

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

<b>Parent on behalf of Student,<sup>1</sup></b>	)	<b>Case Nos. 2025-0201</b>
	)	
<b>Petitioner</b>	)	<b>Hearing Dates: February 3 and 5, 2026</b>
	)	
<b>v.</b>	)	<b>Conducted by Video Conference</b>
	)	
<b>District of Columbia Public Schools,</b>	)	<b>Date Issued: February 22, 2026</b>
	)	
<b>Respondent</b>	)	<b>Terry Michael Banks,</b>
	)	<b>Hearing Officer</b>

**HEARING OFFICER DETERMINATION**

**INTRODUCTION**

Petitioner is the parent of an X-year-old student (“Student”) attending School A. On November 21, 2025, Petitioner filed a due process complaint notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) denied Student a free appropriate public education (“FAPE”) by failing to evaluate Student in all areas of suspected disability, failing to provide an appropriate Individualized Education Program (“IEP”) and placements, and failing to implement Student’s IEPs. On December 9, 2025, DCPS filed *District of Columbia Public Schools’ Response to Petitioner’s Administrative Due Process Complaint* (“*Response*”), denying that it had denied Student a FAPE in any way.

**SUBJECT MATTER JURISDICTION**

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

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<sup>1</sup> Personally identifiable information is attached in the Appendix and must be removed prior to public distribution.

## PROCEDURAL HISTORY

On November 21, 2025, Petitioner filed her *Complaint* alleging that DCPS (1) failed to conduct psychological, occupational therapy (“OT”), assistive technology (“A/T”), and speech and language, (“S/L”), and a functional behavior assessment (“FBA”) of Student by January 28, 2025 due to her/his school refusal, (2) failed to honor Petitioner’s October 23, 2025 request for OT, A/T, and S/L evaluations, and an FBA, (3) failed to develop an appropriate IEP on January 28, 2025, and (4) failed to implement Student’s IEP. Petitioner asserted that DCPS’ failure to address Student’s school refusal caused Student’s failure to attend school since December 16, 2024. For relief, Petitioner requested, *inter alia*, (1) an order requiring DCPS immediately to identify and fund an appropriate placement for Student, including a non-public day school or residential facility, (2) an order requiring DCPS to conduct or fund the following evaluations for the student: psychological, S/L, A/T, OT, and an FBA, (3) compensatory education and related transportation expenses, and (4) attorney’s fees and costs.<sup>2</sup>

On December 9, 2025, DCPS filed its *Response* to the *Complaint* denying that it had denied Student a FAPE. DCPS asserted, *inter alia*, that (1) In October 2022, DCPS conducted the student’s triennial evaluations. At that time, DCPS conducted a S/L screening, a psychological evaluation, and an OT evaluation. Student was found eligible with a disability classification of autism (“ASD”);<sup>3</sup> (2) Due to evaluation data and assessment procedure, DCPS determined in March 2023 that Student should receive compensatory education due to the COVID-19 pandemic school closings; (3) Petitioner declined to present Student to DCPS for his/her IEP placement for the summer of 2023 and for the entire 2023-24 and 2024-25 school years. Student’s annual review IEP was developed on January 30, 2024, with all available data. At the meeting, Petitioner reported that Student slept a lot during the day and Student had attacked her when she mentioned returning to school prior to the January 2024 meeting;<sup>4</sup> (4) Student had a BIP in the 2023-24 school year; and (5) Appropriate behavior supports and interventions are identified on Student’s January 28, 2025 IEP. Student’s placement has been assigned to a full time Communication & Education Support (“CES”) classroom for the last two school years as well, which affords her/him the needed support to progress.

The parties conducted a resolution meeting on December 5, 2025 that did not result in a settlement. A prehearing conference in this case took place by video conference on December 23, 2025. A *Prehearing Order* was issued later that day

The due process hearing was conducted on February 3 and 5, 2026 by video conference facilities. The hearing was open to the public at Petitioner’s request. Petitioner filed Five-day Disclosures on January 27, 2026 containing a witness list of three witnesses and 23 documents.

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

<sup>3</sup> In response to my question, Respondent’s counsel reported that for the 2025 triennial, “October 2025 was the triennial period/date for the student. DCPS made referral; however, the student continued to be absent.”

<sup>4</sup> In response to my question about Student’s enrollment status during the Summer 2023 and the 2023-24 and 2024-25 school years, Respondent’s attorney reported that “The student was not presented for necessary programming and supports as per the IEP. The student remained enrolled in DCPS but was not attending.”

DCPS filed objections to Petitioner's Disclosures on January 30, 2026. DCPS objected to P15-P17, P19, P20, P22, and P23. Petitioner's Exhibits P1-P23 were admitted into evidence.

Respondent also filed Disclosures dated January 27, 2026 containing a witness list of nine witnesses and 31 documents. On December 1, 2025, Petitioner filed objections to DCPS' Disclosures on January 30, 2026. Petitioner objected to R2 as to relevance and R 13 and 31 as to authenticity and foundation. Respondent's Exhibits R1 and R4-R31 were admitted into evidence. Petitioner presented as witnesses in chronological order Witness A and Petitioner. Witness A was admitted as an expert in Behavior Management and in Special Education. Respondent presented as witnesses in chronological order Witness B and Witness C. At the conclusion of testimony, the parties' counsel provided oral closing arguments.

## ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to conduct the following evaluations of Student by January 28, 2025 due to Student's school refusal: psychological, OT, A/T, and S/L, and an FBA.
2. Whether DCPS denied Student a FAPE by failing to conduct the following evaluations of Student following Petitioner's October 23, 2025 request due to Student's school refusal: psychological, OT, A/T, and S/L, and an FBA.
3. Whether DCPS denied DCPS a FAPE by failing to develop an appropriate IEP on January 28, 2025 (as amended on or about April 25, 2025).<sup>5</sup> Petitioner asserts that the IEP was inappropriate because (a) it was not supported by a Behavior Intervention Plan ("BIP") that addressed Student's school refusal behaviors, (b) it did not include direct speech and language pathology ("SLP") services, OT services, or behavioral support services ("BSS"), and (c) it did not provide for a therapeutic residential placement despite documentation of significant social-emotional and behavioral needs that have contributed to serious school refusal behaviors.
4. Whether DCPS denied DCPS a FAPE by failing to implement Student's IEP. Petitioner asserts that DCPS' failure to address Student's school refusal has caused Student's failure to attend school since December 16, 2024.

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<sup>5</sup> During the prehearing conference, Petitioner's counsel reported that he had only recently become aware of an amendment to the IEP that was developed on or about April 25, 2025. Petitioner asserts that she was unaware of the amendment until receiving a copy of it sometime after it was developed. When the hearing officer indicated that the amended IEP would be considered as along with the January 28, 2025 annual IEP, Respondent's counsel stated that DCPS would introduce evidence of Petitioner's contemporaneous knowledge of the amended IEP.

## FINDINGS OF FACT<sup>6</sup>

1. Student is an X-year-old student attending School A.<sup>7</sup>

2. On November 20, 2022, when Student was in grade B at School B, DCPS completed an Occupational Therapy Data Review Re-Evaluation as part of her/his triennial review. Although consent for evaluation had been granted on October 22, 2022, Student had missed 24 school days since that time. Examiner A reported that Petitioner had contacted School B to inform them that Student would not be returning to school “for the foreseeable future due to health reasons. Therefore, an occupational therapy due diligence report was completed in lieu of a comprehensive occupational therapy assessment due to [Student’s] multiple absences due to medical and health issues.” Student was diagnosed with autism spectrum disorder in 2019.<sup>8</sup> Student was placed in a Communication and Education Support (“CES”) classroom at School B for the 2022-23 school year. Examiner A noted that no measurable data was collected on Student’s OT goals that school year due to his/her absences.<sup>9</sup> Examiner A was unable to interview Petitioner because Petitioner was unreachable by phone. Examiner A was unable to observe, interview, or assess Student because s/he was persistently absent from school. Thus, a due diligence report was completed instead of a comprehensive assessment.<sup>10</sup>

Teacher A, Student’s special education teacher, completed rating scales on the Sensory Profile 2: School Companion (“SP-2”). His responses ranked Student in the “Just Like the Majority of Others (68% of children) in all categories of Sensory Processing other than Behavioral, Avoiding, and School Factor 4 (Availability for Learning), where he ranked Student “More Than Others” (14% of children), one category below “Much More Than Others” (2% of children).<sup>11</sup> Examiner A interpreted the results of the SP-2 as follows:

Based on the results from the Sensory Profile 2, [Student] appears to be an Avoider (necessity to control or avoid sensation). Due to [her/his] difficulty in understanding some sensory information, [Student] may demonstrate behaviors that impact [his/her] ability to function within [his/her] environment. [Student] can be easily overstimulated. [S/he] is drawn to or distracted by stimuli in environment. [S/he] can appear introverted or lack the motivation to participate in activities. These behaviors can impact [her/his] ability to make and maintain friendships, initiate, and complete tasks and complete worksheets. [Student] may benefit from activities that incorporate multiple senses such as hands on activities or sitting on a therapy ball, participating in "heavy work" activities and using fidgets or manipulatives.<sup>12</sup>

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<sup>6</sup> The Findings of Fact includes all of the oral and written evidence that I considered material in rendering the decision in this matter. The quotations of oral testimony are from my notes during the hearing, not the transcript.

<sup>7</sup> Petitioner’s Exhibit (“P.”) 1 at page 6. The exhibit number is followed by the Bates page number, i.e., P1:6.

<sup>8</sup> P5:42.

<sup>9</sup> *Id.* at 43.

<sup>10</sup> *Id.* at 44.

<sup>11</sup> *Id.* at 45.

<sup>12</sup> *Id.* at 46.

3. On November 21, 2022, DCPS completed a Speech-Language Data Review Evaluation (Alternative Assessment). Student was referred to determine if s/he continued to be eligible for speech and language therapy (“SLP”) services. A complete battery of assessments could not be completed due to Student’s absences.<sup>13</sup> Teacher B reported to Examiner B that she did not have sufficient information to provide regarding Student’s communication skills due to her/his absences during the 2021-22 school year, but stated that s/he could communicate the need to visit the nurse when not feeling well. A classroom observation was not done due to Student’s absences.<sup>14</sup> Student’s articulation skills were informally determined to be within age-level expectations; s/he was 100% intelligible both in known and unknown contexts. Her/his voice and speech fluency were also within normal limits.<sup>15</sup> On the Peabody Picture Vocabulary Test (“PPVT-5”), which measures receptive vocabulary, Student’s score of 62 was in the 1<sup>st</sup> percentile. “This indicates that [s/he] may present with difficulty demonstrating understanding of grade-level vocabulary through non-verbal means, such as pointing to a picture depicting a vocabulary word, acting out the meaning of a word, or drawing an image depicting a given curricular vocabulary word at the same rate as [her/his] peers.”<sup>16</sup> On the Expressive Vocabulary Test (“EVT-3”), Student’s score of 68 placed her/him in the 2<sup>nd</sup> percentile. “This indicates that [Student] may present with difficulty verbally identifying a given grade-level vocabulary word when shown a picture or a visual representation of the word at the same level as [her/his] peers. [Student] presented with difficulty following some directions during administration of this assessment.”<sup>17</sup> Examiner B was unable to complete any other assessments due to Student’s absences.

4. On November 14, 2022, DCPS completed a Comprehensive Psychological Triennial Reevaluation. Student was in a self-contained CES classroom, which “is based on the principles of Applied Behavior Analysis (ABA) and provide a highly structured environment that supports academic, behavioral, communication and social emotional needs of students in order to develop independent life skills.”<sup>18</sup> During the 2021-22 school year, Student failed every course except Health & Physical Education, for which s/he received an A.<sup>19</sup> Student was previously diagnosed as a child with autism spectrum disorder (“ASD”) who presented as a child with mild to significant developmental delays in the areas of communication, social-emotional, cognitive, and adaptive and met the criteria for an ASD classification. Petitioner reported to Examiner C that Student had trouble sleeping, was “cranky” in the mornings, and was refusing to attend school.<sup>20</sup> “[Petitioner] stated that [Student] often prefers to be alone and in [her/his] own world. She tries to get [him/her] to go out when she can, but [s/he] sometimes will tantrum if she encourages [him/her].” Examiner C observed Student for 30 minutes in an English classroom. Student remained on-task without support and behaved appropriately throughout the period.<sup>21</sup>

On the Test of Nonverbal Intelligence (“TONI-4”), which estimates general intellectual ability, using nonverbal formats and pointing responses, Student’s score of 83 was in the Below

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<sup>13</sup> P6:49.

<sup>14</sup> *Id.* at 52.

<sup>15</sup> *Id.* at 53.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 53-54.

<sup>18</sup> P7:59.

<sup>19</sup> *Id.* at 61.

<sup>20</sup> *Id.* at 62.

<sup>21</sup> *Id.* at 63.

Average range. “This suggests that [Student] may have some difficulties managing nonverbal information, organizing spatially oriented material, and managing abstract properties of visual symbols at a level expected of [her/his] age.”<sup>22</sup> On the Kaufman Test of Educational Achievement (“KTEA-3”), Student scored in the Low range in Reading (72), and in the Extremely Low range in Math (44) and Written Language (63).<sup>23</sup> On her/his beginning of the year (“BOY”) i-Ready Reading assessment, Student’s score of 458 was at the grade E level, six grades below Student’s grade at that time. His/her i-Ready Math score of 365 was at the grade H level, seven grade levels below Student’s grade.<sup>24</sup>

Examiner C concluded that Student continued to present as a Student with ASD, “which severely impacts [his/her] ability to access the general education curriculum. It is this examiner’s impression that [Student] continues to benefit from specialized instruction support in a CES classroom setting.”<sup>25</sup>

5. On November 28, 2022, Petitioner filed a due process complaint. The complaint alleged, *inter alia*, that Student’s 2021 and 2022 IEPs were inappropriate because they “failed to incorporate a Behavior Intervention Plan or provide for Behavior Support Services to address Student’s school refusal behavior...”<sup>26</sup> On February 23, 2023, Hearing Officer Peter B. Vaden issued a Hearing Officer Determination (“HOD”). He found that “since DCPS reopened schools to in-person classes in the fall of 2021, Student has refused to go to school for almost all of the 2021-2022 and 2022-2023 school years. Mother testified that Student is a large child and the parent has been unable to physically force the child to leave the home and go to school.” Hearing Officer Vaden cited *Springfield School Committee v. Doe*<sup>27</sup> for the proposition that “A child with a disability who does not attend school cannot be expected to make educational progress and it is the duty of the IEP team to provide special education and related services directed to improving attendance, where the child’s nonattendance is related to his/her disability.”<sup>28</sup> Hearing Officer Vaden found the IEPs inappropriate because they did not address Student’s nonattendance:

While the City School 1 IEP team provided at least minimal attendance-related annual goals in the December 9, 2021 and April 8, 2022 IEPs, the IEPs provided only 1 hour per week of unspecified Specialized Instruction and neither IEP contained any related services, such as Behavioral Support Services or parent training, calculated to get Student to come to school. See 34 C.F.R. § 300.34(a) (Related services include social work services in schools and parent counseling and training). I find that DCPS has not met its burden to offer a “cogent and responsive” explanation to show how these IEPs were reasonably calculated to address the “primary challenge” of Student’s nonattendance. This was a denial of FAPE.<sup>29</sup>

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<sup>22</sup> *Id.* at 64.

<sup>23</sup> *Id.* at 65-66.

<sup>24</sup> *Id.* at 66.

<sup>25</sup> *Id.* at 67.

<sup>26</sup> P23:325.

<sup>27</sup> 623 F.Supp.2d 150 (D.Mass. 2009).

<sup>28</sup> P23:336.

<sup>29</sup> *Id.* at 236-37.

Hearing Officer Vaden ordered the following relief:

Subject to the parent's providing written consent, within 20 business days of this decision, DCPS shall engage a mental health professional, experienced in working with children with school refusal and chronic absenteeism behaviors, to conduct an evaluation of Student focused on finding the causes of Student's school refusal, determining whether there is a relationship with Student's ASD disability and making recommendations to Student's IEP team to equip the IEP team to revise Student's IEP to develop goals and services aimed at getting Student to attend school regularly. Unless there is a DCPS employee with the requisite expertise, DCPS shall engage an independent evaluator. DCPS shall promptly convene Student's IEP team and ensure that Student's IEP is revised, as appropriate, based on the evaluator's recommendations and other information available to the IEP team;

Pending the revision of Student's IEP, DCPS shall forthwith, in coordination with Mother, resume diligent efforts to significantly increase Student's school attendance. DCPS shall keep a record of its attempts to secure Student's attendance, including detailed records of telephone calls and electronic communications made or attempted and the results of those calls; copies of correspondence sent to the parent and any responses received and detailed records of visits made to the child's home.<sup>30</sup>

6. On November 22, 2024, when Student was in grade KK at School A, DCPS issued Student's IEP Progress Report for the period ending November 4, 2024. It reported that Student did not attend school in the first term.<sup>31</sup>

7. On January 28, 2025, DCPS conducted an IEP Annual Review meeting. Her/his disability classification was ASD.<sup>32</sup> In Special Considerations, the IEP team noted that while it was aware that Student's behavior impeded his/her learning or that of other children, the information about Student was copied from previous IEPs because Student had not attended school as of December 16, 2024 for the 2024-25 school year. The IEP team reported that Student benefitted from a small classroom setting that utilized the principles of Applied Behavior Analysis (ABA), including positive reinforcement, token boards, explicit instruction of academic and social skills, and small group instruction. Student's concerning behaviors included aggression (hitting, kicking, pushing, biting, and/or scratching) and elopement (leaving the classroom or making an attempt to do so). The following strategies are used with Student: individual visual schedule; regular review of classroom rules; token boards during instructional time/work centers; timers for transitions from preferred activities; review and use of the "Zones of Regulation" strategies and language; and limiting attention during maladaptive behaviors. The IEP team determined that Student did not require A/T.<sup>33</sup>

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<sup>30</sup> *Id.* at 344-45.

<sup>31</sup> P11:166.

<sup>32</sup> P8:71.

<sup>33</sup> *Id.* at 73.

In Mathematics, the Present Levels of Academic Achievement/Functional Performance (“PLOP”) indicated that Student had not attended school as of December 16, 2024. The goals were: (a) given 20 two and three digit addition problems with and without regrouping, Student will solve the problems with 90% accuracy, (b) given combinations of coins and one dollar bills in amounts up to \$5.00, Student will count the money with 90% accuracy, and (c) given fractional models of halves, fourths, thirds, sixths, and/or eighths, Student will correctly label the fractions with 90% accuracy.<sup>34</sup> In Reading, the goals were: (a) given a text at his/her instructional level, Student will read the text with at least 95% accuracy, (b) given a text read by her/him at his/her instructional level, Student will retell the story by accurately telling at least 4 out of 5 of the following: beginning, middle, end, characters, and setting with 80% accuracy, and (c) given a text read by him/her at his/her instructional level, Student will tell the main idea of the text as well as three supporting details with 80% accuracy.<sup>35</sup> In Written Expression, the goal was: given a question about a familiar event or story, Student will write at least five sentences to respond using correct spelling, spacing, and punctuation with 80% accuracy.<sup>36</sup> In Adaptive Daily Living Skills (“Adaptive”), the goals were: (a) given the use of a Behavior Intervention Plan (“BIP”), Student will display appropriate school behavior across settings by engaging in zero instances of property destruction (i.e., swiping items off table, ripping materials, throwing objects, etc.) across 30 consecutive school days, (b) given the use of a BIP, Student will display appropriate school behavior across settings by engaging in zero instances of aggression (i.e., hitting, kicking, slapping, etc.) for 15 consecutive school days, and (c) during the independent or small group (or another specific time in the school day) when Student previously displayed off-task behavior, Student will use an individual behavior tracking chart to identify two on-task behaviors and demonstrate the two on-task behaviors by refraining from engaging in off-task behaviors (e.g. off topic conversations, distracting peers, publicly shutting down,) for 30 minutes for 2 out of 3 times when beginning to disengage.<sup>37</sup> In Communication, the goal was: the SLP provider will consult with the IEP team regarding Student’s communication skills. By January 2026, Student will implement learned communication strategies to engage in classroom discussions about classroom content, by responding to verbal prompts with 70% accuracy within a 30 minute observation.<sup>38</sup> In Motor Skills/Physical Development (“Motor”), the goal was: with compensatory strategies as needed (visual aids, sensory/movement breaks), Student will attend to a non-preferred activity of 20 minutes duration, with no more than minimal verbal cueing for redirection.<sup>39</sup>

In Emotional, Social and Behavioral Development (“Behavior”), the PLOP reported that during the 2023-24 school year,

The social worker conducted one home visit in October 2023 following a virtual meeting with the parent who requested academic work packets. The SW made a home visit and delivered the work packets created by [her/his] teachers. It should be noted that several meetings have occurred in school year 23-24 with community stakeholders who are supporting the family. HCSN, CBO agency “Better mornings”, students community pediatrician, DCPS central office, and HHIP. At

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<sup>34</sup> *Id.* at 74-78.

<sup>35</sup> *Id.* at 80-84.

<sup>36</sup> *Id.* at 86.

<sup>37</sup> *Id.* at 88-92.

<sup>38</sup> *Id.* at 94.

<sup>39</sup> *Id.* at 97

the last meeting HCSN reported they were awaiting the application to residential/restrictive placement to be completed by the parent and CBO agency. . Parent reported she was also on a waiting list for ABA services and would notify the stakeholders when support was in place.

During the 2022-23 school year, as of February 22, 2023, Student had attended school 26 days. The goals were: (a) Student will identify the feelings to include: confusion, frustration, and/or disappointment and/or zone s/he is experiencing and use an appropriate coping skill to manage it (ask permission to take a break, engage in a calm down activity, make another choice, ask an adult for help, etc.), and (b) when Student is given direct social skills instruction using priming, scenarios, modeling and visuals, Student will learn how to initiate conversations with peers, problem solve through situations and advocate for his/her needs in social situations and in the classroom.<sup>40</sup>

The IEP team prescribed 25 hours per week of specialized instruction outside general education, thirty minutes each per month of SLP and OT consultation services, and Other Classroom Aids and Services: visual aids, choices, highlighting key words and phrases, step-by-step instructions, instructions broken down into simplified parts and steps, reinforcement systems, and visual aides to support his/her coping skills.<sup>41</sup> Student was also deemed eligible for extended year services (“ESY”).<sup>42</sup>

8. At the IEP meeting on January 28, 2025, the IEP team discussed Student’s absences. Petitioner stated that she wanted Student back in school. However,

[Student] sleeps a lot during the day - difficulty getting [him/her] up to join the meeting. [Student] attacked her yesterday when she mentioned [him/her] returning to school - mom called [Facility A] - [Student] was calm when they arrived- they didn’t take [her/him]. Behaviors started in 2021 when lost family members (mom’s support team)- [Student’s] dad was murdered in 2021. [Student] has difficulty following male authority figures since then - has behaviors when [Staff Member A] (case manager) visits... [Her/his] aunt died in 2021 during childbirth.<sup>43</sup>

Witness B, School A’s Social Worker, committed to help Petitioner complete the process of getting ABA services. Witness B requested permission to do a home visit to which Petitioner agreed. The team also discussed the possibility of DCPS’ Home and Hospital Instruction Program (“HHIP”) services once ABA services begin.<sup>44</sup>

9. On February 5, 2025, DCPS issued Student’s IEP Progress Report for the period ending January 27, 2025. It reported that “[Student] hasn't attended school in the last 2 years. The team is working to transition [Student] back to school.”<sup>45</sup>

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<sup>40</sup> *Id.* at 100-03

<sup>41</sup> *Id.* at 106.

<sup>42</sup> *Id.* at 110.

<sup>43</sup> Respondent’s Exhibit (“R.”) 13 at page139. The exhibit number is followed by the Bates page number, i.e., R13:139.

<sup>44</sup> *Id.*

<sup>45</sup> P12:172.

10. On April 24, 2025, DCPS issued Student's IEP Progress Report for the period ending April 7, 2025. It reported that "[Student] hasn't attended school in the last 2 years. The team is working to transition [Student] back to school."<sup>46</sup>

11. On April 25, 2025, DCPS issued an Amended IEP to add goals for ESY.<sup>47</sup> The IEP prescribed one hour per month of behavioral support services outside general education.<sup>48</sup> For ESY, the IEP team prescribed twelve hours per week of specialized instruction outside general education with goals in Mathematics, Reading, Written Expression, Communication, Motor, and Behavior.<sup>49</sup>

12. On June 17, 2025, Petitioner was invited to attend a screening appointment at Facility B

to gather sufficient information to determine which, if any, level of service within the Neurobehavioral Programs would be most appropriate to meet {Student's} needs. Levels of service within the Neurobehavioral Programs include: inpatient, intensive outpatient or day treatment services and will be reviewed with you during the appointment.<sup>50</sup>

13. On June 18, 2025, DCPS issued Student's IEP Progress Report for the period ending June 18, 2025. It reported that "Student hasn't attended school in the last 2 years."<sup>51</sup>

14. On October 23, 2025, Attorney A requested that DCPS conduct the following evaluations of Student: "psychological evaluation, functional behavioral assessment, and any observations necessary to make a recommendation regarding a dedicated aide."<sup>52</sup> Attached to the letter was Petitioner's Consent for Evaluation, signed on October 17, 2025.<sup>53</sup> Later on October 23<sup>rd</sup>, DCPS issued an Acknowledgement of Referral to Special Education Letter.<sup>54</sup>

15. On November 10, 2025, DCPS issued Student's IEP Progress Report for the period ending November 3, 2025. It reported that Student had not attended school in the first term of the school year.<sup>55</sup>

16. Witness A was Petitioner's expert witness in special education and behavior management. She opined that a child's school refusal was an appropriate behavior to address in an FBA. She testified that Student's challenges were related to his/her ASD disability: aggression and school refusal. Witness A opined that Student needed updated evaluations; the prior evaluations relied on records reviews due to Student's unavailability and failure to complete the assessments.

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<sup>46</sup> P13:178.

<sup>47</sup> P10:122.

<sup>48</sup> *Id.* at 147.

<sup>49</sup> *Id.* at 151-52.

<sup>50</sup> R18:209.

<sup>51</sup> P14:184.

<sup>52</sup> P15:190.

<sup>53</sup> *Id.* at 192.

<sup>54</sup> R19:211.

<sup>55</sup> R22:215.

She suggested trying different approaches, perhaps virtual testing or testing at Student's home. Witness A conceded that OT and S/L evaluations were outside of her scope of expertise, but an FBA could be conducted virtually. When asked what supports would be needed to get Student to come to school, Witness A opined: building rapport with school staff, a visual schedule, reinforcement to receive her/him at school, and identifying a preferred adult. Witness A opined that the IEP was inappropriate because it offered no support for Student's school refusal. In response to my question as to how the school staff could address Student's behavior at home, Witness A responded that it could be done through reinforcement in a BIP. Witness A also opined that the IEP should have included goals related to school refusal. Witness A opined that Student required the following evaluations: OT, S/L, A/T, and psychological. In response to my question, she opined that all ASD students with communication delays and behavioral issues should be administered A/T evaluations. In response to my question why Student required an OT evaluation, she replied that his/her triennial assessment was due and that s/he previously exhibited sensory issues. Witness A opined further that the IEP was inappropriate because it did not provide OT or SLP services and that it did not consider a residential setting for Student. On cross-examination, Witness A conceded that Student refuses to leave home for any reason, not just school; s/he had to be carried out of the home when s/he needed emergency medical care.

Witness A developed the Compensatory Education Proposal for Student in Petitioner's Exhibit 22. She opined that but for the denial of FAPE, two years of missed services, Student would have improved her/his receptive and expressive language skills and her/his coping skills. When I asked what this opinion was based on, she replied that the improvements were "likely." Witness A proposed as compensatory education services: 200 hours of tutoring, 60 hours of BSS, 60 hours of OT services, new comprehensive speech and language, occupational therapy with sensory profile, assistive technology, and psychological evaluations, an updated FBA to include school refusal, an updated BIP, placement in a non-public setting, and an updated IEP to include direct speech and language, occupational therapy, and BSS.<sup>56</sup> In response to my question as to how she determined 200 hours of tutoring was appropriate, Witness A replied that Student had missed a lot of services; she considered how much she believed Student could handle in a week and concluded s/he could handle 200 hours over the course of a year. When asked the amount of services Student missed, Witness A conceded that she did not know. The proposed hours of BSS and OT services were also Witness A's estimates of what Student could handle.<sup>57</sup>

17. When asked how Student's ASD affects her/him, Petitioner testified that s/he behaves aggressively; s/he is verbal, but when agitated, instead of verbalizing, s/he punches and throws things. With respect to school, Student refuses to get dressed in the morning and refuses to leave home. This behavior began in grade H but worsened in 2022. S/he will not bathe or dress, s/he will kick, fight, scream, throw things at her, and punch her. "This goes on for a while." Each time Student needed an ambulance, they had to call the police to help get Student out of the home. School A told Petitioner that if Student did not come to school, they could not help him/her. Petitioner testified that Student was denied bus service for fighting the bus driver and was banned from Uber. In response to my question as to whether OSSE refuses to send a bus for Student, Petitioner replied that the bus comes but Student will not leave the home. Petitioner testified that

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<sup>56</sup> P22:321

<sup>57</sup> Testimony of Witness A.

she could not remember anything about the January 2025 IEP meeting. She remembered declining ESY services because Student would not attend regular school year services.<sup>58</sup>

18. Witness B was School A's social worker. Student was assigned to her caseload for the 2024-25 school year. Witness B testified that she only saw Student at school on two occasions. Petitioner informed Witness B that due to a large number of stressors in middle school, Student became combative and was not able to leave home unless "bribed" with a reward of some kind. These symptoms exacerbated to the point where s/he would not leave the home for any reason. Student's private ABA therapist accompanied him/her to school on two occasions in March 2025. School A proposed further "gentle reentry" visits, but Petitioner declined because she no longer had access to ABA services. Witness B recommended that Petitioner pursue Student's enrollment in Facility B's Neurobehavioral Program and contacted Facility B to provide coordination and collaboration. On May 6, 2025 and September 23, 2025, Witness B contacted the Child and Family Services Agency ("CFSA") to report that Student was "not coming to school at all."<sup>59</sup> On cross-examination, when asked why there were no goals on the IEP addressing school refusal, Witness B replied, "I don't know how it would work if [s/he] does not attend." In response to my question as to whether School A had a responsibility to provide goals addressing school refusal, Witness B replied, "The services we provide are in school – all designed to be in school... I was directed to copy [the PLOPs] from the previous school." Witness B clarified that the program she recommended for Student at Facility B was for inpatient/outpatient neurobehavior treatment, not an educational placement. In response to my question about goals addressing school refusal, Witness B questioned if it was her role to address Student's unwillingness to leave home. She also testified that she had no reason to believe that there was anything about School A that was causing the school refusal.<sup>60</sup>

19. Witness C was a special education teacher at School A. Student was assigned to her class. She testified that she reached out to Petitioner on the second day of the 2024-25 school year when Student had not appeared for class. Petitioner informed her that she had experienced difficulty getting Student to attend for two years. Witness kept in touch with Petitioner and visited Petitioner and Student at their home in October 2024. Witness C conducted a home visit on February 10, 2025 with Witness B. Student visited school briefly with his/her ABA specialist in March. S/he sat in the hallway, but would not enter the classroom. On a second visit the following week, Student came into the classroom but did not participate in the pancake cooking exercise with the other children. Both visits lasted about 30 minutes. A third visit was set up, but Student did not attend. Petitioner told Witness C that there would be no further visits because she no longer had access to the ABA therapist who could accompany Student on the visits. When asked on cross-examination why she did not make a home visit before February, Witness C replied that home visits are not required; she was trying to help Petitioner in any way she could to get Student to come to school.<sup>61</sup>

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<sup>58</sup> Testimony of Petitioner.

<sup>59</sup> R3:17-18.

<sup>60</sup> Testimony of Witness B.

<sup>61</sup> Testimony of Witness C.

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, and this hearing officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows: The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production 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.<sup>62</sup>

The issues in this case include the alleged failure of DCPS to provide appropriate IEPs and placements. Under District of Columbia law, DCPS bears the burden of persuasion as these issues. Petitioner bears the burden of persuasion as to all other issues.<sup>63</sup>

**Whether DCPS denied DCPS a FAPE by failing to develop an appropriate IEP on January 28, 2025 (as amended on or about April 25, 2025).<sup>64</sup> Petitioner asserts that the IEP was inappropriate because (a) it was not supported by a BIP that addressed Student's school refusal behaviors, (b) it did not include direct SLP services, OT services, or BSS, and (c) it did not provide for a therapeutic residential placement despite documentation of significant social-emotional and behavioral needs that have contributed to serious school refusal behaviors.**

The Supreme Court's first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act ("EHA"), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.<sup>65</sup> The Court noted that the EHA did not require that states "maximize the potential of handicapped children 'commensurate with the opportunity provided to other children.'"<sup>66</sup> Rather, the Court ruled that "Implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is

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<sup>62</sup> D.C. Code § 38-2571.03(6)(A)(i).

<sup>63</sup> *Schaffer v. Weast*, 546 U.S. 49 (2005).

<sup>64</sup> During the prehearing conference, Petitioner's counsel reported that he had only recently become aware of an amendment to the IEP that was developed on or about April 25, 2025. Petitioner asserts that she was unaware of the amendment until receiving a copy of it sometime after it was developed. When the hearing officer indicated that the amended IEP would be considered as along with the January 28, 2025 annual IEP, Respondent's counsel stated that DCPS would introduce evidence of Petitioner's contemporaneous knowledge of the amended IEP.

<sup>65</sup> 458 U.S. 176, 187 (1982).

<sup>66</sup> *Id.* at 189-90, 200

provided be sufficient to confer some educational benefit upon the handicapped child...<sup>67</sup> Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”<sup>68</sup>

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.<sup>69</sup> The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”<sup>70</sup> The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.<sup>71</sup>

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

When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly... awaiting the time when they were old enough to drop out...” The IDEA demands more. The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.<sup>72</sup>

The provision of a FAPE must be “in conformity with the [child's] individualized education program required under section 1414(d)...”<sup>73</sup> An IEP “is the means by which special education and related services are tailored to the unique needs of a particular child.”<sup>74</sup> An IEP must be in

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<sup>67</sup> *Id.* at 200.

<sup>68</sup> *Id.* at 203-04.

<sup>69</sup> *Andrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

<sup>70</sup> *Id.* at 997.

<sup>71</sup> *Id.* at 1000-01 (citations omitted)

<sup>72</sup> 137 S.Ct. at 1000-01.

<sup>73</sup> 20 U.S.C. § 1401(9)(D). *See id.* § 1414(d)(2).

<sup>74</sup> *Andrew*, *supra*, 580 U.S. at 391, quotation marks omitted, quoting *Rowley*, *supra*. 458 U.S. at 181.

place for each disabled student “[a]t the beginning of each school year,”<sup>75</sup> and must outline a comprehensive plan to “meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum.”<sup>76</sup>

In his 2023 HOD, Hearing Officer Vaden ordered an evaluation to be conducted to determine if there was a relationship between Student’s school refusal and her/his ASD disability, and ordered DCPS to reconvene an IEP team meeting to update Student’s IEP upon completion of the evaluation. Although Petitioner offered Hearing Officer Vaden’s HOD into evidence, there was no testimony offered as to its effectuation. Thus, there was no testimony that Petitioner consented to the evaluation that was ordered or that an evaluation ever took place.

Hearing Officer Vaden cited *Springfield School Committee* as precedent for his decision. While *Springfield* may not have been distinguishable at the time of Hearing Officer Vaden’s decision, it certainly is now. In *Springfield*, the student was absent 33 days between the beginning of school in September 2007 and January 2008, when he enrolled in another school district. The IEP team did not reconvene to address the student’s absences during the fall of 2007. Moreover, there was no contact between school staff and the student or his guardian during the fall of 2007. The court upheld the hearing officer’s determination that the school district had an obligation to reconvene the IEP team to address the student’s truancy during the fall of 2007.<sup>77</sup> Here, similar issues, for a significantly longer period of truancy (two school years), were litigated before Hearing Officer Vaden. Three years later, Student still has not attended school. Unlike the *Springfield* school, which failed to contact the student throughout the fall of 2007, Witness C, contacted Petitioner on the second day of the 2024-25 school year to see what could be done to get Student to come to school. Petitioner told Witness C that she had been unable to get Student to attend school for two years. Witness C remained in touch with Petitioner and conducted a home visit in October 2024 along with Witness B. Student made two brief, thirty-minute visits accompanied by her/his ABA therapist, but Petitioner would not authorize additional visits once she no longer had access to the therapist.

In *Middleton v. District of Columbia*,<sup>78</sup> the student was absent 57 days, 48 of which were unexcused. When the student attended, it was determined that there were environmental conditions that affected him negatively. An FBA determined that he was “more likely to engage in the off-task/resistant behaviors when he d[id] not understand an assignment, when he d[id] not have a relationship with the staff or if there [were] too many students in the class... Similarly, the assessment noted that ‘[w]hen there [was] either a large class or a staff that he ha[d] little rapport with, [A.T] w[ould] frequently cut the class’ and ‘hide[ ] somewhere in the school’ or ‘seek out support staff (i.e. social worker, school psychologist).’ ”<sup>79</sup> Moreover, Judge Rudolph Contreras agreed with the parent that the Student’s problem began with a change of placement out of a small, self-contained class to a larger environment where he would have to navigate transitions independently.<sup>80</sup> Judge Contreras noted that local education agencies (“LEAs”) may be vulnerable

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<sup>75</sup> 20 U.S.C. § 1414(d)(2)(A).

<sup>76</sup> *Id.* at § 1414(d)(1)(A)(i)(II)(aa).

<sup>77</sup> *Springfield, supra*, 623 F.Supp.2d at 161.

<sup>78</sup> 312 F.Supp.3d 113 (D..D.C. 2018)

<sup>79</sup> *Id.* at 146.

<sup>80</sup> *Id.* at 143-44.

to a claim of a denial of FAPE if they do not address absences in IEPs, but the caselaw was not instructive:

Courts in this jurisdiction have assumed that a student may be denied a FAPE if his educational plan does not contain sufficient interventions to adequately address attendance issues... However, consistent with the notion that the IDEA does not prescribe one-size-fits-all interventions, these cases provide little indication of when a school district has done enough to attempt to address attendance issues or, conversely, when a school district's efforts were inadequate.<sup>81</sup>

The student in *Middleton* came to school often enough for a pattern of behavior to be established to develop an FBA. That FBA identified the conditions likely to trigger maladaptive behaviors or to motivate the student's non-attendance. Under these circumstances, it is apparent that the LEA has an obligation to address the environmental conditions in a BIP and the IEP that are predictive of truancy. Here, however, Student has not attended school since the beginning of the 2021-22 school year. Thus, School A has observed no behaviors that it can address in an FBA, BIP, or IEP. There is nothing in the record to indicate that Student's truancy has anything to do with any incident that took place at School A or School B. In fact, at the January 2025 IEP meeting, Petitioner conceded that since Student's father and aunt died in 2021, Student has been unwilling to leave the house *for any reason*, to the point of requiring police assistance when s/he needs to leave the house for medical emergencies. Moreover, unlike the situation in *Middleton*, Student has at all times relevant to this proceeding been placed in a small, self-contained classroom setting. Ever since 2022, Student's IEPs have required specialized instruction in a small class, CES environment throughout the school day, the most restrictive setting within DCPS. Examiner C described DCPS' CES program as being "based on the principles of Applied Behavior Analysis (ABA) and provide[s] a highly structured environment that supports academic, behavioral, communication and social emotional needs of students in order to develop independent life skills."

I conclude that Petitioner has failed to make a *prima facie case* that the IEP DCPS developed on January 28, 2025 was not reasonably calculated to enable Student to make progress appropriate in light of her/his circumstances. The IEP offered the most intensive educational setting possible within DCPS: a small, self-contained CES class throughout Student's academic week. As for Student's truancy, Petitioner offered no testimony as to what DCPS reasonably could or should have done to get Student to come to school. Petitioner concedes that she has not been able to get Student to leave home since Student's father and aunt died in 2021. No amount of creative verbiage in an FBA, BIP, or IEP will magically induce Student to begin to attend school for the first time in

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<sup>81</sup> *Id.* at 146, citations to *Garris v. District of Columbia*, 210 F.Supp.3d 187 (D.D.C. 2016) and *Presely v. Friendship Public Charter School*, Civil Action No. 12-0131, 2013 WL 589181 (D.D.C. Feb. 7, 2013) omitted. These cases are distinguishable because the students attended class sufficiently for the schools to observe their behaviors, identify behavioral triggers, and address them in BIPs and IEPs. In *Garris*, the petitioner challenged the appropriateness of the child's IEP for failing to address her truancy. However, the student's latest BIP included "a host of interventions" designed to improve her attendance. The court had no quarrel with the hearing officer's finding that "the Student's difficulties with attendance do not stem from difficulties in class but, at least in part, from a disinterest in education generally." 210 F.Supp.3d at 190-91. In *Presely*, Magistrate Judge Deborah Robinson upheld an HOD that found that the IEP adequately addressed student's attendance. The student attended class enough for the staff to determine that she "generally did well in class when she attended, and did not seem to exhibit problems or difficulties when she was present in class." 2013 WL 589181 at 8.

five years. I am unaware of any precedent that would hold DCPS responsible for Petitioner's inability to get Student to leave home on a regular basis.

**Whether DCPS denied Student a FAPE by failing to conduct the following evaluations of Student by January 28, 2025 due to Student's school refusal: psychological, occupational therapy ("OT"), assistive technology ("A/T"), and speech and language, ("S/L"), and a functional behavior assessment ("FBA").**

**Whether DCPS denied Student a FAPE by failing to conduct the following evaluations of Student following Petitioner's October 23, 2025 request due to Student's school refusal: psychological, OT, A/T, and S/L, and an FBA.**

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

Each public agency must ensure that... the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities...<sup>82</sup>

The regulations also require reevaluations if a teacher or parent requests them, and at least once every three years.<sup>83</sup> During the triennial review, the MDT must make a determination if further assessments are necessary to make the eligibility determine or to determine an appropriate educational program for the student:

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

- (1) Review existing evaluation data on the child, including—
  - (i) Evaluations and information provided by the parents of the child;
  - (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
  - (iii) Observations by teachers and related services providers; and
- (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—
  - (i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
  - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child...<sup>84</sup>

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<sup>82</sup> 34 C.F.R. § 300.304 (c)(4).

<sup>83</sup> 34 C.F.R. §300.303.

<sup>84</sup> 34 C.F.R. §300.305(a). *See also, Office of the State Superintendent's Special Education Process Handbook at 12* (IEP teams may determine that sufficient data exists to support an eligibility determination without additional assessments)

[https://osse.dc.gov/sites/default/files/dc/sites/osse/service\\_content/attachments/OSSE%20Special%20Education%20Process%20Handbook%20%28Sept%202023%29.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/OSSE%20Special%20Education%20Process%20Handbook%20%28Sept%202023%29.pdf).

The failure to conduct a timely triennial reevaluation is a procedural violation. A hearing officer's determination of whether a child was denied a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit.<sup>85</sup> In other words, an IDEA claim is viable only if procedural violations affected the child's substantive rights.<sup>86</sup>

In the previous section, I concluded that DCPS cannot be held responsible for Petitioner's inability to get Student to leave the home to attend school. Student must attend school to be evaluated; Petitioner offered no expert testimony concerning the viability of virtual psychological, OT, or SLP evaluations. Witness A's suggestion that an FBA be conducted virtually at home makes no sense whatsoever. An FBA is conducted to address behaviors in the classroom environment. If the child cannot be observed in the classroom environment, the FBA is functionally useless. I note that the OT and SLP evaluations that were initiated in 2022 were not completed due to Student's failure to attend throughout the testing sessions, necessitating "due diligence" reports, essentially reviews of past evaluations and academic records. I note also that Petitioner offered no testimony as to the evaluation that Hearing Officer Vaden ordered in his 2023 HOD. Thus, I conclude that Petitioner has failed to make a *prima facie* case that DCPS has failed to evaluate student in all areas of suspected disability or upon request by Petitioner, as Petitioner is demonstrably incapable of making Student available for assessments.

**Whether DCPS denied DCPS a FAPE by failing to implement Student's IEP. Petitioner asserts that DCPS' failure to address Student's school refusal has caused Student's failure to attend school since December 16, 2024.**

An LEA is culpable for failing to implement a child's IEP if the services provided materially deviate from the services prescribed in the IEP.<sup>87</sup> A material deviation requires more than a minor discrepancy or a "de minimis failure to implement all elements of [the student's] IEP."<sup>88</sup> It is "...[t]he proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement."<sup>89</sup>

In the first section above, I concluded that Petitioner failed to make a *prima facie* case that DCPS failed to provide Student an appropriate IEP because it lacked the authority and means to

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<sup>85</sup> 34 C.F.R. 300.513(a).

<sup>86</sup> *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015); *Brown v. District of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), quoting *N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

<sup>87</sup> *Middleton, supra*, 312 F. Supp. 3d at 144; *Van Duyn ex rel. Van Duyn v. Baker School District 5J*, 502 F.3d 811, 822 (9th Cir. 2007).

<sup>88</sup> *Johnson v. District of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013), quoting *Catalan ex rel. E.C. v. District of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). See *J.B. ex rel. Belt v. District of Columbia, Report and Recommendation*, Case No. 17-cv-1298, 2018 WL 10399853 at 17 (D.D.C. May 8, 2018)(a deviation of less than 10% of the school day was deemed *de minimus*).

<sup>89</sup> *Turner v. District of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), citing *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).

effectuate Student's attendance in school. Thus, it has not had the opportunity to gather the intelligence necessary to conduct an FBA to address Student's attendance, to develop a BIP to address her/his attendance, or to develop behavioral goals to address his/her attendance. Since DCPS has neither the authority nor the means to force Student to leave home to attend school, I conclude that Petitioner has failed to meet her burden to prove that DCPS' inability to implement Student's IEP constitutes a denial of FAPE.

### **RELIEF**

For relief, Petitioner requests, *inter alia*, (1) an order requiring DCPS to immediately identify and fund an appropriate placement for Student, including a non-public day school or residential facility, (2) an order requiring DCPS to conduct or fund the following evaluations for the student: psychological, S/L, A/T, OT, and an FBA, (3) compensatory education and related transportation expenses, and (4) attorney's fees and costs.

As discussed above, Student has not attended school in five years. Despite her apparently sincere desire to have Student attend school, Petitioner is physically and emotionally overmatched, and is incapable of getting Student to leave the home for any reason. The record does not support a finding that DCPS has denied Student a FAPE or that Student requires a residential placement. Thus, an order requiring DCPS to fund evaluations or a residential placement is not warranted. However, as the status quo is untenable, I will order DCPS to initiate its referral authority under 5-A DCMR § 2103.5(b). The motivation for this referral is in no way punitive as I believe Petitioner genuinely wants Student to attend school. Rather, it is intended to facilitate her receiving the social and mental health support services that she needs for Student's well-being.

### **ORDER**

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

**ORDERED** that within fifteen business days of this order, Respondent shall refer the matter of Student's truancy to the Court Social Services Division of the Superior Court of the District of Columbia and to the Office of Attorney General Juvenile Section pursuant to 5-A DCMR § 2103.5(b).

## APPEAL RIGHTS

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

*Terry Michael Banks*  
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Terry Michael Banks  
Hearing Officer

Date: February 22, 2026

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