

**District of Columbia
Office of the State Superintendent of Education**

Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
February 28, 2025

Parent, on behalf of Student,¹)	
Petitioner,)	
)	Hearing Dates: 1/24/25, 2/6/25
v.)	Hearing Officer: Michael Lazan
)	Case No. 2024-0230
District of Columbia Public Schools,)	
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student (the “Student”) who is currently eligible for services. On November 27, 2024, a due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”), pursuant to the Individuals with Disabilities Education Act (“IDEA”). The Complaint was filed by the Student’s parent (“Petitioner”). On December 9, 2024, Respondent filed a response.

II. Subject Matter Jurisdiction

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

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

III. Proceedings

A resolution meeting was held on December 9, 2024. The parties were unable to resolve the case. A prehearing conference took place by telephone on December 23, 2024. Participating in the prehearing conference were Attorney A, Esq., attorney for Petitioner, and Attorney B, Esq., attorney for DCPS. On January 2, 2025, a prehearing order was issued, summarizing the rules to be applied in the hearing and identifying the issues in the case.

On January 9, 2025, Petitioner moved to extend the timeline for filing the Hearing Officer Determination (“HOD”). The motion was granted by order dated February 3, 2025, extending the decision timeline to February 28, 2025. The matter proceeded to hearings on January 24, 2025, and February 6, 2025. The hearings were conducted via the Microsoft Teams videoconferencing platform, without objection. After testimony and evidence, the parties presented oral closing statements on February 6, 2025.

During the proceeding, Petitioner moved into evidence exhibits P-1 through P-15 and P-18 through P-70. Objections were filed with respect to exhibits P-61 through P-63. These objections were overruled. Exhibits P-1 through P-15 and P-18 through P-70 were admitted. DCPS moved into evidence exhibits R-1, R-3, R-5, R-10, R-15, R-17 through R-29, R-30 through R-45, and R-48 through R-50, without objection. Petitioner presented as witnesses, in the following order: Witness A, a speech-language pathologist (expert in speech-language pathology and assistive technology); Witness B, a special education advocate (expert in special education as it relates to the development and implementation of functional behavior assessments (“FBAs”) and behavior intervention plans (“BIPs”)); and herself. Respondent presented as witnesses: Witness C, a teacher and

case manager; Witness D, a speech-language pathologist (expert in speech-language pathology); Witness E, a teacher; Witness F, a social worker; and Witness G, an assistant principal at School C (expert in special education programming and placement).

IV. Issues

As identified in the Prehearing Order and in the Complaint, the issues to be determined in this case are as follows:

1. Did DCPS fail to implement the Student’s Individualized Education Programs (“IEPs”) during the 2024-2025 school year? If so, did DCPS deny the Student a Free Appropriate Public Education (“FAPE”)?

Petitioner contended that the IEPs were not implemented, because DCPS did not address the Student’s behavioral issues relating to attendance.

2. Did DCPS fail to evaluate the Student in all areas of suspected disability when it did not properly assess the Student through an FBA, BIP, or assistive technology evaluation during the 2023-2024 and 2024-2025 school years? If so, did DCPS deny the Student a FAPE?

3. Did DCPS deny the Student a FAPE through the IEPs written on or about December 6, 2023, and May 22, 2024? If so, did DCPS deny the Student a FAPE?

Petitioner contended that the December 6, 2023, IEP was inappropriate because DCPS failed to provide the Student with appropriate assistive technology, based on updated testing. Petitioner also contended the May 22, 2024, IEP was inappropriate because DCPS failed to provide the Student with appropriate assistive technology, based on updated testing, and failed to provide the Student with appropriate speech-language services and goals.

4. Did DCPS fail to review and revise the Student’s IEP during the 2024-2025 school year?

Petitioner contended that DCPS should have: (1) created an appropriate BIP for the Student; (2) provided the Student with services in a more restrictive setting (pull-out instruction for all academics, specials, lunch, recess, and transitions); (3) provided the Student with appropriate interventions to facilitate rapport-building between the Student and school staff; (4) provided the Student with appropriate assistive technology; and/or (5) provided the Student with an appropriate “transition to school” plan.

V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a student with Autism. Among other things, the Student is diagnosed with selective mutism, autism, social anxiety disorder, and obsessive-compulsive disorder. These conditions make it difficult for the Student to get to school and participate while s/he is in school. The Student also has difficulties at school because of his/her strong fear of germs. P-10-2; P-14-1; Testimony of Petitioner; Testimony of Witness D. The Student also engages in behaviors such as staying up all night, pacing without saying anything, shaking, and digging his/her fingers into his/her scalp. Testimony of Petitioner.

2. The Student has a difficult time expressing his/her needs. Peers have reported that they do not hear the Student when s/he speaks. P-14-1. The Student would benefit from the use of an Augmentative and Alternative Communication (“AAC”) device when communicating in the classroom. P-23-3. The AAC device could provide a voice for the child, who could select an image or a word, press a prompt, and let the device speak for them. Testimony of Witness A; Testimony of Witness B.

3. The Student was first found eligible for services in or about June 2021. Testimony of Petitioner. The Student attended School A from pre-school through the 2023-2024 school year. Testimony of Petitioner.

4. On or about October 8, 2021, Petitioner received a call from the Student's teacher to the effect that the Student was shaking in class. As a result, Petitioner obtained medical documentation to support the Student's placement in a virtual program. P-41; Testimony of Petitioner.

5. An IEP was written for the Student on May 20, 2022, which indicated that the Student was diagnosed with Social Anxiety Disorder and that, as a result, the Student frequently displayed anxiety in academic settings, which made completing work difficult for him/her. The IEP indicated that the Student required small-group and individual check-ins to support him/her in accessing academic content, had significant delays in articulation/phonology and receptive/expressive language skills, and required speech-language services to improve his/her functional communication in the classroom. The IEP also said that the Student was able to use spoken language to communicate, but that his/her AAC needs should be monitored for an alternative method of communication in moments of high stress and heightened anxiety. The IEP indicated that the Student was functioning on or about the kindergarten level in academic areas, and that s/he was participating in the DCPS virtual learning program. The IEP also said the Student did not participate in a large class setting, did better in small groups, and grew more comfortable with his/her teachers during the spring of 2022. P-18.

6. The IEP recommended specialized instruction as follows: reading outside general education for 2.5 hours per week; written expression outside general education

for one hour per week; mathematics outside general education for four hours per week; and written expression inside general education for one hour per week. The IEP also recommended 120 minutes per month each of behavioral support services, occupational therapy, and speech-language pathology, all outside general education. The IEP also recommended support such as visual aids and extra wait time for verbal responses. P-18.

7. Or about November 10, 2022, a “transition to school” plan was written for the Student by DCPS’s Home/Hospital Instruction Program (“HHIP”) to integrate the Student back into the school setting at School A. The plan provided for, among other things, the Student to meet School A security staff, complete a walkthrough of the building, and see his/her classroom location. The plan also provided for the Student to be greeted at the door at School A, receive a check-in during the day, and participate in a “Social Emotional Learning” block. P-29.

8. On May 10, 2023, DCPS wrote another “transition to school” plan for the Student, which provided him/her with in-person instruction at home on Mondays and Wednesdays for the first few weeks, and then check-ins during each day at school. Like the previous plan, this plan also provided for the Student to meet security staff, complete a walkthrough of the school building, see his/her classroom location, be greeted at the door, and participate in a “Social Emotional Learning” block. P-30.

9. Another IEP was written for the Student on May 18, 2023. This IEP carried over language from the previous IEP with respect to positive behavior interventions, communication, and assistive technology. The IEP also indicated that no updated data was available for the Student because Petitioner would not send the Student

to school, due to his/her social anxiety. The IEP did not change the Student's specialized instruction or related services mandates. P-19.

10. The Student continued at School A for the 2023-2024 school year. On October 16, 2023, Petitioner received a letter from the school indicating that the Student was excessively absent. R-2-41-42. On May 7, 2024, Petitioner received another letter from the school indicating that the Student was excessively absent. R-2-43-44. During the 2023-2024 school year, the Student would typically arrive late and walk slower than necessary to his/her assigned class and during transitions. The Student required a great amount of prompting and assistance to attempt or complete any assignment. P-21-24.

11. An IEP meeting was held for the Student on December 6, 2023. The resulting IEP recommended that the Student receive specialized instruction as follows: reading outside general education for 2.5 hours per week; written expression outside general education for one hour per week; mathematics outside general education for four hours per week; math inside general education for four hours per week; and written expression inside general education for one hour per week. Like the previous IEP, this IEP also recommended 120 minutes per month each of behavioral support services, occupational therapy, and speech-language pathology, all outside general education. This IEP also added thirty minutes per week of consultation services for behavioral support and occupational therapy. P-21.

12. An FBA "Level 1 Interview" was written for the Student on February 7, 2024. The assessment identified the Student's behavior concerns, including his/her inability to work independently and detachment from the teacher during classroom instruction. The FBA stated that the Student had challenges with accessing grade-level

academic content and was unable to work independently. The FBA also indicated that the Student would attempt to do the work with 1:1 support, and that, when the Student was not tracking the teacher or working independently, the teacher should provide encouragement to the Student so that s/he would attempt the work. However, the FBA also stated that “the teacher does not have the ability to provide 1:1 support during the entire class period.” The FBA also said that anxiety caused the Student’s issues in the classroom, that work avoidance was the function of the anxious behavior, and that the Student did better in small groups. The FBA also contained specific recommendations for the Student to address his/her issues, including chunking work, 1:1 instruction, and a review of classroom instructions. The FBA stated: “We recognize that [the Student] is challenged with the academic rigor of the content. However, we are hopeful that [the Student] will at minimum attempt the work.” A corresponding BIP, also dated February 7, 2024, indicated that prompts, immediate praise, role play, demonstration, and tracking should be used to address the Student’s issues with the inability to work independently and with detachment from the teacher. P-26.

13. On February 26, 2024, the parties held a meeting. Petitioner expressed concern for the Student, requested additional pull-out instruction, and sought further evaluations, including comprehensive psychological testing, autism spectrum disorder testing, and cognitive and educational testing. DCPS indicated that it would check to see if a school psychologist could perform autism testing. DCPS also agreed that an increase in services for the Student was warranted. P-15.

14. Another meeting was held between the parties on March 20, 2024. At this meeting, it was reported that the Student was not engaged in class, even in a small-group

setting with work on his/her level, and needed 1:1 support. DCPS indicated that it would start the process to move the Student to a more restrictive setting. P-15. On March 22, 2024, an amended IEP was issued. The parties agreed on an amendment to the assistive technology section of the IEP. P-21-1. Another amended IEP was issued on April 8, 2024, to reflect additional classroom and testing accommodations. P-22.

15. An occupational therapy evaluation of the Student was conducted by DCPS staff on April 12, 2024. The DCPS evaluator found that the Student presented with below-average visual motor skills and with handwriting skills at the 1st percentile. The Student presented with difficulty processing touch, taste, and smell and manifested sensory differences. These issues were found to have a severe impact on the Student's ability to use his/her planning skills and to engage socially. P-10.

16. On April 14, 2024, a DCPS evaluator wrote a speech evaluation for the Student. To the evaluator, the Student presented with general language ability, with receptive and expressive vocabulary within normal limits. Expressive language was considered to be slightly below average. The evaluation said that the Student continued to exhibit difficulty with pragmatic skills, consistent with his/her disability of autism spectrum disorder, selective mutism, and social anxiety. The evaluation stated that the Student was reluctant to use an adequate speaking volume, became upset when prompted to repeat his/her message, might not respond when spoken to, and might use gestures, grunts, or other vocalizations, such as "squeals," when too nervous to speak. The evaluation described selective mutism as a complex anxiety disorder that affects pragmatic language, and that, despite the term "selective," individuals with selective mutism do not elect where to speak but are more comfortable speaking in select

situations. The Student also presented with difficulty demonstrating appropriate body language and refraining from using non-specific language (e.g., “he,” “she,” “this,” “stuff,” and “that”). The Student also provided redundant information at times and occasionally repeated information that did not clarify explanations. The evaluation said that educating the Student required a multidisciplinary team (“MDT”) approach. The evaluator concluded that the Student’s speech and language skills were impeded by his/her social-emotional challenges but did “not have a direct adverse impact or interference with [his/her] educational performance provided reasonable classroom accommodations, social-emotional support, and an appropriate academic environment.” The evaluator underscored that the Student did not have a willingness and motivation to participate in all therapy activities. R-26.

17. On May 22, 2024, another IEP meeting was held. The ensuing IEP indicated that the Student’s therapist recommended that s/he be escorted to class “first thing” in the morning, and that s/he would gradually work toward escorting him/herself to class independently. The IEP said that an assistive technology consultation indicated that the Student should have access to an AAC device at all times to aid in the learning process. The IEP said that the Student had significant delays in articulation/phonology and receptive/expressive language skills, required speech-language services to improve his/her functional communication, and should receive support such as visual aids and extra wait time for verbal responses. The IEP reported that the Student was still on the kindergarten level in reading, writing, and math, and had regressed in math. However, the Student had made strides with communication, learning the day-to-day school routines, and advocating for him/herself. This IEP increased the recommended special

education hours for the Student to twenty hours per week, with occupational therapy services staying the same at two hours per month, and behavioral support services staying the same at two hours a month. Speech-language pathology services were reduced to one hour per month. P-23; Testimony of Witness B.

18. On June 19, 2024, DCPS wrote an assistive technology consultation summary for the Student. The document said that, based on a teacher interview and a records review, the Student might benefit from access to a comprehensive language system which would enable him/her to access the vocabulary needed to communicate across the educational setting. The document indicated that the Student would benefit from access to a symbol-based AAC system and a trial of “TouchChat” with “Word Power.” Also recommended were dictation, text-to-speech software, accessible worksheets, “read alouds,” word prediction software, and speech-to-text software. The assistive technology summary also said that the IEP team must determine if a trial of the AAC device should be conducted and, if so, the team should conduct the trial and collect data on the effectiveness of the device. The IEP also said that, at the end of such a three-week to four-week trial, if the AAC device was effective, the team should update the IEP to add this assistive technology accommodation. The IEP said that if the AAC features were not effective for the Student, the IEP team may request coaching support for implementation or consider additional assistive technology supports. P-14.

19. For the 2024-2025 school year, Petitioner initially enrolled the Student at School B. Petitioner then learned that the Student was assigned to School C. The Student was intensely anxious about attending a new school, especially a school that was bigger than his/her previous school, and the Student was afraid of the metal detectors at

the school. Petitioner gave School C a copy of the “transition to school” plan that School A had used, and provided the School C team with other documentation about the Student’s needs. A meeting was held on September 17, 2024, to discuss the Student’s transition to School C. Testimony of Witness B; Testimony of Petitioner.

20. On September 17, 2024, Witness G proposed that the Student should go on a tour of School C, that Petitioner should accompany the Student to his/her classroom for the first few school days, that school staff should use “social stories” as a way to introduce the school and its staff to the Student, and that the school should provide a “choice board” to enable the Student to respond manually. R-42. In or about September-October 2024, the Student participated in walkthroughs at School C to get acquainted with the school. The Student did not feel well during the walkthroughs and would not go into a classroom. Testimony of Petitioner. The Student seemed very frightened during the walkthroughs. Testimony of Witness F. The AAC device was first offered to the Student during one school walkthrough. The device was taken to the Student’s home, but Petitioner was told that the device had to stay in the school. Testimony of Witness C.

21. On September 27, 2024, DCPS wrote a new “transition to school” plan for the Student. The “Exposure Plan” section provided for Petitioner to text School C’s assistant principals that the Student had arrived each day. The Student would then transition to the school, first through the security area, then to a staff member, who would give the AAC device to the Student. The Student would then check in with Witness F, the school social worker, who would escort the Student to his/her first class. The “Full Day Transition Plan” section provided that the Student would be greeted by a school staff member upon arrival, transition through the security checkpoint, check in with Witness F,

and then go to class. Witness F was also to check in with the Student before fifth period. The school would collect the AAC device at the end of the day. The plan also added support during lunch and recess. P-33; Testimony of Witness F.

22. In or about October 2024, Witness D offered to create a “social story” to introduce the Student to the school. Witness D also created a “choice board” to enable the Student to make “yes” or “no” choices. Testimony of Witness D.

23. On October 3, 2024, the Student was disenrolled from School C because of non-attendance. P-52.

24. On October 4, 2024, Petitioner and DCPS staff met to follow up on the Student’s “transition to school” plan. Petitioner felt that the plan would not work, and Witness G, a School C assistant principal, said that the school did not have the resources to mirror the earlier transition plan that had been implemented at School A. In particular, the school did not have social workers who could help the Student during every transition. Testimony of Witness G; P-34-2.

25. Notwithstanding the Student’s disenrollment, on October 21, 2024, School C contacted Petitioner to ask if the Student was coming to school. Testimony of Petitioner. On or about October 23, 2024, Witness F suggested that the Student’s psychiatrist write recommendations for the school team to support the Student. P-38-1. Toward the end of November 2024, DCPS reached out to Petitioner and offered a home visit, virtual meetings, and behavior support services for the Student. P-67-7; Testimony of Witness F. In or about December 2024, Witness C gave the Student about three assignments while s/he was at home, and s/he completed some of these assignments.

Testimony of Witness C. Witness E also gave the Student math assignments, but found it difficult to teach the Student virtually. Testimony of Witness E.

26. The proposed classroom at School C is a self-contained, “SLS” classroom with a maximum of fifteen students per class and an extra adult in the classroom. The students in these classes are at least three grade levels behind. Testimony of Witness C. These classes work in very small groups that give teachers many opportunities to work 1:1 with students. Testimony of Witness E.

VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was established 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 and shall establish a *prima facie* case before the burden of persuasion falls on the public agency.” D.C. Code Sect. 38-2571.03(6)(A)(i).

Accordingly, on Issue #1 and Issue #2, the burden of persuasion is on Petitioner. On Issue #3 and Issue #4, the burden of persuasion is on Respondent, if Petitioner presents a *prima facie* case.

1. Did DCPS fail to implement the Student’s IEPs during the 2024-2025 school year? If so, did DCPS deny the Student a FAPE?

Petitioner contended that the Student’s IEP was not implemented, because DCPS did not address the Student’s behavioral issues relating to attendance.

Once a student’s IEP is developed, the school district “must ensure that ... special education and related services are made available to the child in accordance with the child’s IEP.” 34 CFR 300.323(c)(2). “Failure to implement” claims may be brought if a Local Educational Agency (“LEA”) cannot “materially” implement an IEP. Turner v. District of Columbia, 952 F. Supp. 2d 31, 40–41 (D.D.C. 2013). The parent “must show more than a *de minimis* failure to implement elements of the IEP, and, instead, 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, 39 (D.D.C. 2016) (citing to Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000); Savoy v. District of Columbia, 844 F. Supp. 2d 23 (D.D.C. 2012) (holding no failure to implement where the district’s school setting provided ten minutes less of specialized instruction per day than was required by the IEP).

In the prehearing order, Petitioner asserted that the failure of DCPS to create an effective behavior plan for the Student led to the Student not attending school. Petitioner contended that, therefore, the IEP could not be, and was not, implemented during the 2024-2025 school year, during which the Student has not attended school at all. But Petitioner provided no support for the contention that a school district’s failure to create an effective behavioral plan for a student should lead to a finding that the district failed to “implement” the IEP. IEP “implementation” claims are based on allegations that specific services that were promised to a student in an IEP were not delivered.

During closing argument, Petitioner’s approach on this issue was to contend that DCPS failed to provide any assistive technology device to the Student. However, this claim was not mentioned in the prehearing order, and the Student was offered the device

during one of the Student's school walkthroughs in late September-early October 2024. If the Student had attended school, the record suggests that the Student would have had access to the device. Petitioner contended that the device was not available until September 20, 2024, but the Student did not enter any classrooms to use the device before September 20, 2024. Indeed, the Student has not been able to enter any classrooms at School C for the entirety of the school year. This claim must be dismissed.

2. Did DCPS fail to evaluate the Student in all areas of suspected disability when it did not properly assess the Student through an FBA, BIP, or assistive technology evaluation during the 2023-2024 and 2024-2025 school years? If so, did DCPS deny the Student a FAPE?

The evaluation procedures of the IDEA are designed to position an IEP team to create an IEP tailored to a student's special educational needs. Failure to follow those procedures may yield an IEP that is not appropriately tailored to the student, denying the student an appropriate education. Z. B. v. District of Columbia, 888 F.3d 515, 522–23 (D.C. Cir. 2018).

A child's initial evaluation or reevaluation must consist of two steps. First, the child's evaluators must "review existing evaluation data on the child," including any evaluations and information provided by the child's parents, current assessments, classroom-based observations, and observations by teachers and other service providers. 34 CFR 300.305(a)(1). Then, based on a review of the existing data and input from the child's parent, the school district must identify what additional data, if any, is needed to assess whether the child has a qualifying disability and, if so, administer such assessments and other evaluation measures as needed. 34 CFR 300.305(a)(2)(c). The LEA must use "a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information

provided by the parent.” 34 CFR 300.304(b). A student must be “assessed in all areas related to the suspected disability.” 34 CFR 300.304(c)(4).

If a school district fails to recommend appropriate behavioral supports for a student, in particular an FBA or a BIP, FAPE denial may be found. An FBA is required in many cases, because the FBA can be essential to address a child’s behavioral difficulties and, as such, can play an integral role in the development of an IEP. Jackson v. District of Columbia, No. CV 19-197 TJK/DAR, at *2 (D.D.C. June 2, 2020), report and recommendation adopted, No. CV 19-197 (TJK/DAR), 2020 WL 3298538 (D.D.C. June 18, 2020). The District of Columbia Circuit Court of Appeals has stated that the failure to conduct an adequate functional behavioral assessment is a procedural violation that can have substantive effects because it may prevent the IEP team from obtaining necessary information about a student’s behaviors, leading to those behaviors being addressed in the IEP inadequately or not at all. Z. B., 888 F.3d at 524.

The FBA and the BIP are “interrelated.” An FBA is a “systematic process of identifying the purpose of problem behaviors by investigating the preexisting environmental factors that have served the purpose of these behaviors.” Based on the foundation provided by the FBA, a BIP is a “concrete plan of action for reducing problem behaviors.” Jackson, 2020 WL 3318034 at *15.

The record in this case, going back to the 2022-2023 school year, establishes that this Student has had difficulty attending school due to issues stemming from his/her disabilities, including autism, selective mutism, and obsessive-compulsive disorder. These issues affected the Student’s education during the 2022-2023 school year, when the Student had difficulty transitioning back to in-school instruction during the COVID-

19 pandemic. By November 10, 2022, the Student was so resistant to going back to School A after receiving instruction at home during the COVID-19 pandemic, DCPS wrote a “transition to school” plan for the Student to integrate into the school setting. The plan provided for the Student to attend School A, be greeted at school each day, and receive a check-in during the day.

The Student continued to have issues attending school. On May 10, 2023, another “transition to school” plan was written for School A. This plan provided the Student with in-person instruction at home initially. An IEP written for the Student on May 18, 2023, said that no updated data for the Student was available because Petitioner would not send the Student to school, due to his/her social anxiety. The Student continued to have issues with attendance during the 2023-2024 school year. On October 16, 2023, Petitioner received a letter from the school indicating that the Student was excessively absent. On May 7, 2024, Petitioner received another letter from the school indicating that the Student was excessively absent. The Student would arrive late and walk slower than necessary to his/her assigned class and during transitions. Yet these core issues were not addressed by any of the Student’s recent evaluations. The FBA and BIP written for the Student on February 7, 2024, said nothing about getting the Student to attend school or getting to Student to move appropriately while in school.

Then, in the 2024-2025 school year, the Student moved to a new, much bigger school setting. The Student, who was accustomed to the smaller setting at School A, was not ready to attend the much larger setting at School C, which included metal detectors that frightened the Student. Indeed, during the Student’s walkthroughs at the school in late September-early October 2024, the Student would not even go into any of the

classrooms out of fear. The Student has not attended school at all during the 2024-2025 school year. Yet DCPS has still not updated the Student's FBA or BIP to address the Student's issues with attending school, which now prevent him/her from going to school at all.

Witness F explained that there was no need to write an FBA for this Student and that DCPS knew that the Student was not attending school because of anxiety. But an FBA and a BIP should have been written to figure out why the Student had such anxiety with respect to School C, and whether it was possible to alleviate that anxiety by, say, changing the Student's academic program to a smaller school setting. Courts have consistently held that, if a student's disability affects the student's attendance such that the student's academics are also affected, it is incumbent on the school district team to come up with a realistic, coherent plan to address the issue. Middleton v. District of Columbia, 312 F. Supp. 3d 113, 146 (D.D.C. 2018); Garris v. District of Columbia, 210 F. Supp. 3d 187, 191–92 (D.D.C. 2016); Presely v. Friendship Pub. Charter Sch., No. 12-0131, 2013 WL 589181, *8–9 (D.D.C. Feb. 7, 2013); M.M. v. New York City Dep't of Educ., 26 F. Supp. 3d 249, 256 (S.D.N.Y. 2014) (the “government must find ways to open the school house doors, by helping children who suffer from emotional problems to attend school”).

Petitioner also claimed that the Student needed an assistive technology evaluation during the 2023-2024 and 2024-2025 school years. Insofar as the 2024-2025 school year is concerned, DCPS wrote a thorough assistive technology assessment of the Student on June 19, 2024. The assistive technology assessment indicated that, as a student with emerging literacy skills, the Student would benefit from access to a symbol-based AAC

system and a trial of “TouchChat” with “Word Power.” Also recommended were dictation, text-to-speech software, accessible worksheets, “read alouds,” word prediction software, and speech-to-text software. The assessment also said that the IEP team must determine if a trial of the AAC device should be conducted and, if so, the team should conduct the trial and collect data on the effectiveness of the device. Petitioner’s claims that this evaluation was not complete because it lacked “trials” was not supported by clear and convincing witness testimony.

As far as the need to conduct an assistive technology evaluation during the 2023-2024 school year, Witness A, Petitioner’s speech-language expert, was asked by Petitioner’s counsel whether an assistive technology evaluation was necessary for the Student during the 2023-2024 school year. When so asked by Petitioner’s counsel, Witness A did not directly address the question and instead pivoted to the Student’s overall need to succeed in class. This Hearing Officer therefore finds that Petitioner did not meet the burden of persuasion on this sub-issue.

However, this Hearing Officer also finds that DCPS denied the Student a FAPE by failing to properly evaluate the Student through an FBA and a BIP for the 2023-2024 and 2024-2025 school years.

3. Did DCPS deny the Student a FAPE through the IEPs written on or about December 6, 2023, and May 22, 2024? If so, did DCPS deny the Student a FAPE?

Petitioner contended that the December 6, 2023, IEP was inappropriate because DCPS failed to provide the Student with appropriate assistive technology, based on updated testing. Petitioner also contended the May 22, 2024, IEP was inappropriate because DCPS failed to provide the Student with appropriate assistive technology, based

on updated testing, and failed to provide the Student with appropriate speech-language services and goals.

In Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), the Court held that an IEP must be reasonably calculated “in light of the child’s circumstances.” Id. at 999-1000. The Court also held that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001-1002.

The record has established that the Student needs assistive technology to communicate in class because of his/her issues with selective mutism, autism, and obsessive-compulsive disorder. DCPS’s own speech evaluation stated that the Student is reluctant to use an adequate speaking volume, becomes upset when prompted to repeat his/her message, may not respond when spoken to, and may use gestures, grunts, or other vocalizations, such as “squeals,” when too nervous to speak.

However, the May 22, 2024, IEP did say that the Student should have access to an AAC device at all times to aid in the learning process. Petitioner’s suggestion that the May 22, 2024, IEP did not provide the Student with an AAC device is inaccurate, and it is not clear why Petitioner feels that more data would have been needed at that point, in light of the Assistive Technology Consultation Summary of June 2024.

Petitioner also contended that the Student needed an AAC device before May 2024. The documentary record and the testimony of witnesses for both sides make clear that the Student’s severe communication issues in the classroom go back at least to the

2022-2023 school year, and DCPS did not argue to the contrary during closing argument. None of DCPS's witnesses refuted Petitioner's assertion the Student needed an AAC device during the 2023-2024 school year. This Hearing Officer agrees that the Student's December 2023 IEP should also have required the Student to have access to an AAC device.

Petitioner also contended that DCPS failed to provide the Student with appropriate speech and language therapy. DCPS reduced the Student's speech and language pathology mandate in the May 2024 IEP from two hours per month to one hour per month. It appears that this reduction may have been based on the speech evaluation conducted in April 2024, which suggested that the Student did not need speech-language pathology, despite his/her pragmatic language deficits. The evaluator appeared to base her reasoning, at least in part, on the notion that because the Student was not likely to go to speech, the Student did not need speech. The evaluator also stated that classroom accommodations could take care of the Student's speech needs.

But this evaluator was not called as a witness, and DCPS also did not call any speech experts to clearly explain why the Student's speech and language services were reduced from two hours a month to one hour a month. Finally, DCPS did not clearly address this contention during closing argument and did not provide any legal authority to support the position that a student's speech-language pathology mandate should be eliminated or reduced if it was difficult for that student to attend their speech lessons.

This Hearing Officer finds that DCPS denied the Student a FAPE by failing to require assistive technology in the December 2023 IEP and by failing to provide adequate speech-language pathology services in the May 2024 IEP.

4. Did DCPS fail to review and revise the Student's IEP during the 2024-2025 school year?

Petitioner contended that DCPS should have: (1) created an appropriate BIP for the Student; (2) provided the Student with services in a more restrictive setting (pull-out instruction for all academics, specials, lunch, recess, and transitions); (3) provided the Student with appropriate interventions to facilitate rapport-building between the Student and school staff; (4) provided the Student with appropriate assistive technology; and/or (5) provided the Student with an appropriate "transition to school" plan.

The review and revision of IEPs is addressed in 34 CFR 300.324(b), which states that the LEA must revise the IEP "as appropriate" to address "any lack of expected progress toward the annual goals in the general education curriculum, if appropriate." In Questions and Answers on Endrew F. v. Douglas County School District RE-1, 71 IDELR 68 (EDU 2017), the United States Department of Education reinforced the Supreme Court's decision in Endrew F. and clarified that if a child is not making progress at the level that the IEP team expected, the team must revisit the IEP with the Endrew F. standard in mind and revise the IEP as necessary, to ensure that the student receives appropriate special education and related services and that the goals are individualized and ambitious. The memorandum affirmed that the IDEA provides for revisiting the IEP if the expected progress does not occur, and that this is "particularly important because of the Court's decision in Endrew F., which clarifies that the standard for determining whether an IEP is sufficient to provide FAPE is whether the child is offered an IEP reasonably calculated to enable the child to make progress that is appropriate in light of the child's circumstances." The memorandum indicated that, if a child is not making expected progress toward his/her annual goals, the IEP team must revise the IEP, as

appropriate, to address the lack of progress. Olympia School District, 123 LRP 17977 (SEA WA 05/17/23) (absenteeism and lack of engagement should have caused a district to revisit the IEP); Upper Sandusky Exempted Village Schs., 82 IDELR 40 (SEA OH 2022) (student's removal from school five times within three weeks should have prompted the IEP team to address the student's social and behavioral problems, since they were evident from attendance records, behavior logs, discipline, and removals).

The Student has not attended school during the 2024-2025 school year because of his/her fear of and anxiety about attending classes at School C, and there is no dispute that the Student's disabilities cause that fear and anxiety. Petitioner argued that these issues could have been address if DCPS had written an effective "transition to school" plan for the Student. Petitioner contended that the "transition to school" plan for School C that DCPS wrote in September 2024 did not provide the Student with enough supports. Petitioner argued that the "transition to school" plan for School C, or a BIP, should have mimicked School A's "transition to school" plan, which worked effectively for the Student by introducing instruction to the Student incrementally.

More specifically, Petitioner contended that the "transition to school" plan at School A worked because it did not require the Student to immediately attend school for an entire day. Instead, the plan allowed the Student to attend School A for a portion of the school day, until the Student was ready to attend full-time. Then the plan provided for an escort for the Student throughout the school day. The testimony of Witness C

confirmed that the Student was not required to go to School A every day until week six of one of the “transition to school” plans at School A.²

. DCPS contended that its September 27, 2024, “transition to school” plan was adequate for the Student to attend School C. DCPS argued that it did try to get the Student to attend school, and the record reflects this effort. Witness D offered to create a “social story” to introduce the Student to School C and created a “choice board” to enable the Student to make “yes” or “no” choices at school.

However, DCPS’s “transition to school” plan for School C has clearly not worked. The Student has not attended School C for even one period during the entire 2024-2025 school year. At one point Witness G appeared to admit the plan did not work, explaining that the school did not have the resources to implement the plan that had worked for the Student at School A. Certainly, by the middle of October 2024, DCPS should have realized that it needed to figure out a different way to get the Student to attend School C, such as the approach that School A took.

Petitioner also argued that the Student needed to be placed in a more restrictive setting, with specialized instruction throughout the school day. DCPS witnesses indicated that the Student is appropriately placed in the SLS program, which offers twenty hours of specialized instruction to students. However, the SLS program also offers classes in general education, and DCPS, which has the burden of persuasion on this point, did not clearly explain how the Student might be able to cope with general education classes given his/her kindergarten-level academic skills. This Hearing Officer

² No DCPS witness explained why an IEP could not provide for the Student to attend school at the school building part-time until the Student was ready to attend full-time.

agrees with Petitioner and Witness B that putting the Student in large, general education classes with higher functioning peers is a risky proposition at this time, given this Student's extreme reaction to placement at School C. To this Hearing Officer, this Student needs to get his/her academic career back on track in a small, secure environment with specialized instruction and 1:1 support in all classes. Indeed, even with 1:1 support, the record suggests that the Student may not be able to succeed. DCPS's own FBA stated that the Student was unable to work independently and would not complete work, even with 1:1 support. Instead, the FBA said that the Student, who functions on a kindergarten level across all academic domains, would "attempt" to do the work with 1:1 support.

In sum, this Hearing Officer finds that DCPS should have provided the Student with (1) a more appropriate "transition to school" plan³ and BIP and (2) instruction in a smaller setting with specialized instruction in all classes for the 2024-2025 school year.⁴

RELIEF

As relief, Petitioner seeks an FBA, a new IEP reflecting a placement in a more restrictive environment with specialized instruction in all classes, a "transition to school" plan, assistive technology, and compensatory education.

When a student is denied a FAPE, the statute directs the Court to "grant such relief as [it] determines is appropriate." School Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985). The Supreme Court has

³ This Hearing Officer also finds that the school district did not engage in rapport-building between the Student and the staff when it failed to create an appropriate "transition to school" plan for the Student.

⁴ Petitioner's claim that the IEP needed to be revised because it did not contain sufficient assistive technology must be denied because the May 2024 IEP specifically provided that the Student should have access to an AAC device at all times to aid in the learning process.

indicated that due process decision-makers have as much discretion as that of courts in IDEA cases. Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 243 n.11 (2009).

Based on earlier findings in the Conclusions of Law section of this HOD, this Hearing Officer agrees that DCPS should write a new FBA for the Student, that DCPS should write a new IEP for the Student reflecting a more restrictive environment, and that DCPS should write a new “transition to school” plan or BIP to focus solely on the Student’s issues with attendance. The request to add assistive technology to the IEP must be denied, since the document already contains such language.

Petitioner also seeks compensatory education. Hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a “qualitative, fact-intensive” inquiry used to craft an award “tailored to the unique needs of the disabled student”). A Petitioner need not “have a perfect case” to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011).

Petitioner seeks 200 hours of tutoring (five hours per week for forty weeks), forty hours of counseling (one hour per week for forty weeks), twenty hours of speech services, and ten hours to teach the Student to use the AAC device. The plan is an attempt by Witness B to remediate the Student’s harm during the 2023-2024 and 2024-

2025 school years. Because the finding of FAPE denial is premised on an inadequate mandate with respect to specialized instruction, speech-language pathology, and assistive technology, and because Petitioner's relatively modest request was not directly opposed by Respondent, this Hearing Officer will order the tutoring, speech-language pathology, and assistive technology services as requested. A compensatory education plan in the record details how these amounts were calculated, consistent with Reid. Since the finding of FAPE denial was not premised on a lack of behavioral support services, this Hearing Officer declines to order such services as relief in this case.

VII. Order

As a result of the foregoing:

1. Respondent shall pay for 200 hours of compensatory tutoring for the Student, to be provided by a certified special education teacher, at a usual and customary rate in the community;
2. Respondent shall pay for forty hours of speech-language pathology for the Student, to be provided by a qualified professional provider, at a usual and customary rate in the community;
3. Respondent shall pay for ten hours of assistive technology training for the Student, to be provided by a qualified professional provider, at a usual and customary rate in the community;
4. The IEP shall be revised to require small class sizes and specialized instruction in all of the Student's courses;
5. All other requests for relief are denied.

Dated: February 28, 2025

Hearing Officer Determination
Michael Lazan, Hearing Officer
Case # 2024-0230

Michael Lazan
Impartial Hearing Officer

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

VIII. Notice of Appeal Rights

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

Dated: February 28, 2025

Michael Lazan
Impartial Hearing Officer