

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

**Office of Dispute Resolution**  
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OSSE  
Office of Dispute Resolution  
July 07, 2025

**Confidential**

<b>Parent on behalf of Student,<sup>1</sup></b>	)	<b>Case Nos. 2025-0064</b>
	)	
<b>Petitioner</b>	)	<b>Hearing Dates: June 10-11, 2025</b>
	)	
<b>v.</b>	)	<b>Conducted by Video Conference</b>
	)	
<b>District of Columbia Public Schools,</b>	)	<b>Date Issued: July 7, 2025</b>
	)	
<b>Respondent</b>	)	<b>Terry Michael Banks,</b>
	)	<b>Hearing Officer</b>

**HEARING OFFICER DETERMINATION**

**INTRODUCTION**

Petitioner is the parent of an X-year-old student (“Student”) attending School A. On April 3, 2025, Petitioner filed a due process complaint notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) had denied Student a free appropriate public education (“FAPE”) by failing to provide appropriate Individualized Education Programs (“IEPs”) and placements and failing timely and/or comprehensively to evaluate Student, . On April 11, 2025, DCPS filed *District of Columbia Public Schools’ Response to Petitioner’s Administrative Due Process Complaint* (“*Response*”), denying that it had denied Student a FAPE in any way.

**SUBJECT MATTER JURISDICTION**

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

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

## PROCEDURAL HISTORY

On April 3, 2025, Petitioner filed her *Complaint* alleging that DCPS had failed to provide appropriate IEPs and placements for the 2023-24 and 2024-25 school years. Petitioner asserted that the IEPs should have prescribed placement in a Communication and Education Support (“CES”) classroom. Petitioner also asserted that the placement in a Spanish bilingual classroom was inappropriate because Student had communications challenges and the language spoken at home was Portuguese. Petitioner further asserted that the IEPs failed to provide behavior support services (“BSS”). Finally, Petitioner alleged that DCPS failed to assess Student in all areas of suspected disability. DCPS should have known that further evaluations were necessary after it issued Student’s Progress Report on June 18, 2024. Further, DCPS conceded that Student’s behavior impeded learning in his/her January 14, 2024 IEP, but it conducted no evaluation.

On April 11, 2025, DCPS filed its *Response to the Complaint* in which it refuted allegations in the *Complaint, inter alia*, as follows: in late July 2023, the student was assigned to School A’s full time special education Early Learning Support (“ELS”) classroom for Student’s 2023-24 school year. The student remained an English language learner in her/his school environment due to the home language being predominantly Portuguese. On or about December 4, 2023, DCPS received a special education referral for the student. DCPS immediately proceeded with an assistive technology (“A/T”) assessment due to the student’s known communication issues to determine if an AAC technology device would be needed. In December 2023, DCPS sent a letter of invitation to discuss the appropriate evaluations needed for eligibility. At the time, the areas of concern were adaptive living skills, motor skills/physical development, cognitive and communication/speech language. All of these areas of concern were appropriately evaluated and programmed for. Parent was provided the PWN for this evaluation procedure in mid-December 2023 and she provided written consent. In January 2024, DCPS sent a letter of invitation to develop an IEP for the student, which was completed at a meeting in February 2024. Student’s February 2024 IEP was appropriately developed. The IEP was then amended without a meeting in April 2024. Student’s records indicate that Petitioner agreed with the eligibility determination and the IEP. In May 2024, DCPS determined the student eligible for extended year services (“ESY”) and appropriately amended the IEP. For the 2024-25 school year, Student’s IEP was again amended in October 2024 to add the student’s augmented alternative communication (“AAC”) device to his/her IEP. There is no data in the record indicating the second language or other language in his/her classes was an issue of concern. Student’s February 2025 IEP was developed similarly. Throughout her/his time at School A, Student has been identified with significant communication needs and delays, both expressive and receptive. Further, as an identified student eligible under the classification of autism spectrum disorder (“ASD”), his/her programming and placement were appropriate. The student’s IEPs provided for 25 or more hours of specialized instruction outside of the general education setting, with occupational therapy (“OT”) and speech and language (“S/L”) services, four hours per month respectively, in addition to classroom aids and services and modifications as demonstrated on her/his IEPs.

The parties conducted a resolution meeting on April 9, 2025 that did not result in a settlement. A prehearing conference in this case took place by video conference on May 5, 2025, and the *Prehearing Order* was issued that day.

The due process hearing was conducted on June 10-11, 2025 by video conference facilities. The hearing was open to the public at Petitioner’s request. Petitioner filed Five-day Disclosures on June 3, 2025, containing a witness list of four witnesses and 25 documents. On June 6, 2025, DCPS filed objections to Petitioner’s disclosures. DCPS did not object to the qualifications of Petitioner’s proposed experts but objected to their “lack of foundation and personal basis knowledge needed to form the expert opinions sought.” DCPS also objected to Petitioner’s Exhibits 7, 9, and 25 on grounds of foundation, and Exhibit 16 of grounds of relevance. Petitioner’s Exhibits P1-P6, P8, P10-P15, and P17-P25 were admitted into evidence.

Respondent also filed disclosures dated June 3, 2025 containing a witness list of thirteen witnesses and 58 documents. Petitioner filed objections to DCPS’ disclosures on June 6, 2025.. Petitioner objected to Witness G’s designation as an expert in special education programming and placement. Petitioner also objected to Respondent’s Exhibit R57 on grounds of authenticity and foundation. On the second day of hearings, June 11, 2025, DCPS filed a supplemental set of disclosures adding the February 2024 IEP as Respondent’s Exhibit 59. Petitioner did not object to the admission of this exhibit. Respondent’s Exhibits R2-R4, R6-R10, R12-R13, R15. R18-R19, R22-R26, R28-R37, R39-R54, R56, and R58-R59 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A, Witness B, and Petitioner. Witness A was admitted as an expert in special education and Witness B was admitted as an expert in speech and language therapy. Respondent presented as witnesses in chronological order: Witness C, Witness D, Witness E, and Witness F. Witness F was admitted as an expert in special education. At the conclusion of testimony, the parties’ counsel provided oral closing arguments.

## ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP and placement on February 8 and April 24, 2024 for the 2023-24 school year. Specifically, Petitioner asserts that the IEPs should have prescribed placement in a Communication and Education Support (“CES”) classroom. Petitioner further asserts that the IEPs failed to provide behavior support services (“BSS”).
2. Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP and placement on April 24, 2024 and January 14, 2025 for the 2024-25 school year. Specifically, Petitioner asserts that the IEPs should have prescribed placement in a CES classroom. Petitioner further asserts that the IEPs failed to provide BSS.<sup>2</sup>

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<sup>2</sup> During, Petitioner’s counsel’s opening statement, he withdrew the allegation as to both school years that the placement in a Spanish bilingual classroom was inappropriate because Student had communications challenges and the language spoken at home was Portuguese.

3. Whether DCPS denied Student a FAPE by failing to assess Student in all areas of suspected disability. Petitioner asserts that DCPS should have known that further evaluations were necessary after it issued Student's Progress Report on June 18, 2024. Petitioner also asserts that DCPS conceded that Student's behavior impeded learning in her/his January 14, 2024 IEP, but DCPS conducted no evaluation.

### FINDINGS OF FACT<sup>3</sup>

1. Student is an X-year-old student who was in grade Q at School A during the 2024-25 school year and was eligible for special education services with a classification of Autism ("ASD").<sup>4</sup>

2. On September 12, 2022, when Student was Y years-old, Examiner A of Facility A completed a Developmental Evaluation. Student's parents had expressed concerns related to speech development. On a prior Modified Checklist for Autism in Toddlers ("MCHAT-R"), the parents' responses yielded a total score of 12, indicating a high risk for autism.<sup>5</sup> On the Bayley Scales of Infant and Toddler Development ("Bayley-4"), Student's Fine Motor/Play skills were 11-14 months delayed. Her/his overall Language abilities were more than 12 months delayed. "[S/he] most frequently babbles C-V strings or open vowel sounds and hums."<sup>6</sup> Student's parents were interviewed using the Autism Diagnostic Interview Revised ("ADI-R"). The parents reported that Student's eye contact was reduced and previously was nearly absent, s/he got his/her needs met by looking at the item s/he wanted and flapping his/her hands. Student consistently used two gestures that s/he invented to communicate that s/he wanted something or wanted to leave. Student did not respond when her/his name was called and was generally unresponsive when spoken to.<sup>7</sup> Student was administered the Autism Diagnostic Observation Schedule, Toddler Module ("ADOS-2"). S/he did not respond to her/his name when called by Examiner A or her/his parents and eye contact was reduced even when s/he needed assistance. Student did not imitate Examiner A's actions with common objects.<sup>8</sup> Examiner A confirmed the prior diagnosis of ASD and recommended speech therapy ("SLP"), Applied Behavior Analysis ("ABA") therapy, occupational therapy ("OT"), and an assistive technology ("A/T") evaluation:

Overall, [Student's] profile is notable for delayed cognitive skills, delayed language abilities, social communication difficulties, variable social interest and engagement, and repetitive and sensory-related behaviors, and meets criteria for a diagnosis of autism spectrum disorder (F84.0). The standard of care for children with autism spectrum disorders includes speech therapy, occupational therapy, and applied behavior analysis (ABA). [Student] is connected to early intervention

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<sup>3</sup> The Findings of Fact includes all of the oral and written evidence that I considered material in rendering the decision in this matter. The quotations of oral testimony are from my notes during the hearing, not the transcript.

<sup>4</sup> Petitioner's Exhibit ("P:") 22 at page 321. The exhibit number is followed by the electronic page number, e.g. P22:321.

<sup>5</sup> P5:38.

<sup>6</sup> *Id.* at 39.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

services through DC Strong Start and receives weekly occupational therapy. Based on [his/her] performance and [her/his] mother and father's reports of [his/her] current functioning, more intensive intervention services are medically necessary including weekly speech therapy and ABA therapy (~10 hours per week). It is also recommended that [Student] participate in an augmentative and alternative (AAC) evaluation, with the goal of determining if a robust AAC device would be beneficial for [Student's] communication development. Additionally, [Student's] parents were instructed to discuss [his/her] leg/torso shaking with [her/his] neurologist. Speech therapy goals focusing on receptive language, total communication (speech, gestures, AAC), and foundational skills (e.g., imitation, joint attention) are encouraged. Occupational therapy goals that promote fine motor/hand use, support [her/his] sensory needs, and build regulation skills are recommended. Regarding the recommendation for ABA, it is suggested that intervention is provided both at home and in the community in order to facilitate generalization of abilities. It is recommended that all services include goals related to regulation (including ways in which others can proactively support [his/her] regulation across settings) and adaptive/self-help skills (e.g., dressing, feeding, toileting).<sup>9</sup>

3. On March 3, 2023, when Student was in grade Q at Facility B. DCPS found Student eligible for special education services with a classification of ASD.<sup>10</sup> DCPS also conducted an Initial IEP meeting that day.<sup>11</sup> In Consideration of Special Factors, it was reported that Student's behavior did not impede her/his learning or that of others, but that s/he presented with significant delays in expressive and receptive language that would "require significant assistance including multisensory supports to attend to and use basic spoken and nonverbal communication." It was also reported that Student was undergoing an AAC trial/evaluation with his/her early intervention speech-language pathologist.<sup>12</sup> In the Adaptive Present Levels of Academic Achievement and Functional Performance ("PLOP"), the results of a Battelle Developmental Inventory ("BDI-2 NU") conducted by Facility B were reported. His/her overall BDI-2 NU Total Developmental Quotient of 60 reflected a

... [s]ignificant delay for [her/his] age. [Student's] domain quotient scores of 70 for Motor and 70 for Adaptive indicate mild delays, while [her/his] scores of 65 for Cognitive, 55 for Communication, and 63 for Personal-Social reflect significant developmental delays. [Student] was deemed eligible for [Facility B] early intervention services based on qualifying developmental delays. Within [her/his] adaptive results on the BDI-2 NU, [Student] received scaled scores of 4 for Self-Care and 4 for Personal Responsibility. In terms of [her/his] adaptive skills in the area of Self-Care, [Student] demonstrated emerging independence with [his/her] self-care and personal hygiene skills. With regard to feeding skills, [Student] feeds [her/himself] bite-sized pieces of food with [his/her] hands or from a pre-loaded spoon... [Student] primarily drinks from cups with straws; with support [s/he] can drink from an open cup, but parents reported that [s/he] often attempts to

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<sup>9</sup> *Id.* at 40-41.

<sup>10</sup> P6:44.

<sup>11</sup> P12:134.

<sup>12</sup> *Id.* at 135.

intentionally spill open cups when provided opportunities to drink from them independently. With regard to dressing routines, [Student] helps [her/his] parents dress [her/himself] by sometimes holding out [his/her] arms and legs when prompted by parents. [Student] independently removes [her/his] socks and sometimes attempts to remove [his/her] pants. With regard to personal hygiene skills, [Student] is not informing others when [s/he] has a soiled or wet diaper or expressing a need to use the toilet... [Student] does not demonstrate caution around common dangers such as knowing to wait at a crosswalk or to be careful at the tops of staircases.<sup>13</sup>

The goals were: (a) Given visual supports, repeated practice and faded prompting, Student will demonstrate independence and understanding by completing multi-step routines, with no more than 2 additional verbal or gestural prompts, (b) Given repeated practice, visual cues and fading prompts, s/he will demonstrate understanding of early learning concepts by completing table top problem solving tasks, such as puzzles, matching, sorting, with no more than one additional verbal or gestural redirection, in 4 out of 5 consecutive opportunities, and (c) Given a variety of visual supports, Student will demonstrate understanding of functional vocabulary by pointing to pictures to make requests, at least 2 times per day.<sup>14</sup> In Cognitive, the goals were: (a) Given classroom supports, Student will demonstrate improved participation (i.e., physically orienting her/his body as directed; remaining in designated area; imitating motor movements) in adult-directed tasks for a period of five minutes during whole-group activities, with no more than one verbal or gestural prompt, (b) Given adult demonstrations and prompting, Student will display functional or appropriate play with a variety of toys, using at least three toys for their intended purpose (i.e., serving toys foods to a doll, pushing a train across railroad tracks, etc.) in a variety of settings (i.e., housekeeping, transportation, etc.), (c) Student will demonstrate improved social awareness by responding when an adult calls his/her name or provides familiar instructions (e.g., “look;” “stop;” “wait;” “come back”) across all environments by looking to the speaker and complying with the command, given no more than one repetition, and (d) Given modeling and repeated practice, Student will demonstrate increased peer interactions by engaging in a back-and-forth or cooperative activity (i.e., ball toss; dramatic play; block construction) with one peer for at least three minutes.<sup>15</sup>

In Communication/Speech and Language (“Communication”), the PLOP reported that Student communicates with gestures, jumping, crying, waving or taking an adult by the hand. S/he follows some daily routines, enjoys singing and babbling, imitates some words, and hums along to songs. Student presents with significant delays in receptive and expressive language. Her/his eye contact is inconsistent, and s/he is inconsistent at following a point. S/he does not respond to her/his name, follow most one-step directions, or associate spoken words with items or people. The goals were: (a) S/he will increase expressive vocabulary to at least 25 words or word approximations (label pictures, objects, toys, people, animal sounds, onomatopoeic sounds), (b) S/he will expressively respond (verbally, head shake/nod, pictures, AAC) to basic yes/no questions in 4 out of 5 trials, (c) Student will respond to his/her name when called upon (turning, pausing an activity, etc.) in 4 out of 5 trials, and (d) S/he will respond to safety/inhibitory words (i.e., no, stop,

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<sup>13</sup> *Id.* at 137.

<sup>14</sup> *Id.* at 136-38.

<sup>15</sup> *Id.* at 139-42.

wait) by (turning, pausing an activity, etc.) in 4 out of 5 trials.<sup>16</sup> In Motor Skills/Physical Development (“Motor”), the PLOP reported the findings of an OT evaluation conducted on November 29, 2022. Student was in the <1 percentile in Fine Motor Skills, and in the 2<sup>nd</sup> percentile in Perceptual Motor Skills (use of fine motor skills in tasks) and on the Developmental Quotient. The goals were: (a) Given visual modeling and/or physical prompts, Student will complete 3 out of 4 play activities (i.e. imitating 3-6 block patterns from a visual model {ex. bridge, wall, train, steps}, complete an 8-12 piece inset puzzle, connect/pull apart blocks, color at least 50% of a picture, etc.), (b) Using multi-sensory strategies, Student will demonstrate improved functional attention as seen by engaging in a structured table top tasks for at least 5 minutes, before attempting to leave the task, given no more than 3 prompts for redirection, and (c) Given visual modeling and/or physical prompts, s/he will hold a pencil or crayon using a functional grasp (pads of 3 or 4 flexed fingers, open web space) to imitate pre-writing strokes (vertical line, horizontal line, crossed lines, circle).<sup>17</sup>

The IEP team prescribed 26 hours per week of specialized instruction outside general education, two hours per month of OT outside general education, and four hours per month of SLP services outside general education.<sup>18</sup>

4. On March 10, 2023, Examiner B completed an Augmentative Communication Evaluation due to concerns regarding Student’s ability to express medical needs and wants in daily environments and settings due to a severe speech disability.<sup>19</sup> The evaluation indicated that Student’s communication “partners” were “relatives, friends, medical professionals, caregivers and new communication partners.”<sup>20</sup> Examiner B rejected low tech options such as Picture Exchange Communications System (“PECS”) “due to the patient’s inability to use low-tech communication to express all medical needs. While low tech is often of lesser cost, it does not allow for dynamic communication where robust language is necessary to identify a specific illness or symptom... Further, the patient has demonstrated cognition that is capable of using a high-tech device. This was assessed and demonstrated during our evaluation sessions as well.”<sup>21</sup> Examiner B also ruled out several high-tech options including (a) an i-Pad with Communication Application (inadequate features), (b) Prentke Romich Company Accent & Via Devices (too heavy to carry/inadequate features), (c) Tobii Dynavox I-110 and Tablet SC Devices (potentially high service costs), and (d) AbleNet Quick Talker Freestyle (lack of in-person support. Examiner D recommended use of the Wego 10A-D Speech Generating Device.

The Wego 10A-D is judged to meet the patient’s communication needs and skills appropriately as it contains a robust amount of vocabulary dedicated for communication with the potential for vocabulary expansion as the patient’s vocabulary skills develop further. In addition, the device’s portability is critically important in the patient’s case as the patient requires this device support in ALL

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<sup>16</sup> *Id.* at 142-43.

<sup>17</sup> *Id.* at 144-47.

<sup>18</sup> *Id.* at 148.

<sup>19</sup> Respondent’s Exhibit (“R:”) 58 at page 803. The exhibit number is followed by the electronic page number, e.g. R58:803.

<sup>20</sup> *Id.* at 804.

<sup>21</sup> *Id.* at 805-6.

environments to safely and effectively communicate any and all important information at any time.<sup>22</sup>

5. On November 17, 2023, when Student was in grade Q at School A, DCPS issued Student's IEP Progress Report for the period ending on November 3, 2023. In Adaptive and Cognitive, Student was reported to be Progressing on all of her/his goals:

[Student] has shown growth in understanding functional language. [S/he] daily responds to verbal greetings by pressing a communication device. In term of the measuring the acquisition of the goal, [Student] is able to partially meet the goal in 2 out 5 consecutive opportunities... [Student] has demonstrated some progress completing table top problem solving tasks like simple puzzles, or sorting objects. [S/he] requires several prompts to complete the assigned task. In term of the measuring the acquisition of the goal, [Student] is able to partially meet the goal in 1 out 5 consecutive opportunities... [Student] has began to use toys like blocks in a meaningful manner. [S/he] stacks the blocks intending to make a tower. [S/he] needs to be directed to display functional or appropriate play... [Student] has demonstrated improvement in imitating motor movements like clapping hands and high five... [Student] is learning to interact with peers especially during center time when [s/he] is near friends playing with toys. Gold metrics: less than minute; 1 out of 5 opportunities... [Student] has demonstrated some growth in responding to certain commands like "come", "look". [S/he] has not responded to [her/his] name yet. Goal metrics more than one repetition...<sup>23</sup>

In Communication, Student showed No Progress on the goal of responding to her/his name, but was Progressing on the three other goals:

Since the parent teacher conference, the AAC device and more sensory/tactile support, has been introduced to make [Student] more aware of [his/her] name. When calling [his/her] name, the provider would often add the use of [her/his] device and will rub [her/his] shoulder/arm to provide more sensory feedback. [Student] has only turned once (1/5 opportunities) to [his/her] name, which might've been coincidental. We will continue to find ways to engage [her/him] more and make [him/her] more aware of [her/his] surroundings... [Student] is more alert and engaged during play based activities, showing better understanding of the routines of the classroom and OT sessions. During centers, [s/he] selects an area and plays alongside [his/her] peers. However, [his/her] main motivation appears to be spinning the materials, rather than functionally completing the activities. [S/he] still requires hand over hand assistance to stack blocks (pushing together and pulling apart), coloring within the lines, imitate pre-writing strokes, and complete inset puzzles.<sup>24</sup>

In Motor, Student was reported to be Progressing on both goals:

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<sup>22</sup> *Id.* at 806-8.

<sup>23</sup> P15:177-79.

<sup>24</sup> *Id.* at 179-80.

[Student's] grasp on crayons is considered emerging. [S/he] is able to use a quadrupod grasp with an open web space in 1/5 trials to make light scribbles on the page. [S/he] reverts to a palmar, digital pronate, or five finger grasp in the remaining trials. [S/he] attends to and participates in coloring tasks for 1-2 minutes at a time, before looking away or getting up from [her/his] chair. [S/he] does best with physical prompts for finger placement as well stencils to direct [her/his] movements on the page... [S/he] is able to engage in structured tabletop activities for 5 minutes before attempting to leave the task in 2/5 trials when given one on one support. When [s/he] has to work more independently in a small group, [her/his] attention decreased to 1-2 minutes. [His/her] sensory profile is one of low arousal, therefore using a multisensory approach is beneficial for [Student]. Giving [her/him] things to touch, listen to, see, and feel are all crucial to keeping [her/his] attention and engagement.<sup>25</sup>

6. On February 5, 2024, DCPS issued Student's IEP Progress Report for the period ending on January 26, 2024.<sup>26</sup> In Adaptive, Student was reported to be Progressing on all goals:

[Student] has demonstrated some growth in understanding of functional language by pointing to pictures to make requests following an adult prompt two times per day in 4 out of 5 consecutive opportunities... [Student] has demonstrated understanding of cause and effect of assigned table activities such as matching colors or shapes when [s/he] is supported with more than two prompts in 4 out of 5 consecutive opportunities... [Student] has shown growth in understanding multi-step routines such as putting belongings away, washing hands, pulling pants up/down and removing dirty diaper with more than two prompts in 4 out of 5 consecutive opportunities.<sup>27</sup>

In Cognitive, Student was reported to be Progressing on all four goals:

[Student] has made good progress displaying appropriate play skills with [her/his] favorite toys during center time when [s/he] is prompted by an adult in 4 out of 5 consecutive opportunities... [Student] has demonstrated improvement in participation in group activities. [S/he] has started imitating motor movements such as "hand clapping" and "high five" when [s/he] is prompted to do it in 3 consecutive opportunities... [Student] has continued to improve peer interactions by engaging in a back-and-forth activity like pushing a car or rolling a ball for at least one or two minutes in 4 out of 5 consecutive opportunities.... [Student] has been more consistently responding when an adult calls [his/her] name across settings with more than one repetition in 4 out of 5 consecutive opportunities.<sup>28</sup>

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<sup>25</sup> *Id.* at 180-81.

<sup>26</sup> R22:550.

<sup>27</sup> *Id.* at 550-51.

<sup>28</sup> *Id.* at 551.

In Communication, Student was reported to be Progressing on the goal responding to her/his name when called upon, but had showed No Progress on two goals, and the fourth had not been introduced:

In the classroom, [Student] has been more aware of [her/his] name and people around [her/him]. When calling [his/her] name, the provider would often rub [his/her] shoulder/arm to provide more sensory feedback. Teacher aides have also reported more awareness of [his/her] name when being called, at times getting a smile, eye contact or a head turn. [Student] is responding to [her/his] name on 1-2 opportunities out of 5 in a session... [The goal of expressively responding to questions] was introduced by modeling yes/no responses verbally and through the use of AAC support (LAMP trialed and Go Talk 4+). [Student] is not yet nodding for yes/no or responding verbally, but the concept is being introduced through multiple models in the day. There has been no progress in this goal and [Student] might not be ready to target this goal yet... [On the goal of responding to inhibitory words] [Student] continues to be compliant in school and there are very few instances where [s/he] needs to follow these directions. They are still modeled throughout [his/her] day. [Student] is following other simple directions (sit, come, give me, etc.) with 20% accuracy with minimal support. [S/he] needs visuals, gestures or prompts to do so more consistently.... [The goal of increasing expressive vocabulary to 25 words] has not been introduced given that at school [Student] is not yet imitating or using words/word approximations to communicate. Although [s/he] is exposed to words constantly, [s/he] is not yet ready to target this goal.<sup>29</sup>

In Motor, Student was Progressing on the goal of completing play activities and on the goal of demonstrating improved functional attention, but had showed No Progress on holding a pencil/crayon with a functional grasp:

[S/he] is doing well with classroom routines and appears more comfortable with school based toys. [S/he] has shown interest in sensory bins with sand particularly. [S/he] can complete play activities, such as puzzles, pre-writing strokes, blocks, and piggy banks, but requires fading hand over hand assistance. Without this support, [s/he] often reverts to spinning the items rather than playing functionally with them or sitting quietly at the table but not participating... At this time, [s/he] is able to engage in a structured tabletop activity for 5 minutes before attempting to leave in 3/5 trials when given maximal verbal and gestural cues. [S/he] is becoming more accustomed to routines and better understands the sequence of activities in our group sessions (e.g., introduction song, movement activity, fine motor activity, goodbye song). [S/he] can still be tempted to leave the table for a preferred object/activity but is easily redirected... [Student] has maintained [her/his] skill level in [functional grasping a pencil/crayon] but has not made significant progress. [His/her] grasp is still considered emerging, maintaining that functional quadrupod grasp in 1 /5 trials and reverting to a digital pronate or five finger grasp in the remaining trials. Without hand over hand assistance for placement [s/he] is able to

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<sup>29</sup> *Id.* at 552-53.

assume the functional grasp with pads of 3 or 4 flexed fingers and an open web space. However, [her/his] grasp is light and [s/he] often drops the materials. In an attempt to increase control, [s/he] reverts to a less mature grasp pattern. [Student] is still working on tracing prewriting strokes, requiring hand over hand assistance and structured stencils to help [her/him]. [S/he] does best on a tactile board with increased sensory input as [s/he] colors.<sup>30</sup>

7. On February 8, 2024, DCPS conducted an IEP Annual Review meeting.<sup>31</sup> The Behavior and Communication sections of Special Considerations were virtually unchanged from the Consideration of Special Factors section of the previous IEP. The Assistive Technology section reported that a trial of a LAMP device had proved unsuccessful. Student had been administered an A/T evaluation in January 2024 that recommended the trial of a TouchChat WordPower42 with keyguard and SnapScene. Student would continue to use low tech options such as using core boards, first/then boards, and visual schedules to expose her/him to both core vocabulary and fringe vocabulary.<sup>32</sup> In Adaptive, the PLOP reported that Student is assigned to an Early Learning Support (“ELS”) class at School A. Student interacts with peers and adults by smiling and less frequently giving eye contact. S/he is not yet able to communicate wants and needs verbally. His/her attention span is very short and s/he needs support to complete simple tasks like putting belongings away, washing his/her hands, and staying focused for longer period of time. Student has increased his/her independence in walking, transitioning, eating and communication. The goals were unchanged from the previous IEP.<sup>33</sup> In Cognitive, the PLOP reported that instead of words, Student uses gestures and sounds to communicate wants and needs, her/his attention span is very short and s/he needs extra help to complete simple tasks and staying focused for longer period of me. Student has been working on pre-academic concepts like matching primary colors, basic shapes (circle, square, and triangle), learning to identify his/her first name, and staying engaged in one activity longer. There was a minor change only to the second of the four goals from the previous IEP.<sup>34</sup>

In Communication, the PLOP reported that Student communicates with eye gaze, smiles, gestures, or taking an adult by the hand. S/he is not yet independent in following daily classroom routines. and continues to need verbal and, at times, physical prompts to transition in the classroom. Student does not babble or produce word approximations with intent yet. Her/his eye contact is inconsistent but has been increasing this school year, and is his/her ability to respond to his/her name. Student has difficulty following simple one-step directions given in the classroom and is not yet responding to yes/no questions. In school, the LAMP program presented too many visual options and they are too small. The core board will be modeled more, but Student struggles with pointing consistently. The first two goals from the previous IEP were deleted (increasing expressive vocabulary to at least 25 words and expressively responding to basic yes/no questions), the goal of responding to her/his name was repeated with a minor change, and the following goals were added: (b) Given low-tech and mid-tech AAC supports, Student will express basic pragmatic functions such as respond to greetings (e.g., hello, goodbye), comment (e.g. all done), or request (e.g.

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<sup>30</sup> *Id.* at 553-54.

<sup>31</sup> R59:813.

<sup>32</sup> *Id.* at 814.

<sup>33</sup> *Id.* at 816- 21.

<sup>34</sup> *Id.* at 822-32.

open, more, help) once given an initial model or cue, and (c) During classroom routines or language-based activities, s/he will follow simple one-step directions (e.g., stop, wait, come, sit, give me) once given visuals, first/then boards, gestures or a visual schedule.<sup>35</sup>

In Motor, the PLOP reported that Student presents with sensory deficiencies that impact his/her attention and engagement. His/her sensory profile is one of low arousal, therefore using a multi-sensory approach is preferable. Student's grasp is considered emerging, maintaining that functional quadrupod grasp in 1/5 trials and reverting to a digital pronate or five finger grasp in the remaining trials. Student is still working on tracing pre-writing strokes, requiring hand over hand assistance and structured stencils. S/he has difficulty with self-care tasks, including toileting, dressing, and self-feeding with utensils. S/he presents with below age level fine motor skills, visual motor skills, bilateral coordination, and pre-writing skills as well as sensory processing differences, decreased postural control, and low tone. Development in these domains are impacted by decreased attention, self-direction, restricted play interest, and responses to sensory-based experiences. The goals from the previous IEP were replaced with the following: (a) Student will demonstrate improved sensory processing skills by sitting and engaging in a structured tabletop tasks for 5-7 minutes when given a multi-sensory approach and fading hand over hand assistance, (b) s/he will demonstrate improved fine motor and visual motor skills, as seen by using a functional grasp pattern to trace pre-writing strokes (vertical, horizontal, and diagonal) when given adaptive tools and fading hand over hand assistance, (c) Student will demonstrate improved self-care skills and functional fine motor skills, as seen by using a functional grasp pattern on utensils (forks, spoons) to self-feed when given fading hand over hand assistance and adaptive tools as needed, and (d) s/he will demonstrate improved postural control and bilateral coordination skills by sitting upright in her/his chair to complete bi-manual activities (i.e. imitating 3-6 block patterns from a visual model, completing an 8-12 piece inset puzzle, connect/pull apart blocks, color at least 50% of a picture, etc.) when given adaptive seating options and fading hand over hand assistance.<sup>36</sup>

The IEP team prescribed 25 hours per week of specialized instruction outside general education, and four hours per month each of OT and SLP services outside general education. Other Classroom Aids and Services included: low tech and mid tech AAC supports throughout the day, peer and adult modeling, visual supports, breaking down larger tasks into smaller parts, repeated practice, first/then boards, visual schedules, core boards, utilizing support cues such as timers and advanced warnings to support learning and responding, pair visual models and cues with verbal prompts and directions, and using social stories to assist with novel activities and peer interactions.<sup>37</sup> The IEP team also prescribed ESY.<sup>38</sup>

8. On April 24, 2024, DCPS issued an amended IEP.<sup>39</sup> None of the boxes indicating the amendments on the first page of the document were checked, and I found no changes to the PLOPs, goals, or services from the February 2024 IEP. I do note that both documents provide that Student's related services are to be provided by the Special Education Coordinator.<sup>40</sup>

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<sup>35</sup> *Id.* at 834-37.

<sup>36</sup> *Id.* at 838-45.

<sup>37</sup> *Id.* at 846.

<sup>38</sup> *Id.* at 850.

<sup>39</sup> R25:574.

<sup>40</sup> *Id.* at 607, R59:846.

9. On June 18, 2024, DCPS issued Student's IEP year-end Progress Report.<sup>41</sup> In Adaptive, Student was reported to be Progressing on all three goals:

[Student] has demonstrated growth in completing self-care routines with no more than 2 additional prompts in at least 3 out of 5 consecutive opportunities... [S/he] is making significant progress understanding and completing puzzles, matching, and sorting objects with no more than one prompt in at least 3 out of 5 consecutive opportunities... [S/he] is really showing motivation in communicating [her/his] wants and needs by pressing buttons at least 2 times per day in 3 out of 5 consecutive opportunities... [S/he] has made great progress participating in whole-group activities with no more than one prompt in 3 out of 5 consecutive opportunities.<sup>42</sup>

In Cognitive, Student was reported to be Progressing on all four goals:

[S/he] has made great progress participating in whole-group activities with no more than one prompt in 3 out of 5 consecutive opportunities. [S/he] is learning to use toys meaningfully in at least 2 out of 5 consecutive opportunities... [S/he] is making progress responding when an adult calls [his/her] name or familiar instructions such as wait, look, stop; in at least 3 out of 5 consecutive opportunities... [Student] has been playing next to other peers but only in a few occasions [s/he] has directly interacted with them, in 2 out of 5 consecutive opportunities."<sup>43</sup>

In Communication, Student was reported to have made No Progress on responding to her/his name being called, Progressing on the goal of expressing basic pragmatic functions, and Regressing on following one-step directions:

[Student] responded to [her/his] name on 1-2/3 opportunities, only responding once touched, but not when named alone... [Student] has been modeled on different functions of [his/her] communication device: hello, goodbye, all done, more, play doh, help, I want to eat. [S/he] has been to use some of these independently at times: hello, bye, all done, more, help, open. Overall, spontaneous and accurate requests with [his/her] communication device on a typical session are observed on 3/15 opportunities... [Student] needs a model and hand over hand supports to follow directions in class with 20-40% accuracy. Regression has been noted in that [s/he] started climbing furniture and leaving areas on [her/his] own (e.g. stand up from table during lunch and walks around the room, needing to be walked back by holding on to [her/his] hand).<sup>44</sup>

In Motor, Student showed No Progress on the goal of demonstrating improved fine motor and visual motor skills, but was Progressing on the goal of demonstrating improved self-care skills and functional fine motor skills, and on the goal of improving postural control:

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<sup>41</sup> P19:269.

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

<sup>43</sup> *Id.* at 269-70.

<sup>44</sup> *Id.* at 270-71.

Due to continued disinterest in drawing activities, [Student] has not made significant progress towards this goal. [S/he] continues to require hand over hand assistance to form a functional grasp and trace pre-writing strokes. Drawing is not purposeful for [her/him] at this time; therefore, this therapist has been working more on sensory motor activities that include pre-writing elements. For example, forming a line with playdoh, tracing a shape on textured paper, etc. We will of course continue to work on drawing skills, but this meets [her/him] where [s/he] is and helps [her/him] form motor plans for when [s/he] is more interested in drawing... [Student] is making significant progress in this goal area. At this time, [Student] independently uses a functional grasp pattern on utensils (forks, spoons) to self-feed in 3/5 trials. With modeling and fading hand over hand assistance, [s/he] has realized that [s/he] can use utensils to dip certain foods into sauces, which is highly motivating! [His/her] main area for growth is in spearing food with the appropriate force ([s/he] often uses too little). [Student] reaches for the utensils without so much as verbal or physical prompt at times... [Student] is making progress in this goal area. [S/he] is becoming more independent with bi-manual tabletop tasks and [her/his] overall posture during tabletop tasks. [S/he] continues to require a backwards chair (for core support) during circle time, but [s/he] is able to maintain an upright position at the table for increased periods of time. Each of the kids have fine motor bins that they work on in the morning. [Student] is able to pull out [his/her] bin, carry it to the table, and manipulate the items inside with improved strength. [S/he] is now completing puzzles, placing coins in a piggy bank, and using fine motor tools in sensory bins with two hands. [Student] is so curious, alert, and engaged now. [S/he] has grown so much...<sup>45</sup>

10. On January 14, 2025, DCPS conducted an IEP Annual Review Meeting.<sup>46</sup> In Special Considerations, it was reported that Student's behavior impedes his/her learning or that of others. "[Student] needs frequent repetitions and re-directions to stay seated and/or stay with the group. [S/he] is doing better at responding to [her/his] name and following simple 1-step directions with less physical assistance."<sup>47</sup> In Adaptive, the PLOP reported that Student had made progress in functional independence. S/he is learning to use a fork to feed her/himself and is able to pull down her/his pants when changing. Student is able to stand and use the toilet with adult guidance. S/he is beginning to show an increased interest in classroom activities by demonstrating a clear desire to participate. Although s/he may not initiate interaction with his/her classmates, his/her eagerness to engage in the activity itself reflects a growing curiosity and willingness to explore collaborative play. This shift in behavior is a positive indicator of her/his social development and suggests that s/he is starting to feel more comfortable in the classroom environment. The first two goals were unchanged. The third goal, demonstrating understanding of functional vocabulary, was replaced with: (c) s/he will use a core board to make requests and express wants and needs at least twice a day.<sup>48</sup> In Cognitive, the PLOP reported that Student demonstrates emerging cognitive abilities by turning his/her head sometimes when an adult calls his/her name, responds more to some adults, follows playground rules, and follows daily classroom routines. The third goal

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<sup>45</sup> *Id.* at 271-73.

<sup>46</sup> R35:695.

<sup>47</sup> *Id.* at 696.

<sup>48</sup> *Id.* at 698-703.

(demonstrating improved social awareness by responding when an adult calls his/her name) was replaced with: Given visuals and no more than two teacher/adult redirections, Student will engage in whole group activities as evidence by physically orienting her/his body as directed, remaining in a designated area, and imitating motor movements for five minutes. The fourth goal from the previous IEP (demonstrating increased peer interactions) was deleted.<sup>49</sup>

In Communication, the PLOP reported that Student is communicating with eye gaze, smiles, gestures, taking an adult by the hand, and with his/her core-based AAC communication system with a dynamic display. While s/he follows some daily routines, s/he still need some of the routines to be broken down by steps or repeated. Student is responding to her/his name and to simple one-step directions once given firm and simple language. S/he has been observed to babble and vocalize, but no words have been enunciated, and s/he is not yet imitating on command. His/her eye contact is significantly better. S/he is successfully using a core-based AAC system with a dynamic display; s/he can independently navigate four icons on a page, but when presented with 25 icons, s/he can isolate icons and point with her/his finger. The goals were: (a) using his/her AAC device, Student will respond to yes/no questions about objects or personal preferences once given faded models and verbal cues, (b) s/he will use his/her AAC device to engage, participate, or respond in class (greeting, labeling, play, weather, calendar, etc.), and (d) while using her/his AAC device, Student will express basic pragmatic functions such as responding to greetings, commenting (all done), or requesting (open, more, help, etc.) once given minimal cues.<sup>50</sup> In Motor, the PLOP reported that Student is independently using a functional grasp with forks and spoons to self-feed. S/he can bring a pre-loaded fork with food to his/her mouth, but without the OT or another adult initiating the fork use, s/he prefers to use her/his hands. His/her previous goal of bilateral hand use was met. Student can independently get his/her bin after toileting, bring it to his/her table and open it. S/he can pull off her/his jacket with both hands independently and unzip the jacket with assistance. The goals were: (a) with sensory supports as necessary, Student will engage in a one-step fine motor based activity such as gluing an item on paper, tearing, snipping and/or imitating pre-writing lines/shapes, given modeling and one physical prompt, (b) s/he will demonstrate increased endurance as evidenced by sustaining a grasp on manipulatives, toys, and/or fine motor tools for one minute.<sup>51</sup>

The IEP team prescribed 24 hours per week of specialized instruction outside general education and four hours each per month of OT and SLP services, a core-based AAC system with a dynamic display, Other Classroom Aids and Services.<sup>52</sup>

11. On April 14, 2025, DCPS issued a Location of Services (“LOS”) letter placing Student in a Communication Education Support (“CES”) classroom at School B for the 2025-26 school year.<sup>53</sup>

12. On May 22, 2025, Witness A developed a Compensatory Education Proposal for Student.<sup>54</sup> The Periods of Harm for the failure to provide an appropriate IEP and placement were

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<sup>49</sup> *Id.* at 704-6.

<sup>50</sup> *Id.* at 707-10.

<sup>51</sup> *Id.* at 711-14.

<sup>52</sup> *Id.* at 715.

<sup>53</sup> P4:36.

<sup>54</sup> P25:368.

February 8, 2024 through June 14, 2024 (81 days/16 weeks) and August 26, 2024 through June 10, 2025 (175 days/35 weeks). The Period of Harm for failing timely to evaluate or reevaluate Student was from August 26, 2024 through June 10, 2025 (175 days/35 weeks). The Proposal identified the academic loss Student suffered, *inter alia*, as follows:

If [Student] had been provided with an IEP, placement, and services responsive to [her/his] developmental profile, language needs, and communication challenges, [s/he] would likely be significantly further along in foundational areas of expressive communication, engagement in instructional routines, adaptive functioning, and social participation. Instead, DCPS's failure to align [Student's] services and placement to [her/his] needs disrupted [her/his] developmental trajectory during a critical window for early learning. Had DCPS conducted timely and comprehensive reevaluations, [Student's] services could have been recalibrated to respond to stagnating progress...<sup>55</sup>

To compensate Student for these losses, Witness A proposed (1) that DCPS conduct or fund the following evaluations: comprehensive psychological, speech and language, OT, and physical therapy; (2) 36 hours of SLP services, (3) 35 hours of OT services, (4) 65 hours of tutoring, and (5) round-trip transportation for the compensatory services.<sup>56</sup>

13. Witness A was Petitioner's educational advocate. She testified that although she has never met or observed Student, she had reviewed Student's records. From those records and participation in meetings at School, Witness A learned that Student was nonverbal, had significant communications challenges, struggled to communicate, show independence, and to remain attentive in class. Witness A opined that the placement in an ELS setting instead of a CES setting was inappropriate. According to Witness A, ELS classrooms are for children with mild communications delays while CES classrooms are designed to address significant delays like Student's.<sup>57</sup> She noted that DCPS had placed Student in a CES classroom at School B for the 2025-26 school year. Witness A opined that Student made inadequate progress on her/his goals on the November 2023 IEP Progress Report, on the Communication goals on the April 2024 IEP Progress Report, and on the June 2024 IEP Progress Report. In her view, there was an insufficient focus on Student's communication deficits. Witness A also noted that the 2025 IEP indicated that Student's behavior was impeding her/his progress, but the IEP provided no support for his/her behavioral issues. Witness A testified that at an Analysis of Existing Data ("AED") meeting on April 21, 2025,<sup>58</sup> DCPS agreed to conduct a functional behavior assessment ("FBA") of Student, but it declined to conduct any other evaluations. Witness A opined that speech and language, OT, physical therapy, and comprehensive psychological evaluations were "imperative." When asked

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<sup>55</sup> *Id.* at 377.

<sup>56</sup> *Id.* at 378.

<sup>57</sup> DCPS' *Special Education Family Guide* describes CES classrooms as follows: "The CES program features an Applied Behavioral Analysis (ABA) learning environment for students who have been identified with autism spectrum disorder and require intensive educational supports." It describes ELS classrooms as follows: "The ELS program provides full-time, early intervention for students with developmental delays or other health impairments." <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Special%20Education%20Family%20Guide%20SY21-22.pdf>

<sup>58</sup> R49:762, the AED meeting form, references an eligibility meeting on April 21, 2025, but the form is dated May 8, 2025.

to specify the denials of FAPE, Witness A opined that the IEPs and placements for the 2023-24 and 2024-25 school years were inappropriate, there were no current speech and language, OT, or behavior assessments, and Student had made minimal progress. In response to my questions as to how she determined the number of hours of the services she proposed in her Compensatory Education Proposal, Witness A provided no explanation.<sup>59</sup>

14. Witness B was Petitioner's speech and language pathology expert. She testified that Student's challenges included expressive and receptive language delays, deficits in cognitive skills, delayed social communication, sensory behaviors, and difficulty retaining communication skills. Witness B opined that Student definitely required SLP services. Witness B opined that based on the November 2023, April 2024 and June 2024 Progress Reports, Student's needs were not being met in the current setting. Witness B opined that DCPS should have conducted a speech and language evaluation. While some goals could be based on classroom observation, but an evaluation would provide present levels, how s/he compares to his/her peers, a measure of his/her ability to follow directions, and a measure of his/her receptive language skills. On cross-examination, Witness B conceded that the A/T evaluation that was conducted in March 2023 was conducted by a speech language pathologist. In response to my question, Witness B opined that the goal of increasing Student's expressive vocabulary to at least 25 words on the March 2023 IEP was beyond her/his capability, but the other three goals were appropriate. Witness B also criticized the goals for not incorporating the use of AAC devices.<sup>60</sup>

15. Petitioner testified that her concerns for Student included her/his inability to communicate, her/his inability to be potty trained, her/his inability to respond to simple commands, and s/he cannot seem to learn things that should be straight-forward. At school, Student is unable to pay attention to retain knowledge. Petitioner expressed concern that Student's behavior disrupts his/her learning as well as the class. Petitioner looks forward to the placement in a CES classroom at School B and expects Student will receive more one-on-one attention than s/he is receiving at School A. However, Petitioner conceded that she was unaware of Student's class size at School A.<sup>61</sup>

16. Witness C is Student's OT provider at School A. The OT sessions are 30 minutes, twice each week. Witness C routinely consults with Student's SLP therapist, Witness E, on how best to use Student's AAC device to communicate with her/him. Witness C testified that Student made slow but steady progress in his/her OT sessions. Student made "night and day progress from [s/he] started" at School A, particularly with holding utensils and sitting still. "[S/he] can load his/her fork when [s/he] wants to" and is able to participate in class. When asked how long Student can focus/attend, Witness C replied that it depends on the task: throughout twenty minutes at lunch, five minutes in large groups, 7-10 minutes in small groups, writing – not as long, and 7-10 minutes in preferred tasks. There up to 10 students in the class with two teachers and one paraprofessional. Witness C testified that Student uses her/his AAC device regularly, both with and without being prompted. S/he opined that where Student is developmentally, s/he would not score on an evaluation.<sup>62</sup>

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<sup>59</sup> Testimony of Witness A.

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

<sup>61</sup> Testimony of Petitioner.

<sup>62</sup> Testimony of Witness C.

17. Witness D was Student's special education teacher during the 2024-25 school year. When asked how Student communicates, she replied that Student puts his/her hand on a picture to respond to questions. Student was a quiet student at the beginning of the year, but is now more open, making more sounds; s/he follows directions. Student uses an i-Pad to indicate his/her wants and needs. While s/he likes to play with items, such as Play Dough, s/he does not interact much.<sup>63</sup>

18. Witness E has been Student's SLP provider since s/he arrived at School A in the fall of 2023. Petitioner informed Witness E at the time that Student "was starting to say words at home," but Witness E did not observe this at school. Student had a one month trial with an AAC device provided by his/her parents in December 2023. Witness E testified that Student was not using the device well and she did not think it was the best system for Student. Another A/T evaluation was conducted in January 2024 that resulted in Student receiving a TouchChat device in the spring. That device was upgraded during the 2024-25 school year to a larger screen with more choices and more vocabulary words. Student uses it every day. "We've seen a lot of success, but [s/he] still needs more practice" on the device. Witness E confirmed Witness C's testimony about collaborating on Student's use of the AAC device. She opined that Student's attention span increased over the course of the school year; s/he was more focused with greater use of the AAC device. Student is more responsive to hearing her/his name called this year, but s/he will not engage with a stranger. In the fall of 2023, Student did well with transitions (such as separating from parents, needed support with routines (cleanup, going to bathroom), and struggled with table-top exercises (puzzles, blocks). By the end of that school year, s/he was using the AAC device and was much happier in the classroom. S/he was more aware of the daily routines and was more independent. At the beginning of the 2024-25 school year, there were no signs of regression. Student continued to use her/his device, and had no difficulty with transitions, but s/he needed verbal prompts during the day to stay on task. When asked the difference between and ELS and a CES classroom, Witness E testified that there is more of a focus on communication in a CES classroom. When asked on cross-examination why the expressive vocabulary goal had not been introduced on the November 2023 Progress Report, Witness E stated that it was because Student did not have an AAC device at the time. When asked why Student made no progress on responding to her/his name, she replied that Student was only responding once out of five times; s/he continued to need maximum support. The same was true on the April and June Progress Reports for the same reason. When asked why Student was regressing on the goal of following one-step directions in June 2024, Witness E testified that at the beginning of the year, Student was calm and compliant. As s/he became more comfortable, s/he would walk around the classroom. When asked why the goal of answering yes/no questions had not been introduced as of the April 8, 2025 Progress Report, Witness E replied that "I wanted [her/him] to make progress on others. I realized it was harder for her/him. It wasn't an appropriate goal for [her/him]. It was too ambitious."<sup>64</sup>

19. Witness F was School A's LEA Representative. When asked to explain why Student was not assigned to a CES classroom, Witness F testified that at the grade Q level, the ELS and CES programs are similar; most of the students have similar verbalization skills. The programs diverge at the grade H level; the ELS program is more academically based as the students have a higher level of communication skills (both verbal and nonverbal). When asked why DCPS

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<sup>63</sup> Testimony of Witness D.

<sup>64</sup> Testimony of Witness E.

declined Petitioner’s request for a number of evaluations at the April AED meeting, Witness F replied, “In terms of the cognitive, occupational therapy, physical therapy, speech and language, those standard assessments would not capture [her/his] range of abilities, and it would be difficult to get [him/her] to engage for normal standard evaluations. The data we had from daily observation was more useful... [Standard evaluations] are normed to the masses. If [s/he] didn’t engage, [s/he] wouldn’t score.” When asked why Student was not placed in a CES class sooner, Witness F replied that “What [s/he] was being provided was helping. What [s/he] would have received in a CES class would not have been substantially different. The classes diverge at grade H.” When asked what meaningful progress looks like, Witness F replied that “If [his/her successes] move from 1/5 to 2/5, that’s progress, a forward trajectory. We don’t expect dramatic change – bit by bit.” Witness F testified that Student has increased his/her ability to engage in tasks; s/he no longer rejects non-preferred tasks. Given the appropriate sensory stimuli, Student will engage for longer periods of time.<sup>65</sup>

## CONCLUSIONS OF LAW

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

Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.<sup>66</sup>

The issues in this case include the alleged failure of DCPS to provide appropriate IEPs and placements. Under District of Columbia law, DCPS bears the burden of persuasion as to these issues. Petitioner bears the burden as to all other issues.<sup>67</sup>

**Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP and placement on February 8 and April 24, 2024 for the 2023-24 school year. Specifically, Petitioner asserts that the IEPs should have prescribed placement in a Communication and Education Support (“CES”) classroom. Petitioner further asserts that the IEPs failed to provide**

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<sup>65</sup> Testimony of Witness F.

<sup>66</sup> D.C. Code § 38-2571.03(6)(A)(i).

<sup>67</sup> *Schaffer v. Weast*, 546 U.S. 49 (2005).

**behavior support services (“BSS”).**

**Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP and placement on April 24, 2024 and January 14, 2025 for the 2024-25 school year. Specifically, Petitioner asserts that the IEPs should have prescribed placement in a CES classroom. Petitioner further asserts that the IEPs failed to provide BSS.**

The Supreme Court’s first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act (“EHA”), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.<sup>68</sup> The Court noted that the EHA did not require that states “maximize the potential of handicapped children ‘commensurate with the opportunity provided to other children.’”<sup>69</sup> Rather, the Court ruled that “Implicit in the congressional purpose of providing access to a ‘free appropriate public education’ is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child...”<sup>70</sup> Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”<sup>71</sup>

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.<sup>72</sup> The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”<sup>73</sup> The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.<sup>74</sup>

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<sup>68</sup> 458 U.S. 176, 187 (1982).

<sup>69</sup> *Id.* at 189-90, 200.

<sup>70</sup> *Id.* at 200.

<sup>71</sup> *Id.* at 203-04.

<sup>72</sup> *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

<sup>73</sup> *Id.* at 997.

<sup>74</sup> *Id.* at 1000-01 (citations omitted).

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

When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly... awaiting the time when they were old enough to drop out...” The IDEA demands more. The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.<sup>75</sup>

On September 12, 2022, Facility A conducted a Developmental Evaluation and confirmed Student's prior diagnosis of ASD. Examiner A recommended that Student receive SLP, ABA therapy, OT, and an assistive technology evaluation. Six months later, DCPS found Student eligible for services, prescribed full-time specialized instruction in a self-contained classroom, and OT and SLP services, and referred Student to Examiner B for an assistive technology evaluation. On Student's February 5, 2024 Progress Report, s/he was reported to be progressing on all of his/her Adaptive and Cognitive IEP goals and one of the two Motor goals. In Communication, s/he was progressing on the goal of responding to her/his name. However, s/he was not yet responding to yes/no questions despite the use of an AAC device recommended by Examiner B. On the goal of responding to inhibitory words, Student was reported to be compliant and following other directives, but there were few instances of the need to comply with inhibitory words. The goal of increasing Student's expressive vocabulary had not been introduced because s/he was still not imitating or using words. Since Student was progressing on most of his/her goals, DCPS proposed a similar IEP when it convened the IEP meeting on February 8, 2024. The IEP team prescribed full-time (25 hours per week) specialized instruction in a self-contained ELS classroom and the maximum amount of SLP and OT services, four hours each per month. In Communication, the two goals requiring verbal responses were deleted and two goals were added that required the use of her/his AAC device and to respond physically to one-step directions.

On the 2023-24 year-end IEP Progress Report, Student was progressing on all of his/her Adaptive and Cognitive goals and one of the two OT goals. In Communication, s/he was progressing on the goal of making functional pragmatic responses on his/her AAC device (hello, good-bye, all done, more, help, open, etc.), but s/he responded inconsistently to her/his name being called, and had regressed on following one-step directions. In OT, Student was reported to use a functional grasp on utensils to self-feed, was becoming more independent with bi-manual tabletop tasks and her/his overall posture during tabletop tasks, was completing puzzles, placing coins in a piggy bank, and using fine motor tools in sensory bins with two hands. “[Student] is so curious, alert, and engaged now. [S/he] has grown so much.”

On January 14, 2025, the IEP developed an annual IEP that resembled the prior year IEP. The Adaptive goal that required an understanding of functional vocabulary was replaced with one requiring Student to make requests and express wants and needs on his/her AAC device. A new Cognitive goal required greater participation in whole group activities. In Communication, the PLOP reported that Student was responding to his/her name and to simple one-step directions.

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<sup>75</sup> 137 S.Ct. at 1000-01.

Student was noted to babble and vocalize but was still not formulating words.

Witness A opined that IEPs were inappropriate because they placed Student in an ELS setting instead of a CES setting. According to Witness A, ELS classrooms are for children with mild communications delays while CES classrooms are designed to address significant delays like Student's. Witness A opined that Student made inadequate progress on her/his goals on the November 2023 IEP Progress Report, on the Communication goals on the April 2024 IEP Progress Report, and on the June 2024 IEP Progress Report. In her view, there was an insufficient focus on Student's communication deficits. Witness A also noted that the January 2025 IEP indicated that Student's behavior was impeding her/his progress, but the IEP provided no support for his/her behavioral issues. DCPS adopted every recommendation in Examiner A's Developmental Evaluation except providing for ABA therapy, which is incorporated in CES classrooms. However, both IEPs reflected Examiner A's recommendation to develop of Student's adaptive skills, which improved significantly during Student's two years at School A.

The issue is whether the programs DCPS developed for Student for the 2023-24 and 2024-25 were reasonably calculated to enable Student to make progress. First, Student's unique circumstances must be considered. S/he was only Z years-old when s/he entered grade Q at School A in the fall of 2023. Second, Student was non-verbal and Examiner A had found him/her to be "generally unresponsive when spoken to." In light of Student's progress on the March 2023 IEP developed at Facility B, and having worked with him/her for half of the 2023-24 school year, School A developed a similar IEP on February 8, 2024: full-time specialized instruction in a self-contained class of 10 students with two certified teachers and a paraprofessional, and the related services and access to AAC devices that were recommended by Examiner A and Examiner B. Witness E's testimony was uncontroverted that there is little difference between the services provided in an ELS classroom and a CES classroom until grade H, when there is more of an academic emphasis in ELS classrooms due the students higher level of verbalization. DCPS assigned Student to at CES classroom for grade H at School B for the 2025-26 school year.

Witness B opined that the lack of success shown in Student's Progress Reports indicates that the current setting was not meeting his/her needs and the goal of increasing Student's expressive vocabulary to at least 25 words on the March 2023 IEP was beyond her/his capability. However, Witness B conceded that the other three Communication goals in the 2023 IEP were appropriate. In fact, the expressive vocabulary goal was not included in the February 8, 2024 IEP, and two new goals were added: expressing basic pragmatic functions and following one-step directions. On the 2023-24 year-end Progress Report, Student was reported to be progressing on expressing basic pragmatic functions, and by the end of the IEP year in January 2025, the IEP PLOP reported that Student was following daily routines, responding to his/her name, and responding to simple one-step directions.

The record supports a finding that Student's progress on the Facility B IEP justified School A in pursuing similar goals on the February 8, 2024 and the January 14, 2025 IEPs. Student consistently made progress on his/her Adaptive and Cognitive goals, which is crucial for severely delayed ASD children at Student's age. Student did not make as much progress on his/her Communication goals primarily due to his/her continuing inability to verbalize. However, Student's Communication skills improved steadily throughout his/her two years at School A.

While s/he was unresponsive when spoken to with Examiner A in 2022, the January 2025 PLOP reported that s/he was following daily routine, responding to his/her name and to simple one-step directives. Student was successfully using an AAC device with a dynamic display to participate in class and was able to make her/his needs and wants known.

As for Witness A's assertion that the January 2025 IEP was inappropriate because it lacked behavior goals, this allegation is without merit. It is true that in Special Considerations, the IEP for the first time checked the box indicating that Student's "behavior" impeded learning. But the team explained that "[Student] needs frequent repetitions and re-directions to stay seated and/or stay with the group. [S/he] is doing better at responding to [her/his] name and following simple 1-step directions with less physical assistance." There was no testimony or documentation that Student posed a significant behavioral problem in the classroom. It is apparent that the IEP team wanted to document his/her inattentiveness but felt that it could be adequately addressed in the small class environment with simple redirections from the three staff members in the classroom.

For all of these reasons, I conclude that DCPS has met its burden of proving that the IEPs and settings in School A's ELS classrooms for the 2023-24 and 2024-25 were reasonably calculated to enable Student to make progress consistent with his/her unique circumstances.

**Whether DCPS denied Student a FAPE by failing to assess Student in all areas of suspected disability. Petitioner asserts that DCPS should have known that further evaluations were necessary after it issued Student's Progress Report on June 18, 2024. Petitioner also asserts that DCPS conceded that Student's behavior impeded learning in her/his January 14, 2024 IEP, but DCPS conducted no evaluation.**

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

Each public agency must ensure that... the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities...<sup>76</sup>

The regulations also require reevaluations if a teacher or parent requests them, and at least once every three years:

A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—

- (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
  - (2) If the child's parent or teacher requests a reevaluation.
- (b) Limitation. A reevaluation conducted under paragraph (a) of this section—

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<sup>76</sup> 34 C.F.R. §300.304 (c)(4).

- (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
- (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.<sup>77</sup>

During the triennial review, the MDT must make a determination if further assessments are necessary to make the eligibility determine or to determine an appropriate educational program for the student:

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

- (1) Review existing evaluation data on the child, including—
  - (i) Evaluations and information provided by the parents of the child;
  - (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
  - (iii) Observations by teachers and related services providers; and
- (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—
  - (i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
  - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child...<sup>78</sup>

Petitioner's counsel has requested a battery of examinations (psychoeducational, occupational therapy, physical therapy, and speech and language) simply because Student has known disabilities for which s/he has not been specifically assessed. However, these evaluations are unnecessary for various reasons. First, Student received a Developmental Evaluation in 2022 in which her/his ASD was confirmed, the severity of symptoms indicated significant developmental delays, and s/he was nonverbal. Examiner A recommended that Student receive OT and SLP services, but she did not recommend conducting OT and SLP assessments. Second, the only additional evaluation Examiner A recommended was an assistive technology evaluation, which DCPS conducted six months later. Third, children at Student's age who are nonverbal and who do not consistently respond to directives typically are unable to complete standardized assessments. Witness C testified that that where Student is developmentally, s/he would not score on an evaluation. Witness F testified that assessments are normed to the masses and "If [s/he] didn't engage, [s/he] wouldn't score." Fourth, the OT PLOP in the March 2023 IEP revealed that Student was also administered an OT evaluation on November 29, 2022. Student was in the <1 percentile in Fine Motor Skills, and in the 2<sup>nd</sup> percentile in Perceptual Motor Skills (use of fine motor skills in tasks) and on the Developmental Quotient.

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<sup>77</sup> 34 C.F.R. §300.303.

<sup>78</sup> 34 C.F.R. §300.305(a). *See also*, *Office of the State Superintendent's Special Education Process Handbook*, P43:14 (348)(IEP teams may determine that sufficient data exists to support an eligibility determination without additional assessments).

Evaluations are required in 34 C.F.R. §300.305(a) to determine continuing eligibility and to determine programming needs. No additional evaluations were needed for either purpose in this matter. Student's eligibility as a child with ASD was not at issue, and the staffs at Facility B and School A were well aware of the appropriate programming for a severely delayed, nonverbal grade Q ASD student, including related services in SLP and OT. As was discussed in the previous section, the intervention of behavioral support services from a social worker was not indicated by the IEP team's recognition that Student needed to be redirected from time-to-time to remain on task. It is expected that such redirection could be routinely and effectively managed in a self-contained class with a student to teacher/paraprofessional ratio of 3:1, and the record reveals that it was.

Finally, Petitioner's counsel's reliance on the 2023-24 year-end IEP Progress Report for proof of the need for additional evaluations is misplaced. Student made progress on all of her/his Adaptive and Cognitive goals in that report. In Communication, Student responded to her/his name in 1/2 to 1/3 opportunities. S/he regressed on the goal of following one-step directions because, as Witness E testified, at the beginning of the year, Student was calm and compliant; as s/he became more comfortable, s/he would walk around the classroom. No formal assessment was necessary for Witness E to make this determination and to address it. The subsequent January 14, 2025 Communication PLOP reported that Student was following daily routines, was responding to her/his name, and was following simple one-step directions. As for OT, as discussed in the previous section, Student was reported on the year-end Progress Report to have made progress in using a functional grip and self-feeding, was becoming more independent in tabletop tasks, and using fine motor tools in sensory bins with two hands, leading the therapist to note that "[Student] is so curious, alert, and engaged now. [S/he] has grown so much." Student's OT therapist at School A, Witness C, testified that "[Student] made 'night and day progress from where [s/he] started'" at School A, particularly with holding utensils and sitting still. "[S/he] can load his/her fork when [s/he] wants to" and is able to participate in class.

For these reasons, I conclude that Petitioner has failed to meet her burden of proving that DCPS failed to assess Student in all areas of suspected disability.

## **RELIEF**

For relief, Petitioner requests, *inter alia*, (1) an order requiring DCPS to conduct a comprehensive psychological evaluation with cognitive, social/emotional/behavioral, executive functioning, and adaptive assessments, speech-language pathology evaluation, an occupational therapy evaluation, and a physical therapy evaluation, (2) an order requiring DCPS to convene both a meeting to place the Student in a CES classroom and another meeting within 30 school days of this placement to address the Student's progress, (3) compensatory education services, and (4) and attorney fees and costs.

## ORDER

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

**ORDERED**, that the Complaint is **DISMISSED** with prejudice.

## APPEAL RIGHTS

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

  
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Terry Michael Banks  
Hearing Officer

Date: July 7, 2025

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