

OSSE  
Office of Dispute Resolution  
February 02, 2025

Parent on Behalf of Student, <sup>1</sup>	HEARING OFFICER’S DETERMINATION
Petitioner,	Hearing Dates: January 14, 2025 January 29, 2025
v.	Counsel for Each Party listed in Appendix A
District of Columbia Public Schools (Local Education Agency “LEA”)	
Respondent.	<u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>
Case # 2024-0222	
Date Issued: February 2, 2025	

<sup>1</sup> Personally identifiable information is in the attached Appendices A & B.

## **JURISDICTION:**

The hearing was conducted, and the decision was written, pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter 5-A30.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student who is the subject of this due process hearing ("the Student") resides with the Student's parent in the District of Columbia. The District of Columbia Public Schools ("DCPS") serves as the Student's local education agency ("LEA"). The Student has been determined eligible for special education under IDEA, classified as having other health impairment ("OHI") due to Attention Deficit Hyperactivity Disorder ("ADHD").

On November 19, 2024, the Student's mother ("the Petitioner") filed a due process complaint ("DPC") claiming that DCPS ("the Respondent") denied the Student a free appropriate public education ("FAPE") by failing to: conduct a comprehensive evaluation, provide a timely and appropriate individualized education program ("IEP") and/or placement, and fully implement the Student's IEP.

The Petitioner seeks the following relief: that DCPS conduct or fund and review a functional behavior assessment ("FBA") and a comprehensive psychological evaluation, revise the Student's IEP consistent with the evaluations' recommendations, and fund a compensatory education award.

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

DCPS filed a response to the complaint on November 27, 2024. In its response, DCPS stated, inter alia, the following:

The student has received various interventions and positive behavior supports to lessen the severity and frequency of concerning behaviors. The identified areas of concern include resistance to completing work and difficulties with attention and distractibility. DCPS effectively monitored and evaluated the student, providing suitable programming and support. The student began the school year ("SY") 2022-2023 having mastered goals from the previous year and demonstrating progress in other areas.

In December 2021, the Student's behavior support was changed from inside to outside the general education setting, which proved effective. In November 2022, the Student's IEP was reviewed, and appropriate monitoring and evaluation procedures were used to determine appropriate, and effective behavior supports and appropriate IEP placement and programming.

In March 2023, the Student's IEP and any needed compensatory service from the COVID pandemic were discussed. It was determined that he/she did not require compensatory services. In September 2023, the team conducted an annual review of the Student's IEP annually. The Student's IEP reflects programming for three hours a week of specialized instruction, split inside and outside

the general education setting with behavior support services (“BSS”) and occupational therapy (“OT”) as well as OT consult. Additionally, there were many aids, services, and accommodations on her/his IEP to provide the least restrictive placement.

The parent signed consent for DCPS to conduct an evaluation, along with a prior written notice (“PWN”) in that same month and year. The psychologist formally assessed the Student in October 2023. As part of the evaluation procedures, the assessor reviewed the student's academic achievement through records, conducted clinical interviews, and performed a classroom observation.

In December 2023, the student was assessed for suicide risk. There were concerning expressions of suicidal ideation along with signs of depression and isolation. The school obtained a release to communicate with a medical provider and appropriately referred the Student to support resources. In response, the school developed a safety plan and created a behavior intervention plan (“BIP”) for the Student.

The Student’s current IEP from May 2024 indicated progress in both behavior and academics. The Student was receiving six hours of instructional support, and this IEP prescribed five hours of specialized instruction, two of which were outside the general education setting. Providing support and instruction alongside general education peers has proven beneficial for the student’s success and progress over time. DCPS maintained both group and individual behavior interventions and occupational therapy. DCPS has not denied this student a FAPE or violated IDEA.

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

Petitioner and DCPS participated in a resolution meeting on December 5, 2024. The parties did not mutually agree to shorten the 30-day resolution period. The due process complaint (“DPC”) was filed on November 19, 2024. The 45-day period began on December 19, 2024, and ends [and the Hearing Officer’s Determination (“HOD”) is due on February 2, 2025.

The undersigned impartial hearing officer (“IHO”) conducted a pre-hearing conference on December 23, 2024, and issued a pre-hearing order (“PHO”) on December 31, 2024, stating, inter alia, the issue to be adjudicated.

### **ISSUES: <sup>2</sup>**

The issues adjudicated are:

1. Did DCPS deny the Student a free appropriate public education (FAPE) from November 14, 2022, through the present by failing to comprehensively evaluate the Student by not conducting a comprehensive psychological evaluation, including an executive functioning assessment, an ADHD assessment, and a behavior assessment and/or by not conducting an FBA and developing an appropriate BIP?
2. Did DCPS deny the Student a FAPE from November 14, 2022, to the present by failing to provide

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<sup>2</sup> At the outset of the due process hearing, the IHO reviewed the issues to be adjudicated the parties agreed to the issue as stated herein.

the Student with a timely and appropriate IEP and/or placement?

3. Did DCPS deny the Student a FAPE from November 14, 2022, through the present by not implementing the Student's IEP?

#### **DUE PROCESS HEARING:**

The Due Process Hearing was convened on January 14, 2025, and January 29, 2025. It was conducted via video teleconference on the Microsoft Teams platform.

#### **RELEVANT EVIDENCE CONSIDERED:**

The IHO considered the testimony of the witnesses, and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 48 and Respondent's Exhibits 1 through 51 ) that were admitted into the record and are listed in Appendix 2.<sup>3</sup> The witnesses testifying on behalf of each party are listed in Appendix B.<sup>4</sup>

#### **SUMMARY OF DECISION:**

The petitioner sustained the burden of persuasion on issue #1 but did not sustain it on issue #3. DCPS did not sustain the burden of persuasion on issue #2 regarding the Student's May 10, 2024, IEP. The IHO directed DCPS to fund an independent comprehensive psychological evaluation, to review the Student's disability classification, to review and revise the Student's IEP as appropriate, and to determine an appropriate placement for the Student. The IHO granted the Student compensatory education.

#### **FINDINGS OF FACT: <sup>5</sup>**

1. The Student resides with Petitioner, the Student's mother, in the District of Columbia. DCPS is the Student's LEA. The Student has been determined eligible for special education pursuant to IDEA with a disability classification of OHI due to ADHD. The Student currently attends a DCPS school ("School. A"), which he/she began attending soon after the start of SY 2024-2025. The Student attended a different DCPS school ("School B")

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<sup>3</sup> Any item disclosed and not admitted or admitted for limited purposes was noted on the record and is noted in Appendix A.

<sup>4</sup> The Petitioner presented two witnesses: (1) an educational advocate who testified as an expert witness and (2) the student's mother (the Petitioner). Respondent presented two witnesses who testified as expert witnesses: (1) the Student's School B social worker for SY 2023-2024 and (2) the special education coordinator from School A. The IHO found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the witnesses' testimony that the IHO identified are addressed in the conclusions of law.

<sup>5</sup> The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained. When citing an exhibit submitted by more than one party separately, the IHO may only cite one exhibit.

during SY 2023-2024. Before that, the Student attended another DCPS school (“School C”) where she/he attended several years. (Mother’s testimony, Petitioner’s Exhibits 4-2, 13, 39)

2. In December 2020, while the Student was attending School C, a DCPS psychologist conducted a comprehensive psychological reevaluation of the Student, with an evaluation report dated January 8, 2021. The evaluation considered the Student’s eligibility for OHI and specific learning disability. The evaluation included parent, student, and teacher interviews, and virtual classroom observation of the Student and the following standardized assessments: Woodcock-Johnson IV Tests of Cognitive Abilities (WJ-IV COG), Woodcock-Johnson IV Tests of Achievement (WJ-IV ACH), Behavior Assessment System for Children, Third Edition (BASC3) Structured Social History Behavior Assessment System for Children, Third Edition (BASC3) Parent and Teacher Form. (Respondent’s Exhibit 2)
3. The DCPS psychologist concluded that the Student continued to perform inconsistently due to high levels of inattention and poor executive functioning skills. His/her brief cognitive functioning was in the low range with a Full-Scale IQ of 79. The Student’s highest cognitive area was fluid reasoning (nonverbal processing), which fell in the low average. Lower scores were noted in the area of short-term memory and auditory processing. The Student’s academic scores indicated that reading scores were a strength while math and spelling were in the low average ranges. On the WJ-IV ACH, the Student’s reading score was 93, which fell in the average range; his/her math problem-solving score was 84 and fell in the low average range. (Respondent’s Exhibit 2)
4. The Student behavioral information was provided from the BASC-3. The Student’s scores fell in the average range for internalizing problems and adaptive skills, while externalizing problems and behavioral symptoms indexes fell in the clinically significant ranges. Concerns were noted in the areas of attention, depression, conduct, anger, and executive functioning. The Student’s at school, behaviors of concern were attention, impulsiveness, and executive functioning skills. This information was commensurate with information provided from previous reports, classroom observation, and teacher interviews. The evaluator noted that the Student continued to need more redirection than other peers, struggled to complete work independently and could be disruptive and unable to monitor his/her behavior causing peer conflicts. The evaluator concluded that the Student continued to need support to problem solve and regulate his/her behavior. (Respondent’s Exhibit 2)
5. The psychologist recommended that the MDT continue the Student’s eligibility with the OHI disability classification with ADHD to address her/his executive functioning, emotional regulation, and academic skills. The psychologist noted that the Student continued to need support to access the curriculum in the areas of reading vocabulary, math word problems, and written expression, which are impacted by weak auditory processing, visual motor integration, and executive functioning skills. (Respondent’s Exhibit 2)

6. On February 9, 2022, School C developed a BIP for the Student to address the following behaviors: inappropriate touching or comments toward other students and refusal to complete work and follow directions. The BIP was updated on November 11, 2022. A second BIP was developed for the Student on or about February 9, 2022, and included a third problem behavior: the Student leaving class without permission. (Petitioner's Exhibits 26, 27)
7. On November 14, 2022, School C conducted an annual review of the Student's IEP. The IEP noted the following regarding the Student's behavior:

“Last school year, behavioral interventions implemented for [the Student] this school year focused on a daily behavior chart. This chart follows [the Student] throughout the day to each class, including Inner Core, Lunch/Recess, and Aftercare. [the Student] has been observed using this chart most days, frequently meeting [the Student's] chosen daily goals \ for earning points for positive behaviors such as following teacher directions, keeping hands & words safe, completing classroom assignments, and asking permission before leaving the classroom during instruction. While [the Student] has shown progress in meeting school and classroom expectations, [the Student] should continue to be considered for additional behavioral instruction and supports as [he/she] continues to struggle with impulsivity and positive social interactions with [her/his] classmates.” (Petitioner's Exhibit 8-2)
8. The Student's November 14, 2022, IEP included math and written expression goals and goals for the related services of OT and BSS. The IEP prescribed the following services: 3 hours per week inside the general education setting and the following related services: 1 hour per month of OT outside general education, 30 minutes of OT consult per month, and 2 hours per month of BSS. The IEP was amended to add bus transportation services on December 20, 2022. (Petitioner's Exhibits 8-8, 9)
9. On September 13, 2023, when the Student was attending School B, DCPS conducted an annual review of the Student's IEP. The resulting IEP contained the same description of the Student's behavior concerns as in the previous IEP.<sup>6</sup> IEP included math and written expression goals and goals for the related services of OT and BSS. The IEP prescribed the following services: 1.5 hours per week of specialized instruction inside the general education setting, 1.5 hours per week outside the general education setting, and the following related services 3 hours per week of specialized instruction inside the general education setting and related services, 1 hour per month of OT outside general education, 30 minutes of OT consult per month, and 2 hours per month of BSS. (Respondent's Exhibit 31)
10. The School B social worker prescribed that she believed the Student required when the September 13, 2023, IEP was developed. At that time, the Student was not manifesting the kind of behavior the social worker later observed, so the amount seemed appropriate.

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<sup>6</sup> The IEP was finalized in the IEP database on November 29, 2023. (Petitioner's Exhibit 11)

Two hours per month of BSS was considered the appropriate level of service prescription for Students without an emotional disturbance disability classification. (Witness 2's testimony)

11. On October 10, 2023, a DCPS psychologist conducted a triennial psychological reevaluation of the Student. included The evaluation, a staff consultation, parent and student interviews, and the following standardized assessments: Wechsler Individual Achievement Test-Fourth Edition (WIAT-4) Conner's-4 Short (Teacher). (Petitioner Exhibits 5)
12. The psychologist noted the following: [the Student] is a \_\_\_year-old who attends [School B]. [the Student] was referred for a psychological triennial re-evaluation to determine if [he/she] continues to meet the criteria for a child with a disability. The psychologist noted that the IEP team sought to determine the Student's current academic performance levels in reading, writing, and math to better understand and provide intervention and determine how his/her medical diagnosis continues to impact her/his learning. The psychologist noted the following regarding the Student's academic performance and behavior: "In September 2023, [the Student] scored at a first-grade level (443) on the I-Ready Reading Diagnostic. [The Student] scored at kindergarten level in comprehension of literary text. [the Student] scored at the first-grade level in phonics, vocabulary, overall comprehension, and comprehension of informational text. In writing, [the Student] continues to show difficulties in spelling and writing more than two complete sentences without a graphic organizer. In math in September 2023, [the Student] scored at a kindergarten level (443) on the I-Ready Math Diagnostic. [the Student] scored at kindergarten level in number/operations, algebra/algebraic thinking, measurement/data, and geometry. In regard to behavior, [the Student] exhibits challenges following directions and, therefore, actively participating in class and completing her/his assignments. [the Student] inability to consistently complete [ / ] assignments interferes with [the Student] progress in the general education curriculum." (Petitioner's Exhibit 5)
13. The psychologist noted that the Conners-4 rating scale completed by the Student's general education yielded several areas of concern that may impact [the Student] in the classroom. The psychologist noted the following: "Rating scales completed by both teachers showed slightly elevated to very elevated T-scores in inattention/executive dysfunction and emotional dysregulation. Both raters scores indicate that [the Student's] behavior may impact [her/his] schoolwork and peer interactions. [the Student] scored within the elevated to very elevated range for at least one rater in the areas of impulsivity and hyperactivity. In class, [the Student] may experience trouble paying attention and sustaining attention, as well as difficulty with other areas of executive functioning such as planning, organizing, initiation, and time management. [The Student]. may have difficulty staying seated or sitting still, needing to move around, getting overly excited, and talking too much. [The Student] may have difficulty with interrupting others, blurting out answers, acting before thinking, and having trouble waiting for one's turn. [The Student] may experience difficulties in controlling emotions, mood changing quickly, and having trouble calming down. In class, [the Student] may have challenges in annoying their peers and others not wanting to be friends with them. Finally, [she/he]

may turn in late or incomplete work, losing homework, and not checking their work for mistakes.” (Petitioner’s Exhibit 5)

14. Based on the evaluation results, the psychologist concluded that the Student continued to meet the criteria for a child with an educational disability under OHI and noted that the Student continued to perform significantly below grade level in reading, writing, and math despite interventions provided. She also noted that the Student’s medical diagnosis of ADHD continued to have an educational impact and he/she continued to require support from specialized instruction and related services to access the general education curriculum. (Petitioner’s Exhibit 5)
15. On November 12, 2023, DCPS conducted an OT reevaluation. (Petitioner Exhibits 6)
16. The School B social worker noted that during SY 2023-2024, the Student was very impulsive and unable to hold a five-minute conversation, and School B staff had difficulty redirecting her/him. The Student was described as being off task 95% of the time during and classroom observation in 2023. It was difficult to accomplish anything with the Student in a group of peers. The Student was the most extreme case of ADHD that the School B social worker had ever seen. The student’s behavior significantly differed on the days that the Student had medication. There were also days when the Student was very sleepy and would fall out of the chair, and she/he could not be awakened. School B had to call the Student’s mother and consider whether medical intervention was necessary. (Witness 2’s testimony)
17. The Student was hospitalized for several weeks in December 2023 due to a suicide attempt. The Student has expressed suicidal ideation while at school. The Student has engaged in self-injurious behaviors while at school, including an incident where she/he was observed trying to cut his/her arm with a piece of glass and another incident where he was hitting her/himself with a stick on the head, causing bleeding. (Witness 2’s testimony)
18. On December 21, 2023, the School B social worker conducted a Suicide Risk Assessment on the Student because it was reported by several classmates that the Student made comments during recess that she/he wanted to kill her/himself. The report indicated the Student is at “medium to high risk” level. (Petitioner’s Exhibit 7)
19. School B developed a Safety Plan on March 12, 2024, for the Student to address behaviors, including suicidal ideation, self-injury, and elopement. The safety plan noted the locations on the school grounds where the Student might be if he/she were missing: hallways, bathrooms, playground, security desk, service provider’s suite, and the location she/he might be off school grounds: grandmother’s home, family home, Congress Heights, wondering around in the neighborhood. (Petitioner’s Exhibit 28)
20. The safety plan noted that the Student was recently hospitalized for several weeks at Children’s Hospital in December 2023 due to a suicide attempt and noted a suicide attempt in the previous school year at School C. The plan also noted that the Student had expressed suicidal ideation on 3 to 4 different occasions, and he/she was also observed trying to cut



his/her arm with a piece of glass during recess. The plan also noted that School B had recently called an ambulance due to the Student expressing suicidal ideation, and he/she was transported to the Children's Hospital for an evaluation with the consent of her/his mother. (Petitioner's Exhibit 28)

21. The safety plan noted the following strategies to address the Student's behaviors: "Student should be closely monitored & supervised by all staff, at all times. If student is out of location or whereabouts are unknown, it should be reported immediately via red code text alert & to the main office. The safety plan noted the following plan of action: Use the [th grade] red code text alert system to notify the team immediately. Call the office for help, if no one responds on the red code text alert. Notify student's mother of any written behavioral incidents on the day of the incident. Refer the student to S.W. for suicide risk assessment if student makes threats to do self-harm." (Petitioner's Exhibit 28)
22. The School B social worker followed up with the Student's mother about getting a release of information signed so she could communicate with the Student's outside medical provider(s) so that the Student's aftercare plan team who was treating him/her after the hospitalization would know what was happening with the Student at school. The Student's mother provided a release for this communication to occur. (Witness 2' testimony)
23. Working with the Student individually or with a group was challenging for School B staff because they did not know what the Student might do to harm him/herself or wander off from a group on the school grounds. School B did not have the level of supervision to address the Student's behaviors. (Witness 2' testimony)
24. On May 10, 2024, School B conducted an annual review of the Student's IEP. The IEP included academic math and written expression goals and goals for the related services of OT and BSS. The IEP prescribes the following services: 3 hours per week of specialized instruction inside the general education setting and 2 hours per week outside the general education setting, and the following related services outside general education: 1 hour per month of OT, 2 hours per month of group BSS and 1 hour of individual BSS. (Petitioner's Exhibit 13)
25. The Student's three most recent IEPs, November 14, 2022, September 13, 2023, and, May 2, 2024, contain the same or similar goals with no progress or minimal progress indicated on the correlated IEP Progress Reports. The same written expression goal has been on all three of the most recent IEPs. Despite the Student working on the same written expression goal for three IEP cycles, the IEP progress reports for SY 2023-2024 indicate that the Student has made no progress every term. Additionally, Motor Skills/Physical Development and Emotional, Social, and Behavioral Development goals have been repeated throughout the past three IEP cycles with little progress noted. (Witness 1's testimony, Petitioner's Exhibits 44, 45)
26. During SY 2023-2024, DCPS began using a new special education database system that contained glitches, including the goals not importing into the progress reports. This resulted in progress report goals often being different from a student's IEP goals. These

errors were corrected when identified by submitting a change to the database. (Witness 2's testimony)

27. Student began attending School A during SY 2024-2025. Since the Student has been attending School A, there has been nothing alarming about his/her behaviors. The greatest concern has been attendance. The Student usually arrives at school late at 10:00 a.m. School A conducted a meeting with the Student's parent regarding the attendance. Although the Student does qualify for bus transportation, the Student's mother declined the bus transportation. Since attending School A, the Student has been disciplined twice on October 29, 2024, and December 10, 2024, which resulted in in-school disciplinary action a mediation. (Witness 3's testimony, Respondent's Exhibits 13, 14)

28. The Student's mother keeps abreast of the Student's progress at School A through progress reports. However, she seems to only communicate with School A staff when the Student misbehaves, and she needs to come to pick him/her up early from school, which she has had to at least four times during the current school year. (Parent's testimony)

#### **CONCLUSIONS OF LAW:**

Pursuant to IDEA §1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

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

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--  
(a) Are provided at public expense, under public supervision and direction, and without charge;  
(b) Meet the standards of the SEA, including the requirements of this part; (c), Include an appropriate preschool, elementary school, or secondary school education in the State involved;  
and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. West*, 546 U.S. 49, 126 S. Ct. 528 (2005). Petitioner the burden of persuasion on issues # 1 and #3. DCPS held the burden of persuasion on issue #2 once Petitioner presented a prima facie case on that issue. <sup>7</sup> The burden of persuasion shall be met by a preponderance of the

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<sup>7</sup> DC Code § 38-2571.03 (6) provides:

(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

evidence. The normal standard is a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

**ISSUE 1:** Did DCPS deny the Student a free appropriate public education (FAPE) from November 14, 2022, through the present by failing to comprehensively evaluate the Student by not conducting a comprehensive psychological evaluation, including an executive functioning assessment, an ADHD assessment, and a behavior assessment and/or by not conducting an FBA and developing an appropriate BIP?

**Conclusion:** Petitioner sustained the burden of persuasion by a preponderance of the evidence that DCPS failed to adequately evaluate the Student during SY 2023-2024 after the Student was hospitalized for suicidal ideations.

Pursuant to 34 C.F.R. § 300.304 (c) a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that "a full and individual evaluation is conducted for each child being considered for special education and related services." The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5A § 3006.7(a).

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

34 C.F.R. § 300.303 provides:

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with Sec. Sec. 300.304 through 300.311--

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) If the child's parent or teacher requests a reevaluation.

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(i) Where there is a dispute about the appropriateness of the child's individual educational program or placement or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement, provided that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section--

- (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
- (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

34 C.F.R. § 300.303(a) makes it clear that "A local education agency ("LEA") *shall ensure* that a reevaluation of each child with a disability is conducted...if the child's parents or teacher requests a reevaluation." and that the reevaluation must be conducted at least once every three years.

Students are also entitled to a reevaluation of their disability upon a parental request, provided that no reevaluation occurs "more frequently than once a year," though a requested reevaluation must occur "at least once every 3 years." 34 C.F.R. § 300.303(a)(2); see *Cartwright v. Dist. of Columbia*, 267 F. Supp. 2d 83, 87 (D.D.C. 2003) ("DCPS' failure to comply with [the parent's] request clearly violates the language of [34 C.F.R. § 300.303].").

While an FBA is the "primary way" for an LEA to "consider the use of positive behavioral interventions and supports," it is not the only way. *Simms v. Dist. of Columbia*, No. 17-CV-970 (JDB/GMH), 2018 WL 4761625, at \*14 (D.D.C. July 26, 2018), report and recommendation adopted, No. CV 17970 (JDB)(GMH), 2018 WL 5044245 (D.D.C. Sept. 28, 2018). IDEA does not mandate that an FBA be conducted and/or a BIP be developed except in the provisions related to disciplinary actions pursuant to 34 C.F.R. 300.530 et. seq. Those provisions do not apply to this case.

34 C.F.R. §300. 324 (a) (2) provides: The IEP Team must— (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior.

Petitioner alleges that DCPS failed to comprehensively evaluate the Student by not conducting a comprehensive psychological evaluation, including an executive functioning assessment, an ADHD assessment, and a behavior assessment, and/or by not conducting an FBA and developing an appropriate BIP.

The evidence demonstrates that DCPS conducted a comprehensive psychological evaluation of the Student in December 2020 and October 2023. Although Petitioner alleged that the comprehensive evaluations did not include certain standardized assessments, Petitioner's witness testimony about was unconvincing regarding the appropriateness of the particular evaluation protocols that were included in these two evaluations.

The evaluation included cognitive, academic, and social-emotional testing. The fact that there was no specific assessment regarding the Student's executive functioning was immaterial. The DCPS social worker credibly testified that the Conners, which was conducted during the October 2023 evaluation, in addition to assessing for ADHD, can also look at depression and anxiety and can identify where the student is elevated.

Her testimony was that when the Student arrived at School B in SY 2023-2024, particularly when his/her September 2023 IEP was developed, she was unaware of any behaviors by the Student that would have indicated that any other assessments were required. The Student had FBAs developed

in 2022 when the Student was attending School C, and the Student had social-emotional and behavioral goals that were being worked on with BSS.

Although no FBA was presented in the Student's educational record, a BIP can be developed with an FBA first being conducted. As noted in the citation above, IDEA only requires an FBA to be conducted under the prescribed circumstances not presented in this case. Consequently, the IHO concludes that the two psychological evaluations that the DCPS conducted in December 2022 and October 2023 appropriately assessed the Student's academic, social emotional and behavioral needs. Likewise, there was insufficient evidence that the evaluations in the areas of OT were inappropriate.

However, the School B social worker testified that when the September 2023 IEP was developed, she prescribed a level of BSS services standard for a Student without an ED disability classification, implying that an ED disability classification would have warranted increased BSS services. Her testimony indicated that another course of action was necessary regarding the Student's evaluation after the Student was hospitalized in December 2023 for suicidal ideations or attempts. She testified that it was after this hospitalization that she became aware of a prior suicide attempt by the Student. She also testified that by December 2023, the Student's behaviors had significantly changed from those observed when the September 2023 IEP was developed

This witness testified regarding the Student's increasingly disturbing behaviors. She noted that working with the Student individually or with a group was challenging for School B staff because they did not know what the Student might do to harm her/himself or herself or wander off from a group on the school grounds. She also testified that School B did not have the level of supervision to address the Student's behaviors.

From this testimony, the IHO infers that the Student was exhibiting suicidal and other dangerous behaviors that should have alerted DCPS to the need for an evaluation regarding an emotional disability and whether the Student required a more restrictive placement than what was provided at School B.

While School B developed a safety plan for the Student, it aimed to monitor and address the Student's safety while the student remained at School B. The testimony provided by the School B social worker suggests that School B was aware, based on the student's behaviors, that the student needed an evaluation to determine if there were significantly more emotional concerns than previously identified and that the student might have required a more restrictive placement.

Consequently, the IHO concludes that DCPS denied the Student a FAPE by failing to comprehensively evaluate the Student for an ED classification and a more restrictive setting during the second semester of SY 2023-2024.

**ISSUE 2:** Did DCPS deny the Student a FAPE from November 14, 2022, to the present by failing to provide the Student with a timely and appropriate IEP and/or placement?

**Conclusion:** DCPS did not sustain the burden of persuasion by a preponderance of the evidence that the Student's May 10, 2024, IEP was appropriate.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special education and related services that' are 'provided at public expense, under public supervision ...;' and that 'meet the standards of the State educational agency;' as well as 'conform[ ] with [each disabled student's] individualized education program.'" *Charles H. v. District of Columbia*, 2021 WL 2946127 (D.D.C. June 16, 2021) (quoting 20 U.S.C. § 1401(9)) (alterations in original). "Special education" is defined as "specially designed instruction, at no cost to parents, [that] meet[s] the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services," on the other hand, are defined as "such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." *Id.* § 1401(26)(A).

"Under [the] IDEA and its implementing regulations, students with disabilities ... are entitled to receive [a] FAPE through an Individualized Education Program (or IEP)." *Charles H.*, 2021 WL 2946127 (quoting 20 U.S.C. § 1401(9)(D)). An IEP is a written document that lays out how the student will obtain measurable annual goals and that mandates specific special education and related services that the student must receive. 20 U.S.C. § 1414(d)(1)(A)(i). It is created for each student by a special "IEP Team," consisting of the child's parents, at least one regular-education teacher, at least one special-education teacher, and other specified educational experts. *Id.* § 1414(d)(1)(B). An IEP is the main tool for ensuring that a student is provided a FAPE. See *Charles H.*, 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

The second substantive prong of the *Rowley* inquiry is whether the IEP developed was reasonably calculated to enable Student to make progress appropriate in light of Student's individual circumstances. In *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the "educational benefits" requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated into the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular

classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Endrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

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

The key inquiry regarding an IEP's substantive adequacy is whether taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP offered was reasonably calculated to enable the specific student's progress....“Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. 988.

Removing a child with disabilities “from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily.” 34 C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the “maximum extent appropriate”); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006)

“The IDEA requires that children with disabilities receive education in the regular classroom whenever possible” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. at 999 (quoting *Rowley*, 458 U.S. at 202)

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

The key inquiry regarding an IEP's substantive adequacy is whether taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP offered was reasonably calculated to enable the specific student's progress....“Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. 988.

Petitioner challenged the Student’s November 14, 2022, September 13, 2023, and May 10, 2024, IEPs. Petitioner asserted that DCPS denied the Student a FAPE when it failed to provide IEPs that were based on comprehensive evaluative data and provided appropriate goals that would provide sufficient progress. Petitioner also asserted that the IEPs did not provide sufficient occupational therapy services and/or behavioral support services or specialized instruction that would provide sufficient progress and/or an appropriate placement.

Petitioner asserted that despite the Student’s lack of progress, DCPS made minimal changes to the Student’s specialized instruction hours and related services and did not consider changing the placement to a more restrictive setting that could address the Student’s behaviors and deficits in academic progress.

With regard to the Student's November 14, 2022, and September 13, 2023, IEPs, Petitioner presented an expert witness who testified regarding the appropriateness of the Student's IEP goals and the level of specialized instruction and related services. This witness had no expertise in the areas of Student's related services. With regard to academic goals and the level of specialized instruction, this witness's testimony was also suspect and of little weight. She met the Student for the first time last week before the hearing; she had not evaluated or observed in the classroom or participated in any of the Student's IEP team meetings, provided her/him with any instruction, or conferred with the Student's teachers or related service providers.

Petitioner also asserted that some of the Student's IEP goals differed from those in the Student's progress reports. A DCPS witness provided a credible explanation for the errors. She testified that the transition to the new special education database system, used to generate the IEP and progress reports, had glitches that resulted in the goals being inaccurately reported in the progress reports and needing correction.

Consequently, the IHO concludes that with regard to the Student's November 14, 2022, and September 13, 2023, IEPs, the Petitioner did not present sufficient evidence to meet a prima facie case of the inappropriateness of these two IEPs. There was no evidence presented that any of the IEPs were untimely. The IHO concludes that there was sufficient evidence that these two IEPs were reasonably calculated to enable the Student to make progress appropriate in light of the child's circumstances.

However, the evidence demonstrates a different conclusion regarding the Student's May 10, 2024, IEP. As stated in the issue above, the School B social worker testified that when the September 2023 IEP was developed, she prescribed a level of BSS services standard for a Student without an ED disability classification, implying that an ED disability classification would have warranted increased BSS services. Her testimony indicated that another course of action was necessary regarding the Student's evaluation after the Student was hospitalized in December 2023 for suicidal ideations or attempts. She testified that by December 2023, the Student's behaviors had significantly changed from those observed when the September 2023 IEP was developed.

As previously stated, this witness testified that working with the Student individually or in a group was challenging for School B staff because they did not know what the Student might do to harm himself/herself or wander off, and School B did not have the level of supervision to address the Student's behaviors.

The IHO has concluded that DCPS should have evaluated the Student once she/he began exhibiting suicidal and other dangerous behaviors during the second semester of SY 2023-2024. DCPS developed an IEP for the Student on May 10, 2024, that lacked that evaluative data despite the Student's demonstrated behaviors that indicated that the Student might have an emotional disability and require a more restrictive placement than what was provided to the Student at School B.



Consequently, the IHO concludes that the Student's May 10, 2024, IEP was not reasonably calculated to enable the Student to make progress appropriate in light of the child's circumstances and was, therefore, a denial of a FAPE.

**ISSUE 3:** Did DCPS deny the Student a FAPE from November 14, 2022, through the present by not implementing the Student's IEP.

**Conclusion:** Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS denied the Student a FAPE from November 14, 2022, through the present by not implementing the Student's IEP.

For a failure to implement claim, the IDEA is violated only when a school district deviates materially from a student's IEP. See *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016); The IDEA is violated when a school district deviates materially from a student's IEP. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011) (citation omitted). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by that child's IEP. *Holman v. District of Columbia*, No. 14-1836, 2016 WL 355066 (D.D.C. 2016) (citing *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007)). In other words, for the court to find a failure to implement an IEP, the school board or local authorities must have "failed to implement substantial or significant provisions of the IEP." *Wilson*, 770 F. Supp. 2d at 274 (citing *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). There is no requirement that the child suffer educational harm in order to find a violation; rather, the proportion of services mandated compared with those provided is "the crucial measure for purposes of determining whether there has been a material failure to implement" an IEP.

A school district "must ensure that ... special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2). A material failure to implement a student's IEP constitutes a denial of a FAPE. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268 69 (D.D.C. 2013). To meet its burden, the moving party "must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Beckwith v. District of Columbia*, 208 F.Supp.3d 34, 49 (D.D.C. 2016) (quoting *Hous. Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) ). "Generally, in analyzing whether a student was deprived of an educational benefit, 'courts ... have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.' " *Id.* (quoting *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011)). *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 at 144 (D.D.C. 2018)

"It is not enough merely to "offer" the services provided by an IEP, the school district must "ensure" the child actually receives them." *White v. District of Columbia*, 80 IDELR 284 (2022)

Petitioner asserts that DCPS knew or should have known that the IEP was not being implemented based on circumstantial evidence of the repetition of IEP goals, some goals not yet being implemented as reported in progress reports, the lack of progress towards other goals, the Student's grades, and her/his continued poor performance on standardized tests. However, no direct

evidence was presented that the Student's specialized instruction and related services were not delivered by the special education teachers and related service providers.

Petitioner presented an expert witness to support her contention that the Student's IEP was not implemented. However, this witness's testimony was of little weight and insufficient to establish that the Student's IEPs had not been implemented. She met the Student for the first time last week prior to the hearing; she had not evaluated or observed in the classroom or participated in any of the Student's IEP team meetings, provided him/her with any instruction or conferred with the Student's teachers or related service providers.

DCPS presented a witness who credibly testified that the Student's IEP was implemented at School B when the Student was otherwise present and available for learning. The Student's parent, who would have been the most likely to know whether the Student's IEP was implemented at School C, did not offer any testimony in this regard.

Consequently, the IHO concludes that the Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that the Student's IEP had not been implemented during SY 2022-2023, SY 2023-2024, and thus far during SY 2024-2025.

### **Remedy:**

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

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

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

The Petitioner requested the compensatory education included in her educational advocate's proposal.<sup>8</sup> Petitioner's educational advocate asserted inappropriately that the Student should be

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<sup>8</sup> The advocate recommended the following compensatory education: 720 hours (120 hours/month x 6 months) of specialized instruction outside of the school setting to address instruction across cognitive areas and to compensate

compensated for denials of FAPE that were not substantiated. Consequently, the IHO found the proposal to be grossly overstated. However, there was sufficient evidence that providing the Student compensatory tutoring will place the Student at or close to the position she/he would have been but for the denial of a FAPE determined herein.

**ORDER: <sup>9</sup>**

1. DCPS shall, within ten (10) business days of the issuance of this order, provide Petitioner authorization and funding to obtain an independent comprehensive psychological evaluation and the OSSE prescribed rate.
2. DCPS shall, within fifteen (15) business days of receiving the report from the independent evaluation mentioned above, convene an IEP team meeting to review the evaluation results, determine the Student's appropriate disability classification, and review and revise the Student's IEP as appropriate. Additionally, the team will identify an appropriate placement and service location for the Student for the remainder of the SY 2024-2025.
3. DCPS shall, within ten (10) business days of the issuance of this order, provide Petitioner authorization for the following independent compensatory services at the OSSE prescribed rates: 250 hours of independent tutoring
4. All other relief requested by the Petitioner is denied.

**APPEAL PROCESS:**

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ *Coles B. Ruff*

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**Coles B. Ruff, Esq.**  
**Impartial Hearing Officer**  
**Date: February 2, 2025**

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for unaccounted, inappropriate, repetitive, and contradictory annual goals. 30 hours of Occupational Services (1 hours/month x 30 months). 60 hours (2 hours/month x 30 months) of BSS-related service to offer Social, Emotional, and Behavioral support, individual instruction to implement 1 annual goal, and the practice of a BIP. Extended School Year enrollment allows the student to continue to work towards annual goals and to ensure the retention of previously learned skills. 16 hours of Parent Training (2 hours/month x 10 months), to familiarize the parent with behavioral strategies in the home.

<sup>9</sup> Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day-for-day basis.