



**JURISDICTION:**

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

**BACKGROUND AND PROCEDURAL HISTORY:**

The student involved in this due process hearing ("the Student") resides with the Student's parent ("Petitioner") in the District of Columbia. The District of Columbia Public Schools ("DCPS") is the Student's local education agency ("LEA"). The Student has been determined eligible for special education and related services pursuant to IDEA, identified with a disability classification of autism. The Student is currently enrolled in a DCPS school (“School A”) where he/she began attending in early 2023.

On February 28, 2025, Petitioner filed a due process complaint (“DPC”) alleging that DCPS had denied the Student a free appropriate public education (“FAPE”) by allegedly failing to conduct a thorough evaluation of the Student, develop an appropriate individualized educational program (“IEP”), and properly implement the Student’s IEP during school year (“SY”) 2024-2025. Petitioner requests a finding that DCPS denied the Student a FAPE and an order requiring DCPS to amend the Student’s IEP to include individualized assistive technology (“AT”), provide Petitioner with parent training on any AT device given to the Student, and award the Student compensatory education.

**LEA Response to the DPC:**

DCPS filed a response to the complaint on March 21, 2025. The LEA stated, inter alia, that the Student has not been denied a FAPE, the request for relief is unwarranted, and the DPC should be dismissed with prejudice.

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

Petitioner and DCPS participated in a resolution meeting on March 13, 2025. The parties did not mutually agree to shorten the 30-day resolution period. The DPC was filed on February 28, 2025. The 45-day period began on March 31, 2025, and ended with the Hearing Officer’s Determination (“HOD”) originally due on May 14, 2025. The parties were unavailable for the hearing dates offered and filed a motion to continue and extend the HOD due date, which was granted. The HOD will now be due on July 5, 2025.

The undersigned impartial hearing officer (“IHO”) conducted a pre-hearing conference (“PHC”) on March 26, 2025, and issued a pre-hearing order (“PHO”) on April 8, 2025 and a revised PHO on April 27, 2025, outlining, inter alia, the issues to be adjudicated.

**The issues to be adjudicated are:** <sup>2</sup>

1. Did DCPS deny the Student a FAPE because the Student’s March 23, 2023, and March 13, 2024, IEPs failed to provide appropriate goals in the following areas: (a) speech-language, (b) cognitive, and (c) adaptive daily living, because the goals in each of these areas were not based on accurate present levels and not measurable.
2. Did DCPS deny the Student a FAPE in January of 2024 by (a) refusing to evaluate the Student for possible Attention Deficit Hyperactivity Disorder (“ADHD”) and (b) failing to provide a prior written notice (“PWN”) after refusing to evaluate for ADHD?
3. Did DCPS deny the Student a FAPE by March 23, 2023, because the Student’s March 23, 2023, and March 13, 2024, IEPs (a) were not based on an assistive technology (“AT”) assessment and (b) failed to provide the Student with a dedicated and appropriate AT device?
4. Did DCPS deny the Student a FAPE because the Student’s March 23, 2023, and March 13, 2024, IEPs failed to provide parent training on an AT device to assist the Student in using the device?
5. Did DCPS deny the Student a FAPE because it failed to provide the Student with all speech services over the past two years and failed to provide speech service logs and notes when requested?
6. Did DCPS deny the Student a FAPE from approximately the last week of January 2025 to date to provide the Student with occupational therapy (“OT”) services because it had no OT specialist to provide OT services until a replacement was found?
7. Did DCPS deny the Student a FAPE because it failed to provide the Student with any accommodations and/or other aides and services on the Student’s March 23, 2023, and March 13, 2024, IEPs?

**DUE PROCESS HEARING:**

The Due Process Hearing was held on May 14, 2025, May 15, 2025, and June 25, 2025, using a video teleconference on the Microsoft Teams platform.

**RELEVANT EVIDENCE CONSIDERED:**

The IHO considered the testimony of witnesses<sup>3</sup> and the documents submitted in each party’s disclosures (Petitioners’ Exhibits 1 through 30, DCPS’s Exhibits 1 through 29) that were admitted into the record and are listed in Appendix 2.

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<sup>2</sup> In an April 11, 2025, email, Petitioner’s counsel requested changes to the pre-hearing order, which included clarification of the issues to be adjudicated as listed in the pre-hearing order (PHO) issued on April 8, 2025. Petitioner’s counsel also withdrew several of the issues that were alleged in the DPC and outlined in the April 8, 2025, PHO. The April 11, 2025, email is included in the administrative record. The April 27, 2025, revised PHO delineated the remaining issues to be adjudicated.

<sup>3</sup> Petitioner presented three witnesses: (1) Petitioner’s educational consultant, who testified as an expert; (2) a speech-language pathologist who also testified as an expert, and (3) the Student’s mother (Parent). DCPS presented five witnesses, (1) the Student’s School A special education teacher who testified as an expert, (2) the Student’s DCPS speech-language pathologist who testified as an expert, (3) School A’s special education coordinator, who testified as an expert, (4) the DCPS AT specialist, who testified as an expert, and, (5) the DCPS program manager for occupational

## **SUMMARY OF DECISION:**

Respondent held the burden of persuasion on issues #1, #3, #4, and #7 after Petitioner presented a prima facie case regarding those issues. DCPS did not meet the burden of persuasion by a preponderance of the evidence concerning the Student's March 13, 2024, IEP, but sustained the burden of persuasion by a preponderance of the evidence as to the Student's March 23, 2023, IEP. Petitioner held the burden of persuasion on all other issues. Petitioner sustained the burden of persuasion by a preponderance of the evidence on issues #5 and #6. The IHO concluded that there was a procedural violation that did not rise to the level of a denial of a FAPE as to issue #2. The IHO ordered DCPS to amend the Student's IEP to include a dedicated DCPS-provided high-tech AT device, provide parent training on the use of that device, convene an IEP meeting to review the Student's IEP, and granted Petitioner authorization to obtain an independent educational evaluation ("IEE") to determine the appropriate compensatory education.

## **FINDINGS OF FACT:<sup>4</sup>**

1. The Student resides with the Student's parent, Petitioner, in the District of Columbia. DCPS is the Student's LEA. The Student has been determined to be eligible for special education and related services pursuant to IDEA, with a disability classification of autism. The Student attends School A and is in its communication educational support ("CES") classroom. (Mother's testimony, Respondent's Exhibit 15)
2. Children's National Health System ("CNHC") conducted a psychological evaluation of the Student in April and May 2022 and completed an evaluation report dated June 3, 2022. The psychologist reviewed records, conducted a clinical interview, and administered the following assessments: Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Autism Diagnostic Interview-Revised (ADI-R), Vineland Adaptive Behavior Scale, Third Edition (Vineland-3), Mullen Scales of Early Learning, and Behavior Assessment Scale for Children, Third Edition (BASC-3). Based on the evaluation, the psychologist diagnosed the Student with autism, noting that the Student's scores on the assessments indicated a classification of autism in communication, reciprocal social interaction, restricted interests, and repetitive behaviors. The psychologist also observed that the Student received a speech therapy evaluation through OSSE Strong Start in February 2022. This evaluation identified a 50% delay in the Student's communication development. The psychologist noted that the Student was receiving speech therapy. (Petitioner's Exhibit 1)

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and physical therapy. The IHO found the witnesses credible unless noted otherwise in the conclusions of law. Any material inconsistencies in the testimony of witnesses identified by the IHO are discussed in the conclusions of law.

<sup>4</sup> The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained or the PDF page number of the entire disclosure document. When citing an exhibit that has been submitted by more than one party separately, the Hearing Officer may only cite one party's exhibit.

3. The OSSE Strong Start also administered the Battelle Developmental Inventory (BDI)-Second Edition and the Assessment,<sup>5</sup> Evaluation, and Programming System-Second Edition (“AEPS”)<sup>6</sup> to determine the Student’s eligibility for early intervention services. The Student had an individualized family services plan (“IFSP”) through OSSE Strong Start. (Respondent’s Exhibit 1 pg. 7)
4. DCPS Early Stages received a referral on September 2, 2022, for evaluation to determine the Student’s continued eligibility. DCPS prepared an analysis of existing data (“AED”) dated October 17, 2022, which indicated that DCPS reviewed the Student’s June 3, 2022, psychological evaluation, the Strong Start evaluations, conducted a parent interview, interviewed the Student’s applied behavior analysis (“ABA”) therapist, and observed the Student. The AED report noted that the Student received ABA therapy twice a week for two-hour sessions and received speech and occupational therapy once a week for 45 minutes, as well as physical therapy twice a month for 45-minute sessions. The AED noted that, when attending learning activities, the Student was easily distracted and had difficulty consistently following directions to participate in learning activities with adults for longer than thirty to forty-five seconds. (Respondent’s Exhibit 1 pgs. 4, 8, 9, 10, 11)
5. On November 3, 2022, the DCPS Early Stages team, including the Petitioner, met to review existing and current data regarding the Student’s development and functioning. The team reviewed DCPS’s disability criteria for autism spectrum disorder (“ASD”) and determined that the Student met the criteria for ASD and is eligible for special education services. Petitioner provided consent for the initial provision of special education services. (Respondent’s Exhibits 2)
6. DCPS Early Stages developed the Student’s initial IEP on November 3, 2022. Once the Student turned age \_\_\_\_, Petitioner enrolled the Student in School A. The Student was in School A’s Pre-K3 communication and education support (“CES”) classroom. School A convened a 30-day IEP review meeting for the Student on March 23, 2023, to review the Student’s progress toward meeting his/her IEP goals. Petitioner noted that the Student was doing well and planned to have the Student tested for ADHD by the Student’s pediatrician. The meeting notes indicate that the Student had hearing test scheduled for May 9, 2023, at Children’s Hospital and that Petitioner had switched insurance coverage effective April 1, 2023, so that the Student would receive additional services. The notes also indicate that Petitioner was working on obtaining an augmentative and alternative communication

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<sup>5</sup> The BDI is a norm-referenced assessment that looks at key developmental milestones in children. This assessment helps measure a child’s progress along the developmental continuum by both global domains and discrete skill sets in the following areas: Adaptive, Personal-Social, Communication, Motor, and Cognitive. Results of testing indicated the Student’s had overall significant developmental delay with a developmental quotient score of 67 (Average= 90-109). Results in the Adaptive field specifically showed mild developmental delay with a developmental quotient of 75 (Average= 90-109), including a Self-Care scaled score of 3 and a Personal Responsibility scaled score of 7 (Average= 7-13).

<sup>6</sup> The AEPS is a criterion-based observational tool for children from birth through age six who are at risk for a delay or have a disability. The AEPS gathers data from six major developmental areas: Fine Motor, Gross Motor, Cognitive, Adaptive, Social-Communication, and Personal-Social. The results of the assessment indicated that the Student fell at or the below the range of his/her typically developing peers in the area of Adaptive development.

("AAC") device for the Student. The team developed a new IEP for the Student dated March 23, 2023. (Respondent's Exhibits 1, 3, 4)

8. The Student's March 23, 2023, IEP included goals in the following areas: adaptive daily living skills, cognitive, communication/speech and language, and motor skills/physical development. The IEP prescribed the following services, all outside the general education setting, to implement the goals in the IEP: 25.5 hours per week of specialized instruction and 240 minutes per month each of speech-language pathology ("SLP") and OT. Under the category of AT, the IEP noted that the Petitioner reported the Student had recently received a referral for an AT evaluation. School A maintained the goals and level of services from the Student's November 2022 IEP because School A team members had not yet had a long enough opportunity to work with the Student, and the goals developed by Early Stages were based upon the Student's evaluations. (Witness 4's testimony, Witness 5's testimony, Respondent's Exhibit 3)
9. The Student's March 23, 2023, IEP did not mention an AT assessment and did not provide a dedicated AT device or parent training on an AT device. The IEP noted in the section entitled "other classroom aids and services" suggestions for communicating with the Student and noted that the Student's sensory diet, created by the Student's treating occupational therapist, should be used throughout the school day. (Respondent's Exhibit 3)
10. The Student's March 23, 2023, IEP noted, under the present level of performance ("PLOP") in adaptive daily living skills, the results of the Student's Strong Start evaluations, and included other anecdotal information about the Student's functioning. The IEP included four adaptive daily living skills goals. (Respondent's Exhibit 3)
11. The Student's March 23, 2023, IEP's cognitive PLOP noted the Student's June 3, 2022, ("CNHC") psychological evaluation and Strong Start evaluations and noted other anecdotal information about the Student's functioning.
12. The Student's March 23, 2023, IEP included three cognitive goals.
13. The Student's March 23, 2023, IEP's PLOP for communication/speech and language noted that the Student presented with significant delayed receptive and expressive language skills based on the formal evaluation.
14. The Student's March 23, 2023, IEP included four goals in communication/speech and language.
15. During SY 2023-2024, the School A's speech-language pathologist delivered the Student's SLP services inside the CES classroom, principally in a group setting. Initially, the Student expressed him/herself through gestures, facial expressions, and walking away from the activity for the non-preferred items. The Student's speech-language pathologist and classroom teacher decided that the picture exchange communication ("PEC") and pre-made Velcro books were the best means of communication for the Student to learn life skills, including eating, toileting, and dressing. (Witness 5's testimony)

16. During the Student's first year and School A, he/she was not ready for high-tech communication devices as he/she did not have finger isolation to the point and make choices, and needed hand-over-hand prompting, so high tech was not appropriate. The Student's speech-language pathologist believed the SLP goals in the Student's IEP could be effectively measured through observation, verbal responses, and practice and drill. She gave the Student up to ten opportunities each session to demonstrate the skill/activity. (Witness 5's testimony)
17. The Student's speech-language pathologist did not provide all the Student's SLP services during SY 2023-2024 when the provider was unavailable or the Student was unavailable. She missed providing seven hours of SLP services during SY 2023-2024. (Witness 5's testimony)
18. On March 13, 2024, School A conducted an annual review of the Student's IEP. Petitioner participated in the meeting. The IEP prescribed the following services, all outside the general education setting, to implement the goals in the IEP: 25.5 hours per week of specialized instruction, 3.5 hours per month of group SLP services with 30 minutes of individual SLP services, 3.5 hours per month of individual OT and 30 minutes per month of OT consultative services. The IEP noted regarding AT that the Student has access to low-tech AT and an iPad in the room, as well as big mac switches to support expressive language. The IEP did not mention an AT assessment and did not provide a dedicated AT device or parent training for an AT device. The IEP noted in the section entitled "other classroom aids and services" suggestions for communicating with the Student, but did not mention the Student's sensory diet as the Student's previous IEP had. (Respondent's Exhibit 15)
19. The Student's March 13, 2024, IEP PLOP in the adaptive daily living skills noted the results of the Student's Strong Start evaluations and noted other anecdotal information about the Student's functioning. (Respondent's Exhibit 15)
20. The Student's March 13, 2024, IEP included four adaptive daily living skills goals that were except for a minor adjustment in the first goal, principally the same goals that were in the Student's prior IEP.
21. The Student's March 13, 2024, IEP PLOP for cognitive goals noted the Student's Strong Start evaluations and noted other anecdotal information about the Student's functioning. (Respondent's Exhibit 15)
22. The Student's March 13, 2024, IEP included three cognitive goals that were, except for minor adjustments, principally the same goals that were in the Student's prior IEP. (Respondent's Exhibit 15)
23. The Student's March 13, 2024, IEP PLOP for communication/speech and language noted data collected during SY 2023-2024.
24. The Student's March 13, 2024, IEP included four goals in communication/speech and language that were updated and different goals that were in the Student's prior IEP. The Student's speech-language pathologist believed the SLP goals in the Student's IEP could

be effectively measured through either observation, verbal responses, and practice and drill. (Witness 5's testimony)

25. During SY 2024-2025, the School A speech-language pathologist delivered the Student's SLP services inside the CES classroom, principally in a group setting, and provided the Student 30 minutes of individual SLP services. However, she did not provide all the Student's SLP services during SY 2024-2025 when the provider was unavailable or the Student was unavailable. She missed providing three hours of SLP services during SY 2024-2025. (Witness 5's testimony)
26. Since the Student's March 2024 IEP meeting, the Student has been provided with mid-tech AT devices through practice and drill, and she/he has started to perform more independently without prompts. The Student has not yet mastered any of his/her SLP goals. There has been no high-tech AT device used with the Student in the classroom at School A. Nonetheless, the Student has made progress since starting at School A. The School A speech-language pathologist now recommends that the Student use a high-tech device with adult assistance and believes it would benefit the Student. (Witness 5's testimony)
27. Petitioner first mentioned ADHD at the Student's March 23, 2023, IEP meeting and did so again at the March 13, 2024, IEP meeting. (Mother's testimony)
28. On March 29, 2024, School A issued a prior written notice ("PWN") stating the following: "On March 18, 2024, Petitioner emailed School A requesting the student to be tested for ADHD. The PWN stated that School A emailed Petitioner on March 22, 2024, requesting a meeting with Petitioner and the Student's classroom teacher to discuss Petitioner's concerns and next steps. The PWN stated that School A made other attempts to contact the parent by telephone on March 25, 2024, and March 28, 2024, and was unsuccessful." (Respondent's Exhibit 5)
29. In February 2025, the Student underwent a neurodevelopmental evaluation at Children's National and was diagnosed with ADHD. Petitioner believes that the Student would benefit from behavior supports in the Student's IEP to assist with the Student's inattention. (Mother's testimony, Petitioner's Exhibit 8)
30. School A's occupational therapist took a leave of absence from January 22, 2025, to February 13, 2025, and returned on February 14, 2025. However, her last day at School A was March 17, 2025, when she resigned, and her position remained unfilled for the rest of SY 2024-2025. Based on a review of the Student's OT service trackers, DCPS determined that, due to the provider's absence, the Student missed 75 minutes of OT services in January and February 2025. The 75 minutes were included in the make-up plan for the Student, along with missed services for the rest of SY 2024-2025, totaling 945 minutes of direct services and 120 minutes of consultative services, which were part of a DCPS services make-up plan. The plan is to be implemented during the extended school year ("ESY") during summer 2025, where additional staffing is available to make up services. (Witness 7's testimony)

## CONCLUSIONS OF LAW:

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

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

34 C.F.R. § 300.17 provides:

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

Pursuant to 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). The burden of persuasion shall be met by a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii). DCPS held the burden of persuasion on issues #1, #3, #4, and #7 after Petitioner presented a prima facie case regarding those issues. Petitioner held the burden of persuasion on all other issues. 7

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

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

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

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

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

### ***Alleged Inappropriate IEP***

**Issue 1:** Did DCPS deny the Student a FAPE because the Student's March 23, 2023 and March 23, 2024 IEPs failed to provide appropriate goals in the following areas: (a) speech-language, (b) cognitive, and (c) adaptive daily living, because the goals in each of these areas were not based on accurate present levels and not measurable.

**Issue 3:** Did DCPS deny the Student a FAPE by March 23, 2023, because the Student's March 23, 2023, and March 13, 2024, IEPs (a) were not based on an AT assessment and (b) failed to provide the Student with a dedicated and appropriate AT device?

**Issue 4:** Did DCPS deny the Student a FAPE because the Student's March 23, 2023, and March 13, 2024, IEPs failed to provide parent training on an AT device to assist the Student in using the device?

**Issue 7:** Did DCPS deny the Student a FAPE because it failed to provide the Student with any accommodations and/or other aides and services on the Student's March 23, 2023, and March 13, 2024, IEPs?

**Conclusion:** Respondent sustained the burden of persuasion by a preponderance of the evidence on the appropriateness of the Student's March 23, 2023, IEP, but not as to the March 13, 2024, IEP.

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

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

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

The second substantive prong of the *Rowley* inquiry is whether the IEP developed was reasonably calculated to enable Student to make progress appropriate in light of Student's individual circumstances. In *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the "educational benefits" requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated into the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Andrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

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

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

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In *McKenzie v. Smith*, 771 F.2d 1527, 1535 n. 17 (D.C. Cir. 1985) the Court considered the deference due to school system officials holding, “where there is no indication that the school officials' expertise has been brought to bear on the individual needs of the handicapped child, however, the deference granted will be commensurately lower.”

When assessing a student's progress, courts should defer to the administrative agency's expertise. See *Roark ex rel. Roark v. Dist. of Columbia*, 460 F. Supp. 2d 32, 44 (D.D.C. 2006) (“Academic success is an important factor ‘in determining whether an IEP is reasonably calculated to provide education benefits.’”). “Limited academic progress does not ipso facto signal a violation of the IDEA any more so than does the existence of substantially similar IEPs year over year.” *J.B. ex rel. Belt v. District of Columbia*, 325 F. Supp. 3d 1, 9 (D.D.C. 2018); see also *Teters v. Peoria Unified Sch. Syst.*, No. 19-cv-5038, 2020 WL 5810061, at \*6 (D. Ariz. Sept. 30, 2020) (“The fact that an IEP has only minor changes does not mean it does not provide a FAPE.”); *Jackson v. District of Columbia*, No. 19-cv-197, 2020 WL 3318034, at \*14 (D.D.C. June 2, 2020) (similar), report and recommendation adopted, 2020 WL 3298538 (D.D.C. June 18, 2020); *Red Clay Consol. Sch. Dist. v. T.S.*, 893 F. Supp. 2d 643, 648 (D. Del. 2012) (“Petitioners’ argument that J.S.’s failure to progress compels a finding that the IEPs were inappropriate is misplaced)

“[T]he court judges the IEP's goals at the time of its implementation.” *Thompson R2-J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148-49 (10th Cir. 2008); *District of Columbia v. Walker*, 2015 WL 3646779, \*6 (D.D.C. Jun. 12, 2015) (the “adequacy of an IEP can be measured only at the time it is formulated, not in hindsight.” IEPs must include “A statement of measurable annual goals, including academic and functional goals” designed to meet the child’s needs and enable them to participate and make progress ... and meet any other educational needs resulting from their disability.” 34 C.F.R. §300.320(a)(2)(i).

When assessing a student's progress, courts should defer to the administrative agency's expertise. See *Roark ex rel. Roark v. Dist. of Columbia*, 460 F. Supp. 2d 32, 44 (D.D.C. 2006) (“Academic success is an important factor ‘in determining whether an IEP is reasonably calculated to provide education benefits.’”). “Limited academic progress does not ipso facto signal a violation of the IDEA any more so than does the existence of substantially similar IEPs year over year.” *J.B. ex rel. Belt v. District of Columbia*, 325 F. Supp. 3d 1, 9 (D.D.C. 2018); see also *Teters v. Peoria Unified Sch. Syst.*, No. 19-cv-5038, 2020 WL 5810061, at \*6 (D. Ariz. Sept. 30, 2020) (“The fact that an IEP has only minor changes does not mean it does not provide a FAPE.”); *Jackson v. District of Columbia*, No. 19-cv-197, 2020 WL 3318034, at \*14 (D.D.C. June 2, 2020) (similar), report and recommendation adopted, 2020 WL 3298538 (D.D.C. June 18, 2020); *Red Clay Consol. Sch. Dist. v. T.S.*, 893 F. Supp. 2d 643, 648 (D. Del. 2012)

Petitioner asserts that the Student’s March 23, 2023 and March 13, 2024, IEPs were inappropriate because (a) the speech-language, cognitive, and adaptive daily living goals were not based on accurate present levels and were not measurable, (b) were not based on an AT assessment and failed to provide the Student with a dedicated and appropriate AT device and parent training on an AT device to assist the Student in using the device, and (c) failed to provide the Student with any accommodations and/or other aides and services.

Petitioner presented two expert witnesses who testified regarding the IEP and the goals. The first witness testified regarding the Student's adaptive and cognitive goals. She gave an opinion that the adaptive and cognitive PLOPS were not based on recent data and were overly general and not directly tied to the goals. She believed one of the adaptive goals was appropriate because it listed too many rules for a [REDACTED] year-old, was not age-appropriate, and she compared the goal to her own child's abilities and whether the Student would be able to comply. She acknowledged that she would include anecdotal data in the PLOPs, but opined that the PLOPs were not based on recent evaluations and should have included measurable data that related to the goals.

She testified that one goal was inappropriate because it mentioned the Student using words, yet the goals also noted the Student could use gestures. She believed that the type of gestures the Student displayed should have been more specific. She also testified that a goal intended to measure the student's tolerance level was inappropriate because it did not specify how many times the Student currently displays the behaviors to be reduced. As to the eating goal, she opined that the goal did not specify the type of eating utensil that the Student was to use, nor define what quantity of food was minimal spillage. In general, this witness was critical of every adaptive and daily living, and cognitive PLOP and goal in the March 23, 2023, IEP. The IHO did not find her testimony convincing as to the inappropriateness of the cognitive and adaptive living goals that were in the Student March 23, 2023, IEP. This witness had not conferred with any of the Student's evaluators and teachers or related services providers other than perhaps at a recent meeting and had never observed the Student in the classroom setting.

On the other hand, the DCPS witnesses credibly stated that the IEP goals in the Student's March 23, 2023, were carried over from the IEP drafted by DCPS Early Stages who had drafted the IEP just months prior to the Student enrolling at School A and after Early Stages had conducted recent comprehensive evaluations of the Student and reviewed the independent psychological evaluation that Petitioner had provided DCPS.

The DCPS witnesses also credibly testified that these goals were measurable. As noted in the case law cited above, the "adequacy of an IEP can be measured only at the time it is formulated, not in hindsight," and "an IEP's substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP is reasonable, not whether the court regards it as ideal." The evidence demonstrates that at least with regard to the adaptive and cognitive goals in the Student's March 13, 2023, IEP, the testimony about the adequacy of the PLOPs and the goals in the Student's IEP was a cogent and responsive explanation of the contents of the Student's IEP. Consequently, the IHO concludes that both the cognitive and adaptive daily living goals in the Student's March 23, 2023, IEP were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

However, regarding the adaptive daily living and cognitive goals in the Student's March 13, 2024, IEP, the testimony of Petitioner's expert witness was more convincing. The goals were repeated in this IEP, and, as she clearly explained, they should not have been repeated year after year. She testified that if the Student was not making progress, the IEP team should have met to determine the reasons and to modify the goals to make them more achievable. Conversely, there was no convincing explanation from the DCPS witnesses as to why the adaptive daily living and cognitive goals were not revised but instead repeated. They simply stated that the goals were repeated because the Student had not yet mastered them. This testimony was unpersuasive. Therefore,

regarding the March 13, 2024, IEP, the IHO concludes that both the cognitive and adaptive daily living goals in the Student's March 2024 IEP were not reasonably calculated to enable the Student to make appropriate progress in light of the Student's circumstances.

As to the communication goals, the IHO did not find Petitioner's speech-language expert opinion about the goals credible. She simply stated that the goals were not measurable, but did not provide any more detail about why they were unmeasurable. On the other hand, the DCPS speech-language pathologist credibly testified that she could measure the goals and that the goals were based on the Student's performance. In addition, the communication goals in the Student's March 13, 2024 IEP were markedly different from those in the Student's March 2023 IEP. Consequently, the IHO concludes that both the communication goals in the Student's March 23, 2023, and March 13, 2024, IEP were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

As to Petitioner's claim that the IEPs were inappropriate because they were not based on an AT assessment, the testimony from even Petitioner's witnesses is that there is no requirement for an AT assessment in order for an IEP team to provide a Student with an AT device. There was credible testimony from the DCPS witnesses that at least during SY 2023-2024, the Student did not have the finger isolation skills to use a high-tech AT device and that both the speech-language pathologist and the classroom teacher concluded that the Student would benefit best from low-tech and mid-tech communication systems and devices.

However, by the time the Student's March 13, 2024, IEP was developed the Student had already been provided a high-tech AT device from Petitioner's insurance provider and the Student was using the device at home. School A was aware of this use when the March 13, 2024, IEP was developed and even noted in one of the Student's IEP goals that the high-tech device would be or could be used. However, DCPS had not provided the Student with such a device. Petitioner testified and her witnesses testified that a high-tech AT device is vital to the Student because he/she is not using her/his natural speech and needs the device to accelerate development of expressive communication skills.

Based on Petitioner's testimony at that of her witnesses about the Student's level of communication and use of the high-tech AT device and its importance to the Student's learning and communication, in addition to the DCPS witness stating that she now endorses its use by the Student, the IHO concludes that DCPS should have provided the Student a dedicated high-tech device when the March 13, 2024, IEP was developed and its failure to do so caused the Student to not progress in the use of the device and his/her communication skills as readily as she/he could have. Consequently, in this regard, the IHO concludes that because the Student's March 13, 2024, IEP did not provide for a dedicated AT device, the IEP not reasonably calculated to enable the Student to make appropriate progress in light of the Student's circumstances.

However, there was insufficient proof that the IEP not including parentally training on the device was a denial of a FAPE. There was testimony that the parent has been provided training on the home device and software that the Student has been using. The DCPS AT expert testified that, now that an AT assessment has been completed, she has recommended the same device and software for the Student that she/he is currently using at home. Consequently, the IHO does not

conclude that the lack of parent training in the Student's IEP resulted in a denial of a FAPE to the Student.

Nonetheless, the IHO, in the order below directs DCPS to provide the Student a dedicated AT device and to provide parent training on the use of that dedicated device and software, so the parent is aware of how the device is being used in the classroom so that she can help support that use with the Student.

Finally, Petitioner claims that the IEPs were inappropriate because they lacked accommodations, aides, and services. There was little, if any, testimony from Petitioner's witnesses about this, except for a mention of sensory accommodations for the Student. Petitioner's expert could not comment on the Student's sensory needs because, as she stated, she did not know the Student well enough. Conversely, the Student's IEP included suggestions for communicating with the Student under the section for aides and services, and the March 23, 2023, IEP also mentioned a sensory diet. Without evidence that the absence of additional accommodations, aides, and services harmed the Student, the IHO cannot conclude that Petitioner's claim is valid as a basis to find the Student's March 23, 2023, and March 2024 IEPs were not reasonably calculated to enable the Student to make appropriate progress in light of the Student's circumstances.

***Alleged Failure to Comprehensively Evaluate:***

***Issue 2:*** Did DCPS deny the Student a FAPE in January of 2024 by (a) refusing to evaluate the Student for possible ADHD and (b) failing to provide a PWN after refusing to evaluate for ADHD?

**Conclusion:** Petitioner proved a procedural violation, but there was insufficient evidence that DCPS denied the Student a FAPE by not evaluating the Student for ADHD or issuing a PWN.

Under the IDEA, while it is not necessary [\*52] that every requested test is administered, "an evaluation's primary role is to contribute to the development of a sound IEP" and the failure to complete all necessary evaluations results in a substantive denial of FAPE. See Long, 780 F. Supp. 2d at 60. Accordingly, to ensure a child receives a FAPE, "a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information" must be used. See *id.* (citing 20 U.S.C. § 1414(b)(2)(A)). Further, "evaluations must take into account a holistic perspective of the child's needs, and the evaluating agency accordingly is compelled to 'use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.'" *Harris v. Dist. of Columbia*, F. Supp. 2d 63, 67 (D.D.C. 2008) (citing 34 C.F.R. § 300.304).

Pursuant to 34 C.F.R. § 300.304 (c) a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that "a full and individual evaluation is conducted for each child being considered for special education and related services."

The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C.

Mun. Regs. Title 5A § 3006.7(a). The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5A § 3006.7(f).

Generally, when a child has been evaluated for special education eligibility and the appropriateness of the agency's evaluation is at issue, the hearing officer must consider whether the agency adequately gathered functional, developmental and academic information about the child's needs to determine the content of the IEP in all areas of suspected disability and that the evaluation was sufficiently comprehensive to identify all of the child's needs. 20 U.S.C. §§ 1412(a)(6)(B), 1414(b)(1-3); 34 C.F.R. §300.304(b)(1-3), (c)(4, 6).

5-A DCMR § 3005.2 provides: The LEA proposing or refusing to conduct an initial evaluation to determine if a child is a child with a disability shall provide the parent with prior written notice in accordance with Section 3032 and a copy of the procedural safeguards notice in accordance with Section 3033. The prior written notice shall also contain: (a) Information about the purpose of the evaluation process; (b) The types of child-level data being assessed; and. (c) Any additional assessments needed.

5-A DCMR § 3005.4 provides: An LEA shall: (a ) Make and document reasonable efforts, as defined in this chapter, to obtain parental consent within thirty (30) days from the date on which the child is referred for an initial evaluation, and begin such efforts no later than ten (10) business days from the referral date; and (b) Evaluate and make an eligibility determination for a student who may have a disability and who may require special education services within sixty (60) days from the date that the student's parent or guardian provides consent for the evaluation.

Petitioner asserts that DCPS denied the Student a FAPE because it failed to evaluate the Student for ADHD. The Student's March 23, 2023, IEP noted that the Student had issues with inattention. The evidence demonstrates that at least by the Student's March 13, 2024, IEP, School A had received a request from Petitioner that the Student be evaluated for ADHD. Although DCPS provided the Petitioner a PWN, indicating attempts to reach her about the requested evaluation, there was no apparent action on the request. The Student has now been diagnosed with ADHD as of February 2025. However, it was not clear at time of the hearing that this diagnosis has yet been considered by an IEP team and that the diagnosis has or would result in any change in the Student IEP.

Petitioner's expert witness testified that the diagnosis should result in additional goals or services in the IEP. However, her testimony in that regard does not supplant the consideration of an IEP team that is more familiar with the Student, determining if any changes or additions should be made to the Student's IEP. With that factor being uncertain, the IHO cannot conclude that the procedural violation of DCPS failing to evaluate the Student for ADHD or provide different PWN regarding the evaluation rose to the level of a FAPE. Consequently, the IHO concludes that the evidence does not demonstrate that the procedural inadequacies impeded the Student's right to FAPE, significantly impeded Petitioner's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused the child a deprivation of educational benefits.

***Alleged Failure to Implement IEP:***

**Issue 5:** Did DCPS deny the Student a FAPE because it failed to provide the Student with all speech services over the past two years and failed to provide speech service logs and notes when requested?

**Conclusion:** Petitioner sustained the burden of persuasion by a preponderance of the evidence on this issue.

**Issue 6:** Did DCPS deny the Student a FAPE from approximately the last week of January 2025 to date to provide the Student with OT services because it had no OT specialist to provide OT services until a replacement was found?

**Conclusion:** Petitioner sustained the burden of persuasion by a preponderance of the evidence on this issue.

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

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

The IDEA does not set a specific time period for implementation of an IEP, but requires that special education and related services must be made available "[a]s soon as possible following development of the IEP." 34 C.F.R. § 300.323(c)(2). As the Second Circuit Court of Appeals explained in *D.D. ex rel. V.D. v. New York City Bd. of Educ.*, 465 F.3d 503 (2d Cir. 2006), *opinion amended on denial of reh'g*, 480 F.3d 138 (2d Cir. 2007),

Plaintiffs' right to a free appropriate public education requires that their IEPs be implemented as soon as possible. "As soon as possible" is, by design, a flexible requirement. It permits some delay between when the IEP is developed and when the IEP is implemented. It does not impose a rigid, outside time frame for implementation. Moreover, the requirement necessitates a specific inquiry into the causes of the delay. Factors to be considered include, but are not limited to: (1) the length of the delay, (2) the reasons for the delay, including the availability of the mandated educational services, and (3) the steps taken to overcome whatever obstacles have delayed prompt implementation of the IEP. *D.D., supra* at 513-14.

In this case, Student's IEP mandated educational services have not been available since the end of the 2020-2021 school year because DCPS has not been able to secure Student's admission to an appropriate school which is able to serve students with severe autism. As U.S. Magistrate Judge G. Michael Harvey pronounced in *Brown v. District of Columbia*, Civil Action No. 1:17-cv-00348 (RDM/GMH), 2019 WL 3423208 (D.D.C. July 8, 2019), where implementation of an IEP become impracticable or impossible, the District may not leave a student with a disability without services.

Generally, in situations in which implementation of a student's IEP has become impracticable or impossible, the remedy is not to leave the student without services. For example, in *John M. v. Bd. of Educ. of Evanston Tp. High Sch. Dist. 202*, 502 F.3d 708 (7th Cir. 2007), the court addressed a situation in which it was unclear whether a student's prior IEP could be implemented as written because he had progressed from middle school to high school. *Id.* at 711-12. In remanding the case to the court below, the Seventh Circuit instructed that, if the court found that implementation of the prior IEP was impracticable or impossible in the high school setting, it could approve an alternative "as close as possible to the approach used in the middle school but nevertheless compatible with the goals of the IEP and the institutional demands of the high school setting." *Id.* at 716. That is, when "rigid adherence" to an IEP is impossible, the school district has an obligation to "provide educational services that approximate the student's ... IEP as closely as possible." *Id.* at 714-15. *Brown*, n.18.

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

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

Petitioner's expert witness who prepared a compensatory education plan testified about the number of missed related services. However, in her calculation she did not account for any services that were missed due to the Student's absences, which, under DCPS policy are not required to be made up. As result, there was insufficient evidence to verify her number of hours missed. The School A speech-language pathologist testified that she did not provide the Student seven hours of SLP services during SY 2023-2024 and three hours in SY 2024-2025 for a total of ten hours missed. The IHO credits her testimony in this regard based upon her having worked directly with the Student had prepared the service trackers that documented the services offered and rendered.

As to OT services missed the evidence demonstrates that School A's occupational therapist took a leave of absence from January 22, 2025, to February 13, 2025, and returned on February 14, 2025. However, her last day at School A was March 17, 2025, when she resigned, and her position remained unfilled for the rest of SY 2024-2025. Based on a review of the Student's OT service trackers, DCPS determined that, due to the provider's absence, the Student missed 75 minutes of OT services in January and February 2025. The 75 minutes were included in the make-up plan for the Student, along with missed services for the rest of SY 2024-2025, totaling 945 minutes of direct services and 120 minutes of consultative services. Although DCPS has prepared a make-up plan for the Student, as of the due process hearing, none of the make-up services had been provided. The IHO concludes that in both instances, for SLP and OT services, the amount of services missed by the Student was substantial and resulted in a denial of a FAPE to the Student.

### **Remedy:**

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

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

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

The Petitioner requested the compensatory education included in her educational advocate's proposal. The Petitioner's educational advocate improperly asserted that the Student should be compensated for denials beyond those identified by the IHO. Additionally, it is unclear at this

point whether the procedural violation found by the IHO caused any detriment to the Student, and whether any missed related services will be provided during ESY. Therefore, the IHO currently lacks enough evidence to determine what compensatory education is appropriate and would place the Student in the position he/she would have been in but for the FAPE denials. Therefore, the IHO in the order below grants the Petitioner authorization to obtain an evaluation to determine the appropriate compensatory education.

**ORDER:** <sup>8</sup>

1. DCPS shall, within ten (10) business days of the issuance of this order, amend the Student's IEP to include a dedicated DCPS-provided high-tech AT device and provide Petitioner appropriate training on the use of that device within the first thirty (30) days of SY 2025-2026.
2. DCPS shall, within thirty (30) calendar days of the issuance of this order, convene an IEP meeting to review all recent evaluations, including the Student's additional diagnosis of ADHD, and review and revise the Student's IEP as appropriate.
3. DCPS shall, within ten (10) business days of the issuance of this order, provide Petitioner with authorization to obtain an IEE at the OSSE-prescribed rate to determine the appropriate compensatory education for the denials of FAPE determined in this HOD. If necessary, Petitioner is authorized to seek appropriate compensatory education for the Student from DCPS based on this evaluation in a subsequent due process hearing.
4. All other relief requested by the Petitioner is denied.

**APPEAL PROCESS:**

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

*/S/ Coles B. Ruff*

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**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: July 5, 2025**

Copies to: Counsel for Petitioners  
Counsel for LEA  
ODR [due.process@dc.gov](mailto:due.process@dc.gov)

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<sup>8</sup> Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day-for-day basis.