

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

Office of Dispute Resolution  
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<b>Guardian, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioner,</b>	)	
	)	<b>Hearing Dates: 5/29/24, 6/26/24</b>
v.	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No. 2024-0075</b>
<b>District of Columbia Public Schools,</b>	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving an X-year-old student (the “Student”) who is currently eligible for services. A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on April 24, 2024. The Complaint was filed by the Student’s grandmother, his/her legal guardian (“Guardian” or “Petitioner”). On May 7, 2024, Respondent filed a response.

**II. Subject Matter Jurisdiction**

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

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

### **III. Procedural History**

A resolution meeting was held on May 15, 2024. The parties were unable to resolve the case. On May 15, 2024, a prehearing conference took place by telephone, attended by Attorney A, Esq., attorney for Petitioner, and Attorney B, Esq., attorney for Respondent. On May 20, 2024, a prehearing order was issued, summarizing the rules to be applied in the hearing and identifying the issues in the case.

The hearings were conducted through the Microsoft Teams videoconferencing platform, without objection, on May 29, 2024, and June 26, 2024. After testimony and evidence, the parties presented oral closing statements on June 26, 2024. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-30 without objection. Respondent moved into evidence exhibits R-1 through R-65, R-68, and R-69 without objection.

Petitioner presented as witnesses, in the following order: Witness A, an advocate (expert in special education, Individualized Educational Program (“IEP”) programming, and psychology); and herself. Respondent presented as a witness: Witness B, an assistant principal (expert in special education, programming, and placement).

### **IV. Issues**

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

**1. Did Respondent fail to provide the Student with an appropriate IEP for the 2023-2024 school year? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that the Student needs a more restrictive setting with additional behavioral supports.

**2. Did Respondent fail to comprehensively reevaluate the Student? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that, given the Student's trauma history, diagnosed mental health challenges, and escalating behaviors, an updated psychological evaluation and Functional Behavior Assessment ("FBA") would have been appropriate to inform the Student's programming and placement. Petitioner contended that, at the Student's IEP meeting on February 15, 2024, DCPS indicated willingness to conduct these evaluations but has not responded since.

**3. Did Respondent fail to provide Petitioner with the Student's educational records? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that Respondent did not respond in full to the request for records sent in January 2024.

As relief, at the time of the prehearing conference, Petitioner sought: a finding that Student was denied a FAPE; compensatory education and related transportation expenses; access to the requested records; additional compensatory education to be reserved for any issues arising out of the records; placement of the Student in a full-time, self-contained program with a behavior component, including a dedicated aide, and/or the funding of a therapeutic non-public placement; and a psychological evaluation.

**V. Findings of Fact**

1. The Student is an X-year-old who is eligible for services as a student with Other Health Impairment. The Student functions well below grade level in all academic subjects and has difficulty understanding the materials in class. The Student functions on a first- or second-grade level academically. One result of the Student's low academic performance is that s/he often avoids going to class and ignores what goes on in class.

The Student frequently elopes from the classroom; routinely refuses to complete assignments; leaves the classroom when a teacher or student attempts to hold him/her accountable for his/her behavior; takes items from peers; talks out of turn; makes rude comments about other students' weight, religion, or attire; is physically aggressive toward other students (at least twice a week); targets vulnerable students (female, smaller, younger, in lower grades, less assertive); and has been restricted from the use of electronic devices due to searching for pornography. R-53; Testimony of Witness A.

2. In August 2021, the District of Columbia Department of Behavioral Health diagnosed the Student with "adjustment disorder." The Student's functioning is compromised due to the death of his/her mother and other family issues. As a result of these traumatic experiences, the Student cannot cope with his/her emotions and "dissociates," meaning that the child appears to be present physically but is mentally "checked out." Testimony of Witness A.

3. The Student attended Public Charter School A ("PCS A") for much his/her academic career, to near the end of the 2022-2023 school year (when the Student was suspended from PCS A). Testimony of Petitioner.

4. PCS A wrote an FBA for the Student in January 2022. The FBA indicated that the Student engaged in elopement, verbal and physical aggression, and inappropriate language or touch, showed a short attention span, and had difficulty with reading and writing. The Student struggled to engage in independent work and often sought to escape from tasks by leaving the classroom or demonstrating interfering behaviors. The FBA indicated that these problems were worsening. The Student found reasons to avoid engaging in work, including asking to leave the room for various reasons, making

vocalizations, wandering around to find materials, and engaging with peers. These behaviors served an escape function; the Student intentionally did things that caused him/her to be removed from class or talked to, which helped him/her avoid the work. The FBA discussed one day when the Student was challenged by the work. The Student initially asked for help but did not get 1:1 support. S/he then began to engage in interfering behaviors (noise, tapping, engaging with peers, getting out of his/her seat, and calling out). R-11.

5. PCS A wrote another FBA for the Student in January 2023. This FBA discussed the Student's elopement behaviors and physical aggression toward staff and other students. This FBA described how the Student had eleven documented behavior referrals during the school year, including for physical aggression toward a person, verbal aggression, elopement, and aggression toward property to the extent that the property was displaced from its intended location,. P-9.

6. A psychological evaluation of the Student was conducted in February 2023 by an evaluator at PCS A. The evaluator administered the Reynolds Intellectual Assessment Scales-Second Edition ("RIAS-2"), Kaufman Test of Educational Achievement-Third edition ("KTEA-3"), and the Behavior Assessment for Children-Third Edition ("BASC-3"). The evaluator, a humanities teacher, described the Student as happy but often unmotivated. During a typical fifty-minute block, the Student would be on task for approximately ten minutes. The Student was described by a teacher as having a hard time following directions without being combative or aggressive. The teacher reported that the Student needed directions to be repeated multiple times, had challenges staying on task (which caused most of his/her work to be incomplete), and often asked to

leave the classroom during work time. If school staff said “no,” the Student would walk out of class to do whatever s/he wanted to do. During an observation of the Student in a general education humanities classroom with thirteen students, the Student wandered in the hallways but was not held accountable. The evaluation reported that the Student was in the below-average range on the RIAS-2, which measures cognitive intelligence. On the KTEA, the Student’s reading, written language, and overall academic skills were significantly below average and his/her math skills were below average. The evaluation report also included the examiner’s observation of the Student eloping, screaming, and crying. The evaluator concluded that the Student’s behavior interfered with his/her ability to attend to lessons and that the Student could be expected to struggle to use spoken language to express and understand classroom content, directions, and his/her thoughts and feelings. P-10.

7. An IEP meeting was held for the Student on February 16, 2023. The resulting IEP from PCS A provided for six hours per week of specialized instruction inside the general education setting, four hours per week of behavior support services inside general education, and 240 minutes per month of behavioral support services outside general education. The IEP reported that, in both math and reading, the Student was performing at the first percentile nationally. The IEP recommended the use of an individualized behavior system, such as a check-in, check-out, to ensure that the Student received frequent feedback about his/her behavior, and small incentives to encourage the Student to demonstrate expected behaviors. The IEP indicated that the Student benefitted from repetition of directions and wait time for compliance, chunking of assignments, simplification of directions or breaking directions down into steps, small-group or 1:1

instruction to complete of tasks, and preferential seating away from distractions or near the teacher. P-14.

8. During the 2022-2023 school year, the Student had four in-school suspensions totaling sixteen hours outside the classroom. The incidents included three instances of physical aggression toward peers and one instance of multiple elopements throughout the building that resulted in safety concerns. P-9.

9. Toward the end of the 2022-2023 school year, the Student was suspended at PCS A. For the 2023-2024 school year, the Student transferred to School B.

Testimony of Petitioner.

10. From the start of the 2023-2024 school year at School B, the Student has had behavior problems that have affected his/her schoolwork. The Student has presented with difficulty sustaining attention consistently and has been physically overactive and restless. The Student has demonstrated social impulsivity and significant socially inappropriate behaviors. The Student has engaged in eloping, cursing, and engaging in highly inappropriate sexual behaviors. The Student has presented with a depressed mood and flat affect at times. The Student has presented a danger to others, as evidenced by his/her physical aggression and inappropriate sexualized behaviors. R-53.

11. On October 30, 2023, a progress report was issued in regard to the Student's Behavior Intervention Plan ("BIP"). According to this report, the Student was disruptive in class more than eight times per week and eloped more than eight times per week during the five weeks that his/her behavior was tracked. P-24.

12. School B implemented the recommendations in the Student's IEP from PCS A. Within weeks, DCPS was working on a new FBA and BIP for the Student. On

September 11, 2023, Petitioner approached School B informally and told School B staff about the Student's issues at PCS A, including his/her behavioral issues. Petitioner told School B staff that the Student needed a smaller classroom. Testimony of Witness B. Witness B indicated to Petitioner that she did not have the power to simply move the Student to a smaller classroom and that she had to contact other staff, through an "MRE request," to obtain a determination from a separate team as to whether the Student was entitled to a smaller classroom setting. Witness B then waited for a notification from the "central office" as to when the central office could observe the Student. Testimony of Witness B.

13. On September 28, 2023, DCPS conducted a "thirty-day review" of the Student's program. The team had before it the IEP and a Prior Written Notice from PCS A. To assess the Student's program at School B, the team noted the Student's performance under his/her BIP. Service trackers reflected that the Student engaged reasonably well during behavioral support service sessions in September 2023. After reviewing this material, the IEP team and School B decided to maintain the same level of services that PCS A had recommended. Testimony of Witness B.

14. At School B, the Student's IEP progress report for the first reporting period of the 2023-2024 school year indicated progress on one the two reading goals and one of the two writing goals, but the Student did not fare as well in emotional, social, and behavioral development, where s/he made no progress on two of three goals. All the Student's math goals were deemed to be just introduced. R-47.

15. On January 31, 2024, Petitioner filed a formal request for the Student's records, asking DCPS to provide all attendance records, portfolios, progress reports,



IEPs, charts, observations, standardized test scores, reports, letters, memos, notes, emails, class schedules, data compilations, letters of understanding, evaluations and assessments, disciplinary records, multidisciplinary meeting notes, related service provider logs, progress reports, report cards, and service trackers. P-3.

16. On the Student's IEP progress report for the second term of the 2023-2024 school year, the Student regressed on behavioral goals and did not make progress on many academic goals. R-47. An IEP meeting was held in February 2024, where the team discussed the Student's FBA from PCS A. DCPS indicated that it would implement the BIP from PCS A and that the Student's service level would need to increase, due to the concerns about his/her behavior. Petitioner requested an assessment of the Student. The DCPS team stated that no specific evaluation was scheduled at the time and that they had called PCS A shortly before the meeting to request the Student's documents, because the documents were never transferred to School B. Petitioner mentioned that she wanted to get the Student into a school that would address his/her conduct issues. Testimony of Guardian; P-4.

17. The IEP indicated that the Student exhibited maladaptive behavior, which impeded his/her learning and the learning of other children. The Student was observed eloping from class often, being aggressive with other students, throwing furniture, and using profane language. The IEP stated that the Student enjoyed making paper airplanes, lacked empathy for others, lacked prosocial skills, and displayed aggressive unprovoked strategies to deal with his/her anger and frustration, with minimal remorse. The IEP, which contained goals in English, reading, written expression, and emotional, social, and

behavioral development, did not detail much meaningful progress in any academic areas.

However, the Student's services were kept the same as in the PCS A IEP. P-18.

18. DCPS wrote an FBA for the Student in March 2024, which indicated that the Student eloped from the classroom (homeroom and special subjects) approximately five times per day without permission, and that when s/he eloped, s/he went into other classrooms that were not locked and took items that belonged to teachers. The Student generally left the classroom after s/he was instructed to complete an assignment. The FBA reported that the Student had been restricted from using electronic devices since January 9, 2024, due to searching for pornography on a computer, and was therefore given paper copies of assignments. The FBA also indicated that the Student left the classroom when a teacher or another student attempted to hold him/her accountable for his/her behavior, and that s/he was physically aggressive toward other students at least twice a week. The Student targeted other students who were vulnerable (female, smaller, younger, in lower grades, less assertive). The Student was not remorseful about these actions. The Student assaulted students during bathroom breaks and had to be escorted by an adult to the bathroom. When the Student's physical aggression occurred, s/he was not provoked by other students. Upon de-escalation, the Student would blame others for his/her actions and not assume responsibility. In two incidents, the Student crawled under a bathroom stall with another student. In one incident, s/he climbed over a bathroom stall with another student. In each incident, the other students indicated that they felt uncomfortable and unsafe. The Student stole a cell phone from another student and, when questioned, said that s/he did not touch the phone. The parent of the other student then used an app to locate the phone at the Student's home. The Student still

denied having the phone, but his/her caregiver found the phone in the home and returned it to the other student's parent. The Student destroyed two laptops by throwing them when s/he was frustrated, and s/he has damaged multiple headphones. The Student also presented with difficulty sustaining attention consistently and was physically overactive and restless. S/he demonstrated social impulsivity and significant socially inappropriate behaviors. The Student was considered a danger to others as evidenced by his/her physical aggression and inappropriate sexualized behaviors. P-12.

19. DCPS wrote a new BIP for the Student on April 2, 2024. This BIP repeated much of the information in the FBA, indicating that the Student presented a danger to others, as evidenced by physical aggression and inappropriate sexualized behaviors. The BIP recommended tracking data and strategies for the Student to use, like requesting non-contingent breaks, using the "stop, think, act" technique to build self-control, asking to move to another seat in the classroom, using problem-solving skills, remaining calm, resetting, and asking, "Am I magnifying the situation?" R-54.

20. On or about April 2, 2024, School B staff learned that the "MRE request" had resulted in a recommendation to place the Student in a more restrictive setting. DCPS decided to wait until it completed another BIP for the Student before moving forward on the recommendation. R-58.

21. On April 2, 2024, School B staff gave documents to Petitioner in response to her document requests. The documents included IEPs, "BOY/MOY" data, Strengths and Difficulties Questionnaire ("SDQ") data, and a psychological evaluation summary report from PCS A. R-56. Services trackers were not provided until May, 2024. P-30.

22. An IEP meeting was held for the Student on May 2, 2024. The team noted that the Student did not really do any of his/her work, that s/he would elope even if an adult was present in the classroom, and that his/her behaviors prevented his/her access to the curriculum. The team agreed that the setting at School B was inappropriate for the Student. The IEP recommended twenty hours per week of specialized instruction outside general education and four hours per week of behavioral support services. The team's intent was to place the Student in a Behavior and Education Support ("BES") classroom. On May 21, 2024, the BES program at School C was identified as a location of services. Testimony of Witness A; P-19.

## **VI. Conclusions of Law**

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." D.C. Code Sect. 38-2571.03(6)(A)(i). Accordingly, on Issue #2 and Issue #3, the burden of persuasion is on Petitioner. On Issue #1, the burden of persuasion is on Respondent if Petitioner presents a *prima facie* case.

**1. Did Respondent fail to provide the Student with an appropriate IEP for the 2023-2024 school year? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that the Student needs a more restrictive setting, with additional behavioral supports.

The IEP is the “centerpiece” of IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). In Endrew F. v. Douglas County School District, 580 U.S. 386 (2017), the Court held that an IEP must be reasonably calculated “in light of the child’s circumstances.” Id. at 399. The Court also held that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 404. However, the “educational program must be appropriately ambitious in light of...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.” Id. at 402. An IEP that fails to satisfy these statutory directives may be remedied through an IDEA claim to the extent that the IEP “denies the child an appropriate education.” Z.B. v. District of Columbia, 888 F.3d 515, 519 (D.C. Cir. 2018).

In Questions and Answers on Endrew F. v. Douglas County School District RE-1, 71 IDELR 68 (EDU 2017), the United States Department of Education reinforced the Supreme Court’s decision in Endrew F. and clarified that if a child is not making progress at the level the IEP team expects, the team must revisit the IEP with the Endrew F. standard in mind and revise it as necessary to ensure that the student receives appropriate special education and related services and that the student’s goals are individualized and ambitious. The memorandum affirmed that the IDEA provides for

revisiting the IEP if the expected progress does not occur, and that this “is particularly important because of the Court’s decision in Andrew F., which clarifies that the standard for determining whether an IEP is sufficient to provide FAPE is whether the child is offered an IEP reasonably calculated to enable the child to make progress that is appropriate in light of the child’s circumstances.” The memorandum indicated that, if a child is not making expected progress toward his or her annual goals, the IEP team must revise, as appropriate, the IEP to address the lack of progress. Upper Sandusky Exempted Village Schs., 82 IDELR 40 (SEA OH 2022) (student’s removal from school five times within three weeks should have prompted the IEP team to address the student’s recurrent social and behavioral problems, since they were evident from attendance records, behavior logs, discipline, and removals).

If a student has an IEP in effect and moves to a new district in the same state within the same school year, the new district must provide services comparable to those the student received in the old district until it either: 1) adopts the IEP developed by the old district; or 2) develops, adopts, and implements a new IEP. 34 CFR 300.323 (e). The IDEA does not establish a specific time frame for adopting the IEP developed by the old district or developing, adopting, and implementing a new IEP for an intrastate transfer student. The United States Department of Education’s Office of Special Education and Rehabilitative Services (“OSERS”) has stated that the new school district must take such action “within a reasonable period of time” to avoid any undue interruption in the student’s services. Questions and Answers on Individualized Educ. Programs, Evaluations, and Reevaluations, 111 LRP 63322 (OSERS 09/01/11).

The Guardian testified that, having experienced the Student's difficult year at PCS A, she knew in September 2023 that the Student needed a smaller setting. Documents in the record from PCS A staff corroborate the Guardian's testimony. At PCS A, the Student did not have the ability to attend to the lessons, s/he struggled to use spoken language to express and understand classroom content, directions, and his/her thoughts and feelings, and s/he engaged in wild, dangerous, anti-social behavior. The January 2023 FBA from PCS A discussed the Student's elopement behaviors and physical aggression toward staff and other students. The FBA indicated that the Student had eleven documented behavior referrals during the school year, including for physical aggression toward a person, verbal aggression, elopement, and aggression toward property to the extent that the property was displaced from its intended location,. There were no reports of academic progress during this period.

However, it appears that DCPS failed to get all of the Student's documents from PCS A when it considered the Student's program at the "thirty-day review" on September 28, 2023. It is unclear why these records were not obtained. This appears to be contrary to 34 CFR Sect. 300.323(g)(1), which states: "The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and (2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency."

As a result, DCPS had to rely on its own information to determine whether or not to adopt the IEP from PCS A. But DCPS surely could tell from the outset that this was a student who needed more services. DCPS's own BIP progress report indicated that the Student consistently eloped from the classroom (more than eight times per week) and was consistently disruptive in class (more than eight times per week) over a five-week period. DCPS did not call a teacher from either PCS A or School B to defend the implementation of the PCS A IEP for the Student for the 2023-2024 school year.

In fact, DCPS may have turned down the Guardian's reasonable request for a smaller placement for the Student simply because the IEP team members did not have the authority to write an IEP for a "full-time" special education placement for the Student, even if it was clear to everyone at the IEP meeting that this was what the Student needed. Instead, DCPS staff said that they had to write an "MRE request" to obtain a determination from a separate team (not the IEP team) as to whether the Student was entitled to a smaller classroom setting. Witness B then had to wait for a notification from the central office, which would observe the Student and, if the observers thought it appropriate, approve the Student for a new placement.

The IEP meeting for the Student in February 2024 made it clearer that the development of an appropriate program depended on the conclusion of the MRE process. The IEP, which contained goals in English, reading, written expression, and emotional, social, and behavioral development, did not detail meaningful progress in any academic areas. The IEP indicated that the Student exhibited maladaptive behavior that impeded his/her learning and the learning of other children. The IEP reported that the Student was observed eloping from class often, being aggressive with other students, throwing



furniture, and using profane language. The IEP stated that the Student enjoyed making paper airplanes, lacked empathy for others, lacked social skills, and acted with minimal remorse. However, the Student's February 2024 IEP recommended virtually the exact same program that PCS A had offered.

In May 2024, the MRE process concluded and DCPS finally agreed with what the Guardian knew in September 2023: the Student needed a full-time setting, given his/her low academic levels and need for more oversight. Unfortunately, by May 2024, the school year was almost over.

DCPS did offer a few arguments in response. DCPS contended that the Student's late start in the 2023-2024 school year made its decision to adopt the PCS A IEP more reasonable or understandable, but no teacher was called to testify in support of this contention. Moreover, Witness B's testimony was inconsistent on issues relating to the Student's late start at School B. At one point, Witness B appeared to say that the Student did not start at School B for months, which is clearly inaccurate, according to the service trackers. Witness B also testified that the Student did well at the start of the school year, which is inconsistent with reports that the Student eloped from class more than eight times a week and engaged in behavioral incidents more than eight times a week.

DCPS failed to show that its IEPs and programs for the Student during the 2023-2024 school year provided the Student with appropriate specialized instruction services or appropriate behavioral supports. Accordingly, I find the Student was denied a FAPE for the 2023-2024 school year.

**2. Did Respondent fail to comprehensively reevaluate the Student? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that, given the Student's trauma history, diagnosed mental health challenges, and escalating behaviors, an updated psychological evaluation and FBA would have been appropriate to inform the Student's programming and placement. Petitioner contended that at the Student's IEP meeting on February 15, 2024, DCPS indicated willingness to conduct these evaluations but has not responded since.

A child's initial evaluation or reevaluation must consist of two steps. First, the child's evaluators must "review existing evaluation data on the child," including any evaluations and information provided by the child's parents, current assessments, classroom-based observations, and observations by teachers and other service providers. 34 CFR 300.305(a)(1). Then, based on a review of the existing data and input from the child's parent, the school district must identify what additional data, if any, is needed to assess whether the child has a qualifying disability and, if so, administer such assessments and other evaluation measures as needed. 34 CFR 300.305(a)(2)(c). The Local Educational Agency ("LEA") must "[u]se a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent." 34 CFR 300.304(b). A student must be "assessed in all areas related to the suspected disability." 34 CFR 300.304(c)(4).

If a school district violates these provisions, a petitioner does not necessarily prevail. A petitioner has the burden to demonstrate that a student was denied a FAPE as a result. Not all procedural violations constitute FAPE denials. Only those procedural violations that affect a student's substantive rights deny that student a FAPE. McLean v. District of Columbia, No. 16-2067, 264 F. Supp. 3d 180, 183-84, 2017 WL 3891669, at \*3 (D.D.C. Sept. 5, 2017).

Petitioner's argument is that, after the February 15, 2024, IEP meeting, DCPS did not follow up on its promises to re-evaluate the Student, rewrite his/her psychological evaluation, and write an updated FBA. DCPS should have lived up to its word. The assessments that Petitioner was requesting would have been appropriate, given the Student's extreme issues in school, and DCPS's failure to respond to the request for an evaluation is a violation of 34 CFR 300.303)(a) of the IDEA regulations, which states that a public agency must ensure that a reevaluation of each child with a disability is conducted if the child's parent or teacher requests a reevaluation.

However, the PCS A assessments had already established that the Student would not be able to function in a general education environment. In fact, by February 15, 2024, DCPS's own documents, including FBAs, IEPs, and progress reports that were readily available to anyone who wanted to read them, made it clear that the Student needed a more restrictive setting. Instead of more evaluations, the Student needed *action*, or at least someone to closely review the well-written evaluations that PCS A had provided, which is eventually what happened.

This claim must be dismissed.

**3. Did Respondent fail to provide Petitioner with the Student's educational records? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that Respondent did not respond in full to the request for records sent in January, 2024.

The IDEA regulations provide: "(t)he parent of a child with a disability must be afforded, in accordance with the procedures of Sects. 300.613 through 300.621, an opportunity to 'examine,' or 'inspect and review' all education records with respect to the identification, evaluation, and educational placement of the child and the provision of

FAPE to the child.” 20 U.S.C. Sect. 1415(b)(1); 34 C.F.R. 300.501(a); 5-A DCMR Sect. 2600.1. The term “education records” means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 USC 232g). 34 CFR Sect. 300.611-300.625.

Petitioner did not clearly argue in support of this claim during closing argument, except to point out that the subject service trackers were not immediately produced. But the service trackers are in the record. Even if all the documents that were requested were not produced to Petitioner’s satisfaction, Petitioner has not clearly explained how, precisely, missing evidence was necessary to the preparation for the due process hearing. Simms v. District of Columbia, No. 17-CV-970 (JDB/GMH), 2018 WL 4761625, at \*23 (D.D.C. July 26, 2018), report and recommendation adopted, No. CV 17-970 (JDB) (GMH), 2018 WL 5044245 (D.D.C. Sept. 28, 2018); compare Amanda J. v. Clark Cty Sch. Dist.; 267 F.3d 877, 894 (9th Cir. 2001) (records revealed that the student was autistic, a diagnosis not known by the student’s parents or IEP team). Accordingly, this claim must be dismissed.

### **RELIEF**

During closing argument, Petitioner sought compensatory education in the form of 150 hours of 1:1 tutoring, 150 hours of mentoring, and 80 hours of counseling with a psychologist.

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to “grant such relief as [it] determines is appropriate.” School

Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confer broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.”

In regard to the request for compensatory education, courts and hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In every case, however, the inquiry must be fact-specific and, to accomplish IDEA’s purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a “‘qualitative, fact-intensive’ inquiry used to craft an award tailored to the unique needs of the disabled student”). A petitioner need not “have a perfect case” to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011). Under the IDEA, if a student is denied a FAPE, a hearing officer may not “simply refuse” to grant one. Henry v. District of Columbia, 55 IDELR 187 (D.D.C. 2010). Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

Given the long period of FAPE deprivation, the professionalism of the proposed compensatory education plan, the credentials and credibility of the expert who proposed the plan (Witness A, whose testimony was reasonable and consistent), and the lack of any

strong objection or compelling testimony to the contrary, this Hearing Officer finds the plan to be a reasonably calculated award for the Student, who needs high-quality professional compensatory services.

## **VII. Order**

As a result of the foregoing:

1. Respondent shall pay for 150 hours of compensatory tutoring for the Student, to be provided by a certified special education teacher, at a usual and customary rate in the community;
2. Respondent shall pay for 150 hours of compensatory mentoring for the Student, to be provided by an individual with at least ten years of professional experience in the field of mentoring, at a usual and customary rate in the community;
3. Respondent shall pay for eighty hours of counseling for the Student, to be provided by a licensed professional social worker or psychologist with at least ten years of professional experience, including experience with trauma patients, at a usual and customary rate in the community;
4. Petitioner's other requests for relief are denied.

Dated: July 8, 2024

*Michael Lazan*  
Impartial Hearing Officer

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

### **VIII. Notice of Appeal Rights**

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

Dated: July 8, 2024

*Michael Lazan*  
Impartial Hearing Officer