

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, NE, 3rd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
July 08, 2024

PARENT, on behalf of STUDENT, ¹)	Date Issued: July 8, 2024
)	
Petitioner,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2024-0051
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Dates:
Respondent.)	June 11, 17 and 18, 2024
)	
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (MOTHER or parent) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the parent seeks prospective private school funding and compensatory education relief from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied her child a free appropriate public education (FAPE) by failing to comprehensively evaluate the child and by failing to offer him/her appropriate Individualized Education Programs (IEPs) since May 2022.

¹ Personal identification information is provided in Appendix A.

Petitioner, who was not originally represented by counsel, filed her Due Process Complaint on March 28, 2024, naming DCPS as Respondent. The undersigned hearing officer was appointed on March 29, 2024. On April 15, 2024, DCPS filed a Notice of Insufficiency, which I sustained by order issued April 19, 2024. Petitioner retained counsel, who filed an amended due process complaint on the parent's behalf on May 3, 2024. DCPS filed its response to the amended complaint on May 16, 2024. The parties met for a Resolution Session Meeting on May 16, 2024 and did not resolve the issues in dispute. On May 16, 2024, I convened a videoconference prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters.

With the parent's consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on June 11, 17 and 18, 2024. MOTHER appeared online for the hearing and was represented by PETITIONER'S COUNSEL and PETITIONER'S CO-COUNSEL. Respondent DCPS was represented by ASSISTANT PRINCIPAL and by DCPS' COUNSEL. Petitioner's Counsel made an opening statement. Mother testified and called as additional witnesses EDUCATIONAL ADVOCATE, NURSE PRACTITIONER and PROGRAM SUPERVISOR. DCPS called as witnesses Assistant Principal, SCHOOL SOCIAL WORKER, PARAPROFESSIONAL SPECIALIST, and LOW INCIDENCE MANAGER. Petitioner' Exhibits P-9 through P-33 and P-35 through P-78, with the exception of Exhibits P-63 and P-64, were admitted into evidence, including Exhibits P-

73 and P-74 admitted over DCPS' objections. Exhibits P-1 thorough P-8, P-63 and P-64 were withdrawn. There was no Exhibit P-34 offered. DCPS' Exhibits R-1 through R-44 were all admitted into evidence without objection. Petitioner's Counsel and DCPS' Counsel made oral closing arguments. There was no request to file written closings.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and 5A DCMR § 3049.1.

ISSUES AND RELIEF SOUGHT

The issues for determination in this case, as set out in the May 22, 2024 Revised Prehearing Order, are:

1. Whether DCPS denied Student a FAPE by failing to comprehensively evaluate the student in all areas of need and for a suspected disability, including a speech and language evaluation and an Assistive Technology evaluation;
2. Whether DCPS denied Student a FAPE by failing to provide the student with a dedicated aide at least as far back as June 23, 2022 and continuing until the current time;
3. Whether DCPS denied Student a FAPE by failing to provide him/her a more restrictive/appropriate educational placement as far back as June 23, 2022 and continuing until the present time;
4. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP for the student on May 17, 2022 (amended IEP), January 11, 2023, May 15, 2023 (Amended), and June 12, 2023 because the IEPs:
 - a. Failed to provide a sufficient number of hours of specialized instruction outside of the general education setting;
 - b. Failed to provide adequate/appropriate goals and supports in the area

of writing (except for the amended IEP dated May 17, 2022) and/or appropriate writing interventions;

c. Failed to provide for Student to be in an appropriate educational setting (more restrictive and with an appropriate cohort and curriculum);

d. Contained highly inappropriate annual goals that were not achievable or reasonable based on his/her present levels of performance at the time;

e. Failed to provide appropriate behavioral supports including use of ABA principles recommended by DCPS and/or Behavioral Support Services (BSS) and Positive Behavior Intervention Supports (and even when BSS was added in June 2023, it was inadequate);

f. Failed to provide Extended School Year (ESY) services on the May 17, 2022 IEP;

g. Failed to provide Student with the recommended placement/setting/supports/interventions made by Student's evaluators and the Independent evaluator, including but not limited to: i. Self-contained setting with low student to teacher ratio and structured daily schedule and routine, emphasis on social interaction and communication, reduced distractions, and multiple/frequent breaks; ii. An alternative school setting where Student would be educated with peers with similar physical and learning needs; iii. Smaller setting with reduced class size and reduced sound and movement and reduced distractions; iv. Small classroom size and very low student to teacher ratio (maximum class size 6-8); v. Speech/Language Therapy (ABA therapy/techniques that include Discrete Trial Training or another similar behavioral therapy appropriate for students with autism); vi. Picture support to assist with expressive language; vii. Repetition and opportunity for spaced practice of previously learned concepts; viii. Regularly scheduled 5 to 10 minute breaks; ix. Brief interventions to reinforce success; x. Monitoring for understanding, task initiation, task completion, understanding, use of appropriate strategies; xi. Early warnings before transitions; xii. Alternative ways to show what the student knows such as multiple choice and visuals/recognition cues; xiii. Low tech modifications - pencil grip, manipulatives, magnetic letters (except in May 2022 Amended IEP); xiv. Modified worksheets and assignments incorporating pictures and symbols (except in May 2022 Amended IEP); xv. Modified seating (except in May 2022 Amended IEP); xvi. Small

group/one on one verbal instruction/demonstration in PE; xvii. Dedicated assistance during general education physical education (PE) class; xviii. Safety plan; xix. Teaching self-regulating skills (except for in June 2023 IEP).

5. Whether DCPS denied Student a FAPE by failing to implement his/her May 17, 2022, January 11, 2023, May 15, 2023, and June 12, 2023 (meeting date May 18, 2023) IEPs in all educational settings. in that at least when outside the self-contained setting, the student did not consistently receive breaks every 3 to 5 minutes, hand-over-hand assistance for any physical task including whenever using writing tools, one-on-one supervision or assistance navigating the classroom and school building, modified curriculum with hands-on sensory activities, and a modified environment with reduced auditory and visual distractions and

6. Whether DCPS denied Student FAPE by failing to provide Prior Written Notice or any documentation regarding the request for a dedicated aide and a more restrictive setting.

At the beginning of the due process hearing, Petitioner's counsel withdrew an additional claim relating to provision of educational records.

For relief, Petitioner requested that the hearing officer order as follows:

- Order DCPS to provide Student with compensatory education for the denials of FAPE alleged in the complaint either by awarding a plan proposed by Petitioner at the due process hearing or after the hearing officer does a fact-specific inquiry;
- Order DCPS to place and fund the student prospectively at NONPUBLIC SCHOOL for, at minimum, the 2024-2025 school year including tuition, related services, and transportation;
- In the event that the hearing officer does not award nonpublic placement either prospectively or as compensatory education, order DCPS to provide the student a dedicated aide for the whole school day and week for educational and safety purposes;
- In the event that the hearing officer does not award prospective nonpublic placement or nonpublic placement as compensatory education, order DCPS to

hold an IEP meeting within 30 calendar days of the final decision to increase the hours of Student's specialized instruction to cover the entirety of his/her school day (including specials) and to revise his/her time and create a safety plan for the student and

– Order DCPS to conduct a comprehensive Speech and Language evaluation and an Assistive Technology assessment within 45 days of the HOD and hold a meeting within 30 days of the completion of the evaluation reports to review and revise the IEP as appropriate based on the findings and recommendations of these evaluations and

– Order any other relief that the hearing officer finds just and equitable.

FINDINGS OF FACT

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE child, resides with the parent in the District of Columbia.

Testimony of Mother.

2. Student is eligible for special education as a student with Multiple Disabilities, based on concomitant Autism (Autism Spectrum Disorder - ASD) and Other Health Impairment (OHI) impairments. Exhibit P-48.

3. Since March 2022, Student has been enrolled in CITY SCHOOL 2, a DCPS Public School. Testimony of Mother.

4. Student was an extreme premature birth baby. Student has been diagnosed with autism and global developmental delay. Student's health concerns include hydrocephalus, seizures (up to 2012) and autism. Because Student had a shunt implanted to treat the hydrocephalus, contact sports are not recommended, but

otherwise, the shunt raises no concerns for the child. Student is able to speak in sentences and understands around 90% of what is spoken to him/her. He/she is able to talk about his/her day, likes, dislikes and school. Student is able to walk, but has problems with coordination and balance. Student needs support with activities of daily living. He/she is able to dress and feed him/herself, but needs help with smaller items, writing instruments, buttons, strength and fine motor skills. He/she cannot write without assistance. Student has minimal need for nursing support. Testimony of Nurse Practitioner.

5. In the most recent comprehensive psychological evaluation report on Student offered into evidence, NEUROPSYCHOLOGIST at HOSPITAL reported on September 23, 2021, *inter alia*, that,

Student's overall skills fell well below age-expectations but his/her severe internal and external distractibility significantly impacted his/her ability to engage in tasks and consistently demonstrate his/her skills. As such, results from the evaluation may have been an underestimate of his/her "true" abilities but reflected his/her current neurocognitive functioning considering his/her significant difficulties with language, autism-related behaviors, and cognitive difficulties.

Within the supportive 1:1 environment (*e.g.*, with prompts for attention and scaffolding), Student demonstrated the following relative strengths:

- **Speech, Language, and Verbal Reasoning:** Though still below age-expectations, Student's expressive and receptive language, and his/her ability to problem solve with words were areas of relative strength. Though highly scripted, Student's expressive language skills were better developed than his/her receptive language, and he/she was able to express him/herself and communicate his/her needs in short phrases. Receptively, Student consistently required frequent repetition and short phrases paired with simple gestures to understand and follow instructions.

- **Pre-Academic Skills and Learning/Memory:** Student demonstrated strengths in aspects of pre-academic skills (*e.g.*, color and letter identification). When focused and attentive, Student was best able to learn and recall information that was presented in small multimodal chunks with opportunities for frequent practice.

Consistent with his/her complex medical and neurodevelopmental history, Student demonstrated relative weaknesses in the following areas:

- **Gross/Fine Motor, Visual-Spatial Construction Skills, and Nonverbal Reasoning:** Consistent with his/her medical history, Student demonstrated significant difficulties with gross (*e.g.*, balance and coordination) and fine motor skills. Student's handedness had not yet been established and he/she continued to struggle with applied fine motor tasks (*e.g.*, pencil grasp, adaptive skills, handwriting/drawing), and tasks that combine visual attention and motor skills (*e.g.*, building blocks, putting pennies in slots at different orientations). Relatedly, Student's internal and external distractibility significantly impacted his/her ability to problem solve with visuals or manipulatives.
- **Attention and Early Executive Control:** Student experienced significant weaknesses in attention and emerging executive functions (*e.g.*, impulse control). Teacher reports of Student's attention and classroom functioning, as well as observations taken during the Hospital evaluation suggested that his/her current difficulties significantly impacted his/her learning, as well as social, behavioral, and adaptive functioning. His/her difficulties attending to information, and other environmental cues around him/her, impacted his/her ability to comprehend language, tolerate and persist in challenging tasks, and transition to and from activities. Student's impulsivity also impacted his/her overall engagement and availability to learn as he/she struggled to remain seated, wait for specific cues, and control impulses to take preferred items without asking.
- **Social Communication, Interaction, and Restricted/Repetitive Interests and Behaviors (RRB's):** Though socially motivated, Student significantly struggled with social communication and demonstrated several restricted/repetitive behaviors and interests. Throughout the evaluation, Student was often echolalic and spoke in a "sing-song" prosody; however, he/she engaged in some spontaneous, though scripted and repetitive phrased speech (*e.g.*, "good finding," "that garbage truck was loud," "my friends are gone"). Student rarely responded when the examiners called his/her name but looked up when an object of interest was removed from his/her sight. In addition, his/her eye contact was minimal,

and he/she did not direct any facial expressions towards examiners during the evaluation. Student showed minimal interest in the examiners during the evaluation and consistently asked to play with preferred toys (*e.g.*, toy cars). When examiners attempted to interrupt his/her play (*e.g.*, removing toys to complete transition to the next task), he/she got out of his/her seat and tried to retrieve the toy. Student showed some spontaneous but repetitive functional play (*e.g.*, made soup with blocks and pretended to play telephone) but he/she was hyperfocused on toy cars. He/she did not engage in reciprocal conversations and struggled to respond to direct questions unrelated to his/her interests. Additionally, Student struggled with transitions, flexible problem solving, and changes in routine. He/she also demonstrated sensory interests/seeking behaviors (*e.g.*, clenching fists, tensing up his/her body, screeching and growling noises, touching his/her mother's and examiner's hands, and visual inspection of preferred items), repetitive motor movements/play (*e.g.*, running cars back and forth, twisting his/her body side to side), and restricted interests in cars.

Diagnostically, Student's cognitive weaknesses were best captured by diagnoses of Global Developmental Delay, mild and Autism Spectrum Disorder, associated with a known medical condition (Epilepsy). While Student demonstrated widespread deficits across cognitive domains, a diagnosis of Intellectual Disability was deferred until Student's autism-related behaviors were better managed and adaptive functioning would be further assessed.

From a neuropsychological perspective, Student's profile was consistent with his/her complex history of extreme prematurity and early stroke, hydrocephalus and associated shunt placement/revisions, and focal epilepsy. Student's continued global cognitive delays, and associated weaknesses in speech/language, attention, executive functioning, and fine and gross motor skills were consistent with his/her history of seizures, as well as abnormal EEG and imaging findings implicating diffuse cortical and subcortical abnormalities, including an enlarged fourth ventricle with mass effect on the brainstem. It was likely that Student's seizure status and persistent hydrocephalus exacerbated his/her difficulties with inattention and autism-related behaviors, which further impacted his/her behavior, adaptive skills, and overall availability for learning.

Positively, Student had many important strengths, including his/her supportive family and scripted, expressive language. However, because Student was able to express his/her needs if provided with an appropriate script, it may have appeared that he/she understands more than he/she did. As such, Student was at high risk for missing key information, being perceived as oppositional, and being

taken advantage of by others. In addition, his/her weaknesses in language, attention, and executive functions made him/her vulnerable to overload, particularly when presented with complex, highly verbal, or fast-paced tasks that he/she perceived were challenging. It was also reported that Student was at continued risk for recurring seizures and changes in neurological status related to his/her shunt, which may interfere with his/her ability to learn and retain newly learned information.

Exhibit P-9.

6. For school-related supports, Neuropsychologist recommended that Student would continue to require special education services and individualized accommodations to support his/her unique and complex cognitive and medical needs. Specific recommendations included that Student would benefit from a structured school program within the self-contained, special education classroom setting that includes a low student-to-teacher ratio and a structured daily schedule and routine, emphasis on social interaction and communication, reduced distractions, and multiple/frequent breaks. However, Student would still benefit from instruction within the regular education setting for specials and lunch; that Student should be provided with slow step-by-step instruction and complex information should be broken down into basic pieces, using Applied Behavior Analysis (ABA) techniques including Discrete Trial Training (DTT); that Student would strongly benefit from Extended School Year (ESY) services; that Student would continue to benefit from school-based occupational and physical therapy services; that Student would benefit from modification of assignments (*e.g.*, reduced language/writing demands) and access to assistive technology (*e.g.*, larger

pencils, assistive scissors) to reduce writing and other fine motor demands; that Student would benefit from school-based speech/language therapy services; that Student may benefit from being provided with a daily schedule combined with visual prompts that he/she could review during the day and alerts prior to transitions and to leaving the classroom (*e.g.*, lunch or therapies); that Student would benefit from multimodal instructions such as pairing verbal information with visual aids (*i.e.*, hands-on materials, visual cues, etc.) and that Student should also be allowed to use visuals and recognition cues to help him/her demonstrate what he/she had learned. Exhibit P-9.

7. In November 2021, a DCPS school psychologist completed an in-depth review of the September 23, 2021 neuropsychological report on Student as well as her own classroom observation. In her review report, the DCPS school psychologist did not indicate any disagreement with Neuropsychologist's findings or recommendations.

Exhibit P-19.

8. As part of her review of Neuropsychologist's evaluation of Student, the DCPS school psychologist reviewed Student's educational performance as of November 2021. On the Beginning of Year (BOY) DIBELS Early Literacy Screener Assessment, Student scored below benchmark. He/she was able to identify 3 letter names in one minute. He/she was not able to segment phonemes, identify letter sounds in a nonsense word or read any sight words. On the TRC-Text Reading Comprehension Assessment, Student was not able to pass the print concepts level. He/she was able to correctly

identify the orientation of the book and identify a letter in print. He/she was not able to demonstrate knowledge of directionality, word by word pointing, the first and last concept, capital and lowercase letters, or punctuation. On Student's most recent I-ready assessment, he/she scored in emerging K for numbers and operations. He/she showed growth in math but needed a lot of individualized support. Student was able to identify shapes with 60% accuracy and he/she could rote count up to 10. Student was able to count objects but still was not able to show 1-1 correspondence with items/objects. Student had not been able to consistently identify letter names. He/she was having difficulty retaining the letter names, sounds, and keywords day to day. Student was performing below benchmark on early literacy skills. He/she was not able to segment phonemes, identify letter sounds in a nonsense word or read any sight words. He/she was not yet able to pass the print concepts level in TRC. Exhibit P-20.

9. Prior to March 2022, Student was enrolled in CITY SCHOOL 1, another DCPS public school. Student's October 12, 2021 City School 1 IEP provided for the child to receive 15 hours per week of Specialized Instruction Services, with 10 hours outside and 5 hours inside general education, 180 minutes per month of Occupational Therapy (OT) and 240 minutes per month of Physical Therapy (PT), both outside general education. Exhibit P-11.

10. Student's City School 1 IEP was revised on December 22, 2021 to provide for the child to receive 19 hours per week of Specialized Instruction Services, with 16.5

hours outside and 2.5 hours inside general education, 90 minutes per month of Adaptive Physical Education in general education, and 180 minutes per month of OT and 240 minutes per month of PT, both outside general education. Exhibit P-22.

11. Student's IEP team met for the child's annual IEP review at City School 1 on January 18, 2022. Student's IEP eligibility category was MD (Autism Spectrum Disorder - Other Health Impairment). The IEP team identified Mathematics and Reading as academic areas of concern for Student and noted that Student was not able to engage in traditional writing instruction or activities at that time. Adaptive/Daily Living Skills, Cognitive, Health/Physical and Motor Skills/Physical Development were identified as other IEP areas of concern. For special education and related services, the IEP provided for Student to have 21 hours per week of Specialized Instruction outside general education, 90 minutes per month of adaptive physical education in general education, 180 minutes per month of OT and 240 minutes per month of PT, both outside general education. The IEP team decided that Student did not require the support of a dedicated aide. Exhibit P-24.

12. By letter of February 17, 2022, DCPS notified the parent that Student's new location of services would be the Early Learning Support (ELS) classroom at City School 2. Exhibit P-27.

13. The ELS program is one of four self-contained classroom programs within DCPS. The other programs are the Independence and Learning Support (ILS) program,

the Communication and Education Support (CES) program, the Behavior and Education Support (BES) program and the Specific Learning Support (SLS) program. Testimony of Low Incidence Manager. CES classrooms primarily serve students who have Autism Spectrum Disorders. Hearing Officer Notice. The SLS curriculum provides classroom accommodations designed to enable students to achieve grade-level standards. The ILS program is for students in grades 3 through 12 and is intended for children who have delays in all areas and need very intensive interventions. It offers a modified curriculum and is intended for children to work toward alternate achievement standards. Both the CES and the ILS programs provide for a maximum class size of 10 students, taught by a teacher and one paraprofessional. Both of the programs employ a lot of ABA strategies. Testimony of Low Incidence Manager.

14. In May 2022, Nurse Practitioner applied to Therapeutic Break Services for Student to receive Speech Therapy during school breaks. Exhibit P-30.

15. On May 17, 2022, Student's City School 2 IEP team amended Student's January 18, 2022 IEP to add special education transportation services. Exhibit P-31.

16. On May 17, 2022, the City School 2 IEP team conducted a 60 day review of Student's IEP and SLS classroom placement. The team reported that Student needed 1:1 support across domains in order to access the general education curriculum and to be safe in his/her environment in regards to mobility, and that at times, Student would fall and so needed help navigating the school environment both with and without

his/her walker. The IEP team noted that for fire drills the plan was for the teacher/adult to carry Student out of the building; that they were following Student's physical accommodations plan which was developed by the physical therapist and the classroom teacher; and that they were helping Student in the bathroom for toileting due to physical needs. The team stated it was doing a referral to DCPS' 1:1 and placement office, so that Student could have a chance to have more support, which helps him/her access everything; that Student does well with an adult with his/her 1:1 all day, however without adult assistance, Student was not able to focus on academic tasks or maintain safety while navigating the building throughout the day or while at his/her desk area. The IEP team noted that City School 1 had completed a 1:1 referral for Student earlier in the 2021-2022 school year, which was not approved and that City School 2 continued to see the need for 1:1 support and smaller class sizes for the child. The IEP team stated concerns that there was no aide that went to specials with the class in Student's grade and therefore Student would have to get to specials classes on his/her own without any assistance from staff; that Student would also have to follow instructions from the PE/Music/art/Spanish/Library teachers, in addition to 2 classes of students, without another adult in the room; that Student needed adult support for physical needs to prevent falling and injury and to attend to class materials/participate; and that Student would also not have an adult 1:1 on the playground/recess or during lunch. Exhibit P-32.

17. Through the hearing date, DCPS never provided Student a dedicated aide.

Testimony of Mother.

18. Student's final, 4th term, report card for the 2021-2022 school year reported that Student performed Below Basic in Reading, Writing and Language and Math. Exhibit P-33.

19. At the end of the first grading period in the 2022-2023 school year, Student was reported to be Progressing in all IEP academic goals which had then been introduced. Student was able to rote count to 20, but was still working on recognizing written numbers in isolation. Exhibit P-38.

20. Student's IEP team met for the child's annual IEP review at City School 2 on January 11, 2023. Student's IEP eligibility category was MD (Autism Spectrum Disorder - Other Health Impairment). The IEP team identified Mathematics and Reading as academic areas of concern for Student. No writing goals were included. Adaptive/Daily Living Skills, Cognitive, Health/Physical and Motor Skills/Physical Development were identified as other IEP areas of concern. Student was accessing math skills that were more than 2 years below grade level standards. For reading, Student did not score on the beginning of year (BOY) Dibels and Text Reading and Comprehension (TRC) assessments because he/she did not answer when prompted to read letters, make letter sounds, read words, segment sounds given a word, or read a short story. Student was marked "Well Below" in all reading and comprehension areas. For special

education and related services, the IEP provided for Student to have 21 hours per week of Specialized Instruction outside general education, 90 minutes per month of adaptive physical education in general education, 180 minutes per month of OT and 120 minutes per month of PT, both outside general education. Exhibit P-24.

21. The January 11, 2023 IEP team reported, *inter alia*, that Student's behavior severely affected his/her ability to access the curriculum and navigate the school and community environment independently, and his/her safety. At times if Student was not getting what he/she wanted, he/she would throw him/herself onto the ground or fall on top of his/her peers. Close proximity to staff for help with steadying his/her body while walking, by holding hands or supporting under his/her arm was being provided. Student needed 1:1 correspondence to verbalize when upset. Student had needs with complying with instructions, communicating and regulating his/her body when he/she became upset. The IEP team noted that a 1:1 referral had been made to DCPS during the 2021-2022 school year, but was denied. The IEP Team reported that when Student would have a tantrum, it could occur anywhere in the school environment and include yelling/screaming, dropping to the floor/ground, rolling on the ground, disrobing (shoes, clothing), throwing glasses, taking off hair ties/bows, pulling down chairs/tables, and hitting self in head. Following a tantrum, Student would require 1:1 correspondence, wait time, encouraging talk and a fresh start. When Student had an adult who could talk to him/her and offer choices at the beginning of the

tantrum, he/she would usually calm down. But if staff was working with other students at the onset of a tantrum, Student would increase his/her tantrum behaviors, seemingly to get his/her way, and attention. The number of children in Student's classroom had decreased from the prior year to between 3 and 5 classmates. Therefore, the student to staff ratio had been decreased, which provided Student with more opportunities to have 1:1 correspondence with an adult in the classroom. The IEP stated that Student did not require the support of a dedicated aide. Exhibit P-40.

22. In February 2023, CLASSROOM TEACHER 1 asked Mother by text mail if she were interested in private school programs for Student. The teacher indicated that if the parent requested and the school recommended a nonpublic placement, there might be a chance that DCPS would approve it. Mother contacted private schools for Student. In April 2023, Classroom Teacher 1 told Mother to "pause" on the nonpublic school search until there could be an IEP team meeting for Student. The teacher wrote that "they" might let Student move to the Specific Learning Support (SLS) classroom, but the teacher still thought that a nonpublic school was the best choice. Exhibit P-41.

23. On May 15, 2023, Student's City School 2 IEP was amended to add Extended School Year (ESY) services for the child. Exhibit P-45.

24. On May 18, 2023, Student's IDEA disability under the MD category was affirmed based upon Neuropsychologist's September 23, 2021 independent neuropsychological evaluation report and an Autism Disability Worksheet. Exhibit P-

48.

25. On June 9, 2023, City School 2 sent Mother a prior written notice (PWN) notifying her that the IEP team proposed to remove the Adaptive and Cognitive goal areas from Student's IEP and to add Behavior Support Services. The reason given on the PWN was that Student did not need those goal areas and had demonstrated mastery of the goals. The PWN stated that Student could benefit from Behavior Support Services to help with social skills and regulating his/her behavior "on the few instances when [he/she] become[s] upset." Exhibit P-49. According to Mother, near the end of the 2022-2023 school year, the school staff had proposed to move Student to an ILS program classroom. Mother objected to this change. According to Mother, the IEP team's removing the Adaptive and Cognitive areas from Student's IEP was done to enable Student to be placed in the SLS program. Testimony of Mother.

26. On May 18, 2023, the City School 2 IEP Team met to review Student's IEP. In the completed IEP finalized in June 12, 2023 (the June 12, 2023 IEP), Mathematics, Reading, Emotional, Social and Behavioral Development, Health/Physical and Motor Skills/Physical Development were identified as Student's areas of concern. The June 12, 2023 IEP provided for Student to receive 21 hours per week of Specialized Instruction outside general education, 90 minutes per month of Adapted Physical Education in general education, and as related services, 180 minutes per month of OT, 60 minutes per month of PT and 120 minutes per month of Behavioral Support Services, all outside

general education. The IEP stated that Student did not require the support of a dedicated aide. Exhibit P-50.

27. The June 12, 2023 IEP reported that Student had made dramatic improvements in his/her behavior and that several times over the year, Student had mastered goals of demonstrating zero tantrums. Exhibit P-50.

28. The June 12, 2023 IEP team reported that Student was able to walk, unsupported, at school but continued to require standby assistance for safety on stairways due to his/her behavioral and cognitive challenges. Exhibit P-50.

29. The June 12, 2023 IEP team reported that Student required 1:1 correspondence from adults when possible across subjects and the school environment for academic instruction, following directions, and physical safety and that the child required required hand over hand assistance when using writing tools. Exhibit P-50.

30. In a June 12, 2023 PWN, the City School 2 IEP team reported that the IEP team had added on the areas of social emotional behavior development and taken off adaptive/daily living skills and cognitive goal areas, since Student needed social skills and behavior regulation support and no longer required goals with adaptive skills (participating in instruction) or cognitive areas (which were left on IEPs from pre-K/Kindergarten). The PWN reported that Student had made gains with physical development and had gone from using a walker at the beginning of the year to not needing the use of a walker and navigating the school environment with more

independence. Exhibit P-49.

31. In a July 7, 2023 PWN to the parent, City School 2 noted that the parent had indicated that she would not be utilizing ESY for Student in summer 2023. Exhibit P-53.

32. At the end of the 2022-2023 school year, Student was selected to move to the SLS program at City School 2. Over the summer of 2023, Student attended summer school at City School 2 to help the child with his/her transition from the ELS program to the SLS program. On September 5, 2023, after DCPS proposed to transfer Student to a different school, Mother wrote DCPS' Division of Specialized Instruction to request that Student's placement and location of services remain the SLS program at City School 2. Exhibit P-56.

33. On September 6, 2023, DCPS issued a location of services letter for Student, notifying the parent that the City School 2 SLS classroom was the location of services designated to implement Student's IEP. Exhibit P-57.

34. As of February 2024, Student was placed in the multi-grade self-contained SLS classroom at City School 2. There were 9 students in the class. Exhibit P-60.

35. In a February 3, 2024 IEP progress report, for the term ending November 3, 2023, Student was reported, *inter alia*, to require extensive 1-on-1 attention. As examples, Student needed one on one support in math to attempt to take

away and count backwards, because he/she could not make eye contact or use his/her hand to manipulate items with consistently. Student was unable to master the numbers 1 to 10 consistently due to his/her inability to write. Student was working on holding his/her writing utensil and was doing more scribbling. In a one-on-one setting, where the adult guided and prompted him/her, Student could identify but not type or use his/her hand on a touch screen accurately. Student was receiving read aloud and visuals for all activities due to needing support for reading. When he/she was receiving one to one support, Student was open to practicing strategies for self-regulation when feeling frustrated or disappointed. Student had challenges with some of his/her classroom peers when he/she shouted out or screamed in class. Student required verbal prompts and reminders for attention to task when ascending stairs, especially when there were other peers/adults in the stairwell. Exhibit P-60.

36. On May 24, 2024, the City School 2 IEP team met by videoconference to review and update Student's IEP. For the May 24, 2024 IEP, Student's areas of need were identified as Reading, Mathematics, Written Expression, Motor Skills/Physical Development, Emotional/Social/Behavioral Development, and Health/Physical. The IEP Present Levels of Performance (PLOPs) indicated that Student's performance in reading was at the Kindergarten level and in mathematics at the Kindergarten to Grade 1 level. Student was working at the "preliterate or scribbles" stage of writing development and was receiving hand over hand letter, number and shape tracing

practice. For Special Education and Related Services, the May 24, 2024 IEP provided for Student to receive 24 hours per week of Specialized Instruction Services outside general education, 2 hours per month of Adaptive Physical Education, and for Related Services, 2 hours per month of OT, 2 hours per month of Behavioral Support Services and 1 hour per month of PT, all outside general education. The location of services would be a self-contained SLS classroom. The IEP team reported that Student was currently working 3 years below grade level and required frequent prompting, hand-over-hand support in the classroom and during transitions, as well as one-on-one targeted instruction. The IEP stated that Student did not require the support of a dedicated aide. Exhibit P-71.

37. On May 24, 2024, City School 2 submitted a dedicated aide request for Student to DCPS. In the justification narrative, the classroom teacher wrote, *inter alia*, that Student was far below grade level; that he/she was not able to work in groups and received one-on-one support as well as hand-over-hand support in writing, moving manipulatives, tracking sounds, and pointing to items to identify including sight words, letters, and numbers; that Student required multiple prompts and support interacting on the tablet as well as using a pencil; that Student required multiple prompts to engage as he/she had a short attention span; that although Student had grown his/her skills since joining the SLS Class at City School 2, he/she needed additional support with the ability to perform tasks such as safely walking without running into objects or others,

completing assignments as he/she has limited use of his/her hands, dressing and undressing and opening food products; that Student required frequent prompting and physical support to ensure he/she lifts his/her feet up the stairs and looks in the correct direction when walking to alleviate drifting and accidents, and that on a School Functioning assessment, Student scored Exceptionally Low at a level 1 out of 5. In the summary of the report, it was suggested that Student have a 1:1 environment to attention and scaffolding [*sic*], which was also in Student's IEP for multiple sections – notably, bathroom, stairs and transitions and hand-over-hand for writing. The teacher wrote that in the SLS classroom, there was a 10:1:1 (student/teacher/paraprofessional) ratio, which did not allow staff to support Student in one-on-one for extended periods, which the child required per his/her IEP. Another stated concern was that Student's IQ and current skills fell below the range of other students in the SLS program and he/she required tailored instruction unrelated to grade level standards, required step by step directions, multiple prompts, and guided practice, and was not yet able to log in or manipulate a computer device, desktop or tablet, independently. Exhibit P-68.

38. On May 30, 2024, Assistant Principal, responded to Petitioner's Counsel's concerns about the May 24, 2024 IEP. Assistant Principal wrote, *inter alia*, that the IEP team was considering an ILS program placement for Student. Exhibit P-67.

39. In June 2024, Paraprofessional Specialist conducted two observations of Student at City School 2. Paraprofessional Specialist has not yet provided a written

observation report. Paraprofessional testified that her recommendation to City School 2 will be that a dedicated aide for Student would be overly restrictive. Testimony of Paraprofessional Specialist.

40. After the due process complaint in this case was filed, Student was offered admission to Nonpublic School for the 2024-2025 school year. The admissions offer was made subject to Student's having a dedicated aide. Exhibit P-73. As of the due process hearing date, DCPS has not endorsed Student's placement at Nonpublic School. Hearing Officer Notice.

41. Nonpublic School is a full-time special education day school in suburban Virginia, serving Students from Kindergarten through 12th grade. The school has 9 mixed-grade classrooms with a maximum of 9 students per class. The classroom proposed for Student's peer group currently serves 4 children, who all are diagnosed with autism. Nonpublic School holds a current Certificate of Approval from the D.C. Office of the State Superintendent of Education (OSSE). The tuition fee is approximately \$53,000 for the regular school year. Testimony of Program Supervisor.

42. Mother has visited Nonpublic School. She noted that there were children there who had disabilities just like Student's. Student went to visit Nonpublic School with Mother and were very excited about the school. Testimony of Mother.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this hearing officer's own legal research, my Conclusions of Law are as follows:

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the parent in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the child's IEP 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. *See* D.C. Code § 38-2571.03(6).

ANALYSIS

Failure to Comprehensively Evaluation

Petitioner's first claim is that DCPS denied Student a FAPE by failing to comprehensively evaluate the child in all areas of need, including possible needs for speech and language services and Assistive Technology (AT) accommodations. Petitioner met her burden of persuasion on this claim.

A “local education” or “State” agency—in this case, District of Columbia Public Schools (“DCPS”)—performs an “initial evaluation” to determine if a child has a qualifying disability. [12 U.S.C. § 1414(a)(1)]. In conducting the evaluation, DCPS must use “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information,” and the child must be evaluated “in all areas of suspected disability.” *Id.* § 1414(b). . . .”This initial evaluation, and any subsequent re-evaluation, forms the basis for identifying the child’s needs and the requirements of the child’s IEP to meet those needs and support her educational development.” *Herrion v. District of Columbia*, No. 18-cv-02827, 2019 WL 5086554, at *1 (D.D.C. Oct. 10, 2019).

H.R. v. District of Columbia, No. 21-CV-01856-TJK-RMM, 2024 WL 1344444, at *2 (D.D.C. Mar. 29, 2024).

The Petitioner’s expert witness, Educational Advocate, opined, *inter alia*, that Student needed a speech and language evaluation and an AT assessment. I find that this testimony was supported by the hearing evidence. With regard to Student’s need for a speech and language evaluation, in the September 2021 independent psychological evaluation of the child, Neuropsychologist reported that Student had weaknesses in speech/language and would benefit from school-based speech/language therapy services. Neuropsychologist’s report was provided to DCPS and speech-language should have been an area of suspected disability for Student. But DCPS never followed up with a speech and language evaluation of Student or offered Student IEP Speech-Language Pathology services.

As to the need for an AT assessment, the IDEA requires that in developing IEPs, IEP teams must consider whether the child needs assistive technology devices and

services. *See* 34 C.F.R. § 300.324(a)(2)(v). Assistive technology service includes, *inter alia*, the *evaluation* of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment. *See* 34 C.F.R. § 300.6(a). Neuropsychologist recommended in her evaluation report that Student would benefit from access to assistive technology (*e.g.*, larger pencils, assistive scissors) to reduce writing and other fine motor demands. As of the most recent May 24, 2024 IEP team meeting, Student was still at the “Preliterate or Scribbles” stage of Writing Development and was receiving hand over hand letter, number and shape tracing practice. I find that the hearing evidence established that Student needed an AT evaluation to inform the IEP team on Student’s needs, if any, for appropriate AT devices or services. For example, an AT evaluation would have better enabled Student’s IEP teams to determine whether an AT device could “increase, maintain, or improve” Student’s writing challenges and other functional capabilities. *See id.*, § 300.6.

The failure to conduct appropriate evaluations and assessments of a child with a disability is a procedural violation of the IDEA. *See, e.g., I.T. ex rel. Renee T. v. Department of Educ.*, 2012 WL 3985686, 16 (D.Haw., Sept. 11, 2012); *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012). Procedural violations may only be deemed a denial of FAPE 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.

34 C.F.R. § 300.513(a)(2). In this case, I find that DCPS' failure to evaluate Student for speech and language needs and possible needs for AT devices, as recommended by Neuropsychologist in September 2021, significantly impeded Mother's opportunity to participate in the decision making process when subsequent IEPs were developed. This was a denial of FAPE.

Petitioner's expert, Educational Advocate also opined that DCPS failed to adequately evaluate Student because the District did not conduct a functional behavioral assessment (FBA) or an Attention Deficit Hyperactivity Disorder (ADHD) assessment of the child. With regard to the need for an FBA, DCPS' expert, School Social Worker opined that an FBA for Student was not needed because Student was showing behavioral growth in the SLS classroom at City School 2. School Social Worker had worked with Student beginning in the 2022-2023 school year. Educational Advocate only met with the child for less than 10 minutes. Moreover, School Social Worker qualified as an expert in school social work and Educational Advocate had a more general special education background. I found School Social Worker's FBA opinion more credible than that of Educational Advocate. As to Educational Advocate's opinion that Student needed an ADHD assessment, this was not one of Neuropsychologist's recommendations in her 2021 evaluation of Student and I discount the opinion of

Educational Advocate, who did not qualify as expert in psychological evaluations.

Appropriateness of IEPs

In her amended due process complaint, Petitioner alleged that the IEPs at issue, including the May 17, 2022 amended IEP, the January 11, 2023 IEP, the May 15, 2023 amended IEP and the June 12, 2023 IEP, were inappropriate for a plethora of reasons. U.S. District Judge Rudolph Contreras explained in *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 (D.D.C. 2018), how a court or a hearing officer must assess an IEP:

In reviewing a challenge under the IDEA, courts conduct a two-part inquiry: “First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206–07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (footnotes omitted).

Middleton at 128. Except for the evaluation claims addressed above, the issues for determination in this case do not include a claim that that DCPS did not comply with IDEA procedures in developing Student’s IEPs for the 2022-2023 and 2023-2024 school years. Therefore, I move on to the second, substantive, prong of the *Rowley/Andrew F.* inquiry. Were the IEPs developed for Student, beginning in May 2022 reasonably calculated to enable Student to make progress appropriate in light of Student’s circumstances? Through the testimony of Educational Advocate, Petitioner established a *prima facie* case, as to the inappropriateness of the IEPs. Therefore DCPS must shoulder the burden of persuasion on the appropriateness of the programs and

placements offered in these IEPs.

U.S. District Judge Beryl Howell explained in *A.D. v. District of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570 (D.D.C. Mar. 8, 2022), how a hearing officer should evaluate the appropriateness of an IEP:

A “free and appropriate public education,” or “FAPE,” is delivered by local education authorities through a uniquely tailored “individualized education program,” or “IEP.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 993-994 (2017); *see also* 20 U.S.C §§ 1401(9)(D), 1412(a)(1). To be IDEA-compliant, an IEP must reflect “careful consideration of the child’s individual circumstances” and be “reasonably calculated to enable the child to receive educational benefits,” *Endrew F.*, 137 S. Ct. at 994, 996 (cleaned up), “even as it stops short of requiring public schools to provide the best possible education for the individual child,” *Z.B. v. District of Columbia*, 888 F.3d 515, 519 (D.C. Cir. 2018). An IEP is also required to “set[] out, in writing, the student’s existing levels of academic and functional performance, establish[] appropriate goals, and describe[] how the student’s progress toward those goals will be measured.” *Id.* Moreover, it is “imperative that, to ‘the maximum extent appropriate,’ public schools provide students with disabilities an education in the ‘least restrictive environment,’” *id.* at 528 (*quoting* 20 U.S.C. § 1412(a)(5)(A)), which, as recently emphasized by the Supreme Court, “requires that children with disabilities receive education in the regular classroom whenever possible,” *Endrew F.*, 137 S. Ct. at 999. An IEP failing to satisfy these statutory directives may be remedied through an IDEA claim to the extent the IEP “denies the child an appropriate education.” *Z.B.*, 888 F.3d at 519.

A.D., 2022 WL 683570, at *1. “[W]here a plaintiff challenges an IEP as inadequate at its inception . . . , a court must analyze that question as of the time that the IEP was offered to the student, ‘rather than with the benefit of hindsight.’” *Edward M.-R. v. District of Columbia*, 660 F. Supp. 3d 82, 144 (D.D.C. 2023), *quoting Z.B. v. District of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018). A hearing officer “may fairly expect

[school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *See Andrew F.*, 137 S.Ct. at 1002.

Dedicated Aide

In her hearing testimony and written report, Exhibit P-74, Petitioner’s expert witness, Educational Advocate, opined that the Student had not been provided a FAPE with the IEPs at issue primarily because, since at least May 2022, the City School 1 IEP team, believed that Student needed a dedicated aide and more restrictive placement, but the City School 2 IEPs provided neither. For her part, DCPS’ expert, Assistant Principal, opined in her testimony that Student did not need a dedicated aide because he/she could receive the support she needed from the SLS classroom teacher and paraprofessional. Based on the hearing evidence, I found Educational Advocate’s opinion on Student’s need for a dedicated aide more credible.

As Educational Advocate emphasized in her written report and testimony, the evidence in this case is clear that the members of Student’s IEP teams have repeatedly recognized Student’s need for a dedicated aide. The City School 1 IEP team completed a dedicated aide referral for Student in the 2021-2022 school year which was not endorsed by DCPS. In spring 2022, the City School 2 IEP team continued to see a need for Student to have more 1:1 assistance. In a May 17, 2022 IEP amendment, the IEP team reported that the child needed 1:1 support across domains in order to access the

general education curriculum and to be safe in his/her environment in regards to mobility and navigating the school environment. In the January 11, 2023 IEP, the City School 2 IEP team reported that Student's behavior severely affected his/her ability to access the curriculum and navigate the school and community environment independently, and his/her safety; that Student needed close proximity to staff for help with steadying his/her body while walking and that Student needed 1:1 correspondence to verbalize when upset. In a February 3, 2024 IEP progress report, Student was reported to require extensive 1-on-1 attention.

On May 24, 2024, City School 2 submitted to DCPS a second dedicated aide request for Student. In the request justification, Student's classroom teacher wrote that Student was not able to work in groups; that the child needed one-on-one support as well as hand-over-hand support in writing; that he/she needed multiple prompts and support interacting on the tablet and additional support to perform tasks such as safely walking and going up and down stairs. The teacher wrote that the 10:2 student-staff ratio in the City School 2 SLS classroom, did not allow staff to support Student one-on-one for extended periods.

Despite the extensive documentation showing that City School 2 educators believed that Student needed more 1:1 support, in each of the IEPs at issue, a box on the IEP was checked that Student did not require the support of a dedicated aide. Apparently the IEP teams' negative dedicated aide decisions flowed from express or

implied recommendations from DCPS' central office staff that a dedicated aide was not warranted for Student. But the child's IEP team, not the DCPS central office, must determine what supplementary aids and services are to be included in a child's IEP. *See, e.g., B.T. v. Department of Education*, 637 F.Supp.2d 856 (D.Haw.2009) ("The IDEA leaves a student's IEP team with the primary responsibility for developing and implementing educational programs for disabled students and allows IEP teams to provide special education and related services in the manner and location that they consider appropriate." *Id.* at 866 (*citing* 20 U.S.C. § 1414(d)).

In light of the evidentiary record that Student's DCPS educators believed Student needed a dedicated aide, or at least more 1:1 support, since at least the 2021-2022 school year, I find that DCPS has not provided "a cogent and responsive explanation" for the decisions of the City School 2 IEP teams that Student did not require the support of a dedicated aide. Due to the IEP teams' failure since May 2022 to provide for a dedicated aide for Student, I conclude that DCPS failed to offer Student a FAPE with the IEPs at issue.

Educational Placement

Petitioner's expert, Educational Advocate, also opined in her written report that Student needed a more restrictive placement than the self-contained classroom at City School 2. DCPS' expert, Assistant Principal, disagreed because, in her opinion, Student had made progress in the City School 2 classroom and enjoyed friendships with typically

developing peers at the school. The self-contained setting at City School 2 provides small class size with a low student to teacher ratio – a maximum of 10 students taught by a teacher and a paraprofessional. Student was also able to attend lunch, recess and specials classes with typically developing peers. This conformed with Neuropsychologist’s September 2021 recommendation that Student would benefit from a structured school program within the self-contained special education classroom setting with a low student-to-teacher ratio, but that Student would still benefit from instruction within the regular education setting for specials and lunch.²

For her part, Educational Advocate only met with Student for less than 10 minutes. She never observed the child in the classroom or spoke with his/her teachers. I did not find Educational Advocate’s opinion persuasive that Student needed a more restrictive classroom environment than the self-contained programs offered by DCPS.

Other IEP Inappropriateness Claims

In her amended due process complaint, Petitioner raised a host of other claims about the alleged inappropriateness of DCPS’ IEPs for Student. These claims included failure to provide a sufficient number of hours of specialized instruction outside of the general education setting; failure to provide adequate/appropriate goals and supports in

² Low Incidence Manager opined in her hearing testimony that the City School 2 SLS program was not currently meeting Student’s needs and that Student’s IEP could be implemented in a DCPS ILS classroom. The parent is opposed to placing Student in an ILS program classroom. DCPS has not taken steps to move Student from the SLS program to an ILS classroom and I do not reach whether that change would be appropriate.

the area of writing and/or appropriate writing interventions; inappropriate annual goals; failure to provide appropriate behavioral supports; failure to provide Extended School Year (ESY) services; and failure to provide the recommended placement/setting/supports/interventions made by Student's evaluators.

Petitioner's expert, Educational Advocate, did not address most of these claims. Educational Advocate did opine that the IEP teams should have included written expression goals in the pre-2024 IEPs and this opinion was not directly rebutted by DCPS. The hearing evidence established that Student, who just completed Grade, is still unable to write by hand or using a keyboard. I find that DCPS did not meet its burden of persuasion that it was appropriate for the City School 2 IEP teams to omit Written Expression as an IEP area of concern prior to the May 2024 IEP.

Failure to Implement Claims

Petitioner alleged in the amended complaint that DCPS had denied Student a FAPE by failing to implement his/her IEPs in all educational settings and that when outside the self-contained setting, the student did not consistently receive breaks every 3 to 5 minutes, hand-over-hand assistance for any physical task including whenever using writing tools, one-on-one supervision or assistance navigating the classroom and school building, modified curriculum with hands-on sensory activities, and a modified environment with reduced auditory and visual distractions.

U.S. District Judge Rudolph Contreras explained in *Middleton v. District of*

Columbia, 312 F. Supp. 3d 113 (D.D.C. 2018), that a material failure to implement substantial or significant provisions of a child’s IEP may constitute a denial of FAPE.

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

Middleton at 144. At the due process hearing, the parent’s evidence did not establish that City School 2 failed to implement substantial or significant provisions in Student’s IEPs or that the child was deprived of educational benefit as a result. I find that the parent did not meet her burden of persuasion on the failure to implement claim.

Procedural Safeguard Notices

Petitioner claims that DCPS denied Student FAPE by failing to provide procedural safeguard notices regarding the request for a dedicated aide and a more restrictive setting. Under IDEA, parents of a child with a disability must be given a written notice whenever the local education agency (LEA) (1) proposes to begin or change the identification, evaluation, or educational placement of the child or the

provision of a free appropriate public education to the child; or (2) refuses to begin or change the identification, evaluation, or educational placement of, or the provision of FAPE to the child. *See* 34 C.F.R. §§ 300.503(a), 300.504.

In the amended due process complaint, the Petitioner alleges that DCPS failed to provide Prior Written Notice (PWN) or any documentation regarding the request for a dedicated aide and a more restrictive setting which DCPS had pending in May 2022. It appears that Petitioner was addressing a referral for a dedicated aide made to DCPS in May 2022. City School 2 did issue a PWN concerning the referral (Exhibit P-32). Mother testified that Classroom Teacher 1 had told her that she had put in requests for a dedicated aide and for Student 's placement in a private school, and that the requests were not approved. Assuming it is correct that DCPS did not provide Mother a PWN about the ultimate decision on the teacher's dedicated aide and private school requests for Student, these would be procedural violations of the IDEA.

Procedural violations of the IDEA may only be deemed a denial of FAPE if the procedural inadequacies—

- (i) Impeded the student's right to a FAPE;
- (ii) Significantly impeded the parent's (or adult student's) opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or
- (iii) Caused a deprivation of educational benefit.

See 34 C.F.R. § 300.513(a)(2). Here, the evidence established that Mother knew from

her communications with Classroom Teacher 1 that the teacher had allegedly submitted requests for a dedicated aide and for Student 's placement in a private school and that those requests were not approved. Moreover, the parent had been contemporaneously provided a notice of her right to receive a copy of procedural safeguards, which was included in the June 23, 2022 PWN. I find, therefore, that if there were an omission to provide the parent a written notice regarding the disposition of the requests for a dedicated aide and a more restrictive setting for Student, this procedural violation did not rise to a denial of FAPE.

Remedy

In this decision, I have determined that DCPS denied Student a FAPE by not conducting a speech and language evaluation and an assistive technology assessment of the child following receipt of Neuropsychologist' September 2021 evaluation report, by failing to provide for a dedicated aide in Student's IEPs beginning in May 2022 and by failing to identify written express as an area of concern in pre-2024 IEPs. For relief, the Petitioner seeks, *inter alia*, an order to DCPS to place and fund Student at Nonpublic School and compensatory education relief.

Private School Placement

After the due process complaint in this case was filed, Student was offered admission to Nonpublic School for the 2024-2025 school year. The admissions offer was made subject to Student's having a dedicated aide. DCPS has not agreed that

Student requires placement in a separate special education school.

“Where a public school system has defaulted on its obligations under the IDEA, a private school placement is ‘proper under the Act’ if the education provided by said school is ‘reasonably calculated to enable the child to receive educational benefits.’” *Wirta v. District of Columbia*, 859 F.Supp. 1, 5 (D.D.C. 1994), quoting *Rowley, supra*, 458 U.S. at 176, 102 S.Ct. at 3034. *See, also, e.g., N.G. v. District of Columbia*, 556 F.Supp.2d 11, 37 (D.D.C. 2008). An award of private-school placement is “prospective relief aimed at ensuring that the child receives tomorrow the education required by IDEA.” *Branham v. Gov’t of the District of Columbia*, 427 F.3d 7, 8, 11 (D.C. Cir. 2005) (citations omitted).

Placement awards, must be tailored to meet the child’s specific needs. *Branham, supra*. To inform this individualized assessment, courts have identified a set of considerations “relevant” to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student’s disability, the student’s specialized educational needs, the link between those needs and the services offered by the private school, the placement’s cost, and the extent to which the placement represents the least restrictive educational environment. *Id.* at 12. Pursuant to the *Branham* guidance, I will look at each of these considerations in turn.

a. Nature and Severity of Student’s Disability

The evidence in this case establishes that Student has severe disabilities,

including Autism Spectrum Disorder and physical challenges, attributed to the child's complex history of extreme prematurity and early stroke, hydrocephalus, and history of seizures. Student is functioning several years below grade level and age expectations in all academic areas. He/she is unable to write or to properly grasp a writing instrument. In the past, Student has exhibited emotional and behavioral challenges which have manifested, notably, in tantrum behaviors at school.

b. Student's Specialized Educational Needs

According to Neuropsychologist's report, Student would benefit from a structured school program within the self-contained, special education classroom setting that includes a low student-to-teacher ratio and a structured daily schedule and routine, emphasis on social interaction and communication, reduced distractions, and multiple/frequent breaks. Neuropsychologist recommended, *inter alia*, that Student would benefit from a structured school program within the self-contained, special education classroom setting, using Applied Behavior Analysis (ABA) techniques that includes a low student-to-teacher ratio and a structured daily schedule and routine, emphasis on social interaction and communication, reduced distractions, and multiple/frequent breaks.

c. Link between Student's Needs and the Services Offered by Nonpublic School

Nonpublic School is a full-time special education day school in suburban Virginia, serving Students from Kindergarten through 12th grade. The school has 9

mixed-grade classrooms with a maximum of 9 students per class. The classroom proposed for Student serves 4 children, who all are diagnosed with autism. Nonpublic School holds a current Certificate of Approval from OSSE. Based upon the testimony of Program Supervisor, it appears that Nonpublic School could meet Student's special education needs.

d. Cost of Placement at Private School

The cost of tuition at Private School is \$53,000 per year. DCPS offered no evidence that tuition expenses at Private School are higher than costs at other local private schools serving children with Student's disabilities.

e. Least Restrictive Environment

The IDEA requires school districts to place disabled children in the least restrictive environment possible. *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) (citing 20 U.S.C. § 1412(a)(5); 34 C.F.R. 300.550; D.C. Mun. Regs. tit. 5, § 3011 (2006)). "In determining the least restrictive environment, consideration is given to the types of services that the child requires." *Id.* (citing 34 C.F.R. § 300.552(d)). The hearing evidence did not establish that Private School, where Student would have no interaction with non-disabled peers, is the least restrictive environment possible for Student. To the contrary, Neuropsychologist recommended in September 2021 that Student would benefit from instruction within the regular education setting, with typically developing peers, for specials and lunch. *See N.T. v.*

District of Columbia, 839 F.Supp.2d 29, 35 n.3 (D.D.C.2012) (Hearing Officer could consider whether private school was the least restrictive environment in evaluating whether private placement was the proper remedy.)

Considering all of the above factors, I conclude that Petitioner has not shown that Private School is a more appropriate placement for Student than a self-contained classroom within a DCPS public school – subject to the child’s being provided a dedicated aide in the public school setting.

Compensatory Education

The parent also requests a compensatory education award for Student to remedy the denials of FAPE in this case. When a hearing officer finds that a school district has denied a student a FAPE under the IDEA, he “has ‘broad discretion to fashion an appropriate remedy,’ which can go beyond prospectively providing a FAPE, and can include compensatory education.” *B.D. v. District of Columbia*, 817 F.3d 792, 798 (D.C. Cir. 2016) (quoting *Boose v. District of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015)). “[T]he ultimate [compensatory] award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005). Unlike “ordinary IEPs . . . compensatory awards must do more—they must *compensate*.” *Id.* at 525 (emphasis in original). . . . [T]his inquiry must be qualitative, fact-intensive, and above all tailored to the unique

needs of the disabled student. *Id.* at 524. *Branham, supra*, 427 F.3d at 9. “Although the plaintiff need not prove that harm occurred to establish a substantive violation of the IDEA and the subsequent denial of a FAPE to [the child], *see N.W. v. District of Columbia*, 253 F. Supp. 3d 5, 15–16 (D.D.C. 2017), to receive a compensatory education award, the plaintiff is required to show that she is entitled to a remedy that rectifies ‘[the] educational deficit created by [the defendant]’s failure over a given period of time to provide a FAPE to [the child]’ *Reid*, 401 F.3d at 523.” *J.T. v. District of Columbia*, No. CV 21-3002 (RBW), 2023 WL 8369938, at *15 (D.D.C. Dec. 4, 2023), *appeal dismissed*, No. 24-7003, 2024 WL 3033764 (D.C. Cir. June 14, 2024).

In her hearing testimony, Petitioner’s expert witness, Educational Advocate, recommended as compensatory education, *inter alia*, that Student first be reevaluated with an updated psychological evaluation and a speech-language evaluation, as well as an AT assessment and an FBA. She stated that without knowing what these evaluations would show, she could not speculate on where Student would be now if, for example, DCPS has provided the child a dedicated aide in the first place.

On this limited evidence, I will grant Petitioner’s request to order DCPS to conduct updated evaluations of Student, including a comprehensive psychological reevaluation, a speech and language evaluation and an AT assessment. (In this decision I have found that Petitioner did not meet her burden of persuasion that Student required an FBA.) The child’s triennial special education reevaluation is apparently also

due in fall 2024. Because Petitioner's witnesses were not able to measure or judge the educational deficit created by DCPS' failure since May 2022 to offer Student a FAPE, I will deny Petitioner's request for other compensatory education relief. This denial will be without prejudice to the parent's right to pursue compensatory education in a future proceeding, because the additional evaluations of Student ordered in this decision, as well as Student's upcoming triennial reevaluation, may demonstrate that substantive compensatory education relief is warranted.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED:

1. DCPS shall ensure that beginning upon the start of the 2024-2025 school year, Student is provided a dedicated aide for the entire school day and that the child's IEP is promptly revised to reflect this requirement;
2. Within 60 days of the date of this decision, subject to obtaining the parent's consent, DCPS shall complete a comprehensive psychological reevaluation of Student, a comprehensive speech and language evaluation and an assessment for AT needs. These evaluations may be conducted as part of Student's triennial reevaluation, or separately. Upon receipt of the evaluation reports, DCPS shall ensure that the child's IEP team is promptly convened to review the evaluations and other data and revise Student's IEP as appropriate;
3. Petitioner's request for additional compensatory education relief is denied without prejudice and
4. All other relief requested by the Petitioner herein is denied.

Date: *Date in Heading of Determination* s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

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 (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

cc: Counsel of Record
Office of Dispute Resolution