

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution  
1050 First Street, N.E., Third Floor  
Washington, D.C. 20002

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2024-0080
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 6/20/24
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates (using Microsoft Teams):
("DCPS"),	)	6/11/24 & 6/13/24
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) due to DCPS’s failure to comprehensively evaluate and find Student eligible for special education pursuant to child-find, and to provide access to education records. DCPS responded that it did satisfy its child-find duties and did provide all available education records.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

**Procedural History**

Following the filing of the due process complaint on 4/29/24, the case was assigned to the undersigned on 4/30/24. Respondent filed a response on 5/13/24 and did not challenge jurisdiction. A resolution meeting took place on 5/10/24, but the parties did not

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<sup>1</sup> Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student’s gender are omitted.

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settle the case or shorten the 30-day resolution period, which ended on 5/29/24. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 7/13/24.

A prehearing conference was held on 5/29/24 and a Prehearing Order was issued that same day, addressing among many other things the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 6/11/24 and 6/13/24, and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in much of the hearing.

### Documents and Witnesses

Petitioner’s Disclosure, submitted on 6/3/24, contained documents P1 through P93, all of which were admitted into evidence over various objections. Respondent’s Disclosure, also submitted on 6/3/24, contained documents R1 through R38, all of which were admitted into evidence over minor objections.<sup>2</sup>

Petitioner’s counsel presented 2 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Educational Advocate* (qualified without objection as an expert in Special Education)
2. Parent

Respondent’s counsel presented 4 witnesses in Respondent’s case (*see* Appendix A):

1. *Social Worker* (qualified without objection as an expert in School-Based Social Work)
2. *School Psychologist* (qualified without objection as an expert in School Psychology)
3. *Occupational Therapist* (qualified without objection as an expert in Occupational Therapy)
4. *Special Education Teacher* (qualified over objection as an expert in Special Education)

Petitioner’s counsel offered no rebuttal evidence.

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<sup>2</sup> Citations herein to the parties’ documents are identical except that Petitioner’s documents begin with a “P,” while Respondent’s documents begin with an “R,” followed by the exhibit number and then a “p” (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

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At the conclusion of Petitioner's case-in-chief, Respondent's counsel orally moved for a directed verdict on the claims relating to occupational therapy, which Petitioner's counsel opposed, and the undersigned orally denied on the record.

### Issues and Relief Requested

The issues to be determined in this Hearing Officer Determination are:

**Issue 1:** Whether DCPS denied Student a FAPE by failing its child-find obligations when it did not timely and comprehensively evaluate and/or find Student eligible and provide an appropriate IEP during 2022/23<sup>3</sup> and 2023/24. (*Petitioner has the burden of persuasion on this issue.*)

**Issue 2:** Whether DCPS denied Student a FAPE by failing to propose an IEP and/or placement/location of services to enable Student to make progress on or after 3/8/24 when the IEP did not provide (a) appropriate goals in academics and daily living skills, (b) goals in occupational therapy ("OT"), and/or behavioral support services ("BSS"),<sup>4</sup> and/or (c) enough specialized instruction outside general education and/or services in a self-contained setting.<sup>5</sup> (*Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*)

**Issue 3<sup>6</sup>:** Whether DCPS denied Student a FAPE by failing to provide Parent full access to education records, including a March 2023 evaluation. (*Petitioner has the burden of persuasion on this issue.*)

### **Relief Requested by Petitioner<sup>7</sup>**

1. A finding that Student has been denied a FAPE.
2. DCPS shall provide access to all of Student's education records; Parent reserves the right to raise any issues that could not be brought due to lack of records.

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<sup>3</sup> All dates in the format "2022/23" refer to school years.

<sup>4</sup> At the beginning of the due process hearing, Petitioner's counsel withdrew without prejudice from Issue 2(b) the phrase, "speech-language therapy ('SL')."

<sup>5</sup> At the beginning of the due process hearing, Petitioner's counsel withdrew without prejudice from Issue 2 the final subsection, "Assistive Technology ('AT') services."

<sup>6</sup> At the beginning of the due process hearing, Petitioner's counsel withdrew without prejudice the entirety of Issue 3, which was, "Whether DCPS denied Student a FAPE by failing to conduct an Assistive Technology assessment of Student."

<sup>7</sup> At the beginning of the due process hearing, Petitioner's counsel withdrew without prejudice the entirety of Paragraph 4 of the Relief Requested, which was, "DCPS shall timely conduct an Assistive Technology assessment and update the IEP accordingly."

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3. DCPS shall revise Student's IEP to address the concerns in the Due Process Complaint, or timely reconvene the IEP team to review and revise the IEP based on updated evaluative data.
4. DCPS shall provide compensatory education for any denials of FAPE, or fund a compensatory education evaluation to determine the appropriate amount of compensatory education warranted, and reimburse Parent for any out-of-pocket costs for implementing compensatory education, including things such as transportation and a laptop computer to access online services.<sup>8</sup>
5. Any other just and reasonable relief.

### Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>9</sup> are as follows:

1. Background/IEP. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>10</sup> Student is *Age*, *Gender*, and in *Grade* during 2023/24 at *Public School*<sup>11</sup> Student is affectionate and helpful.<sup>12</sup> Student had an Individualized Family Service Program ("IFSP") dated 5/13/21 and previously received speech therapy and OT until discontinued following an evaluation in Spring 2023.<sup>13</sup> Student's initial IEP was on 3/8/24;

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<sup>8</sup> So far as Petitioner's request for compensatory education depends on the findings of evaluations that may be carried out in the future, that portion of the compensatory education claim is reserved pending the completion of Student's evaluations and a determination of eligibility for additional special education and related services.

Petitioner's counsel was put on notice at the prehearing conference that at the due process hearing Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondents were invited to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

<sup>9</sup> Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>10</sup> Parent.

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

<sup>12</sup> P16p180.

<sup>13</sup> P14; P8p87-88; P16p179,180; P39p456.

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the eligibility meeting was on 2/12/24; the IEP provided 2 hours/week of specialized instruction inside general education, along with 120 minutes/month of Speech Language Pathology (“SLP”) outside general education and 120 minutes/month of OT outside general education.<sup>14</sup>

2. Referrals. On 8/8/22, 1/3/22 and 1/3/23, referrals were made for an initial evaluation/reevaluation to see if Student was a child with a disability; existing data was reviewed in an Analysis of Existing Data (“AED”) to determine next steps in the evaluation process.<sup>15</sup> Student received a “Refer” in the Problem Solving domain and in the Personal Social domain of the Ages and Stages Questionnaire 3 (“ASQ-3”) dated 1/6/23.<sup>16</sup> On 11/7/23, there was another referral for an initial evaluation of Student to determine whether Student was a child with a disability.<sup>17</sup> At the 12/7/23 AED meeting, Student’s teacher noted that Student is often off task after 3-4 minutes and has “fantastic vocab conversations” with self, but won’t talk to peers.<sup>18</sup> At the AED meeting on 12/7/23, the team agreed to “throw everything in there,” including comprehensive psychological, Functional Behavioral Assessment (“FBA”), OT, SPL, cognitive, socio-emotional and adaptive functioning.<sup>19</sup> The formal 12/15/23 AED was developed to determine next steps in the evaluation process; 5 of 12 possible areas of need/concern were selected; no behavior concerns were worth pulling Student out of class.<sup>20</sup> Student had no behavior concerns.<sup>21</sup> In the formal AED, the team, including Parent, concluded that psychological, SLP and OT assessments would cover all concerns.<sup>22</sup>

3. Screeners/Evaluations. On 5/4/21, Student was given the Battelle Developmental Inventory, 2d Edition (“BDI-2”), a screener for adaptive-daily living and other limited areas, with some areas in the 1<sup>st</sup> percentile for Student’s age.<sup>23</sup> On 2/10/23, Student was given the Battelle Developmental Inventory, 3d Edition (“BDI-3”) and BDI-2 screeners.<sup>24</sup> Student’s teacher completed the Strengths and Difficulties Questionnaire (“SDQ”) on 11/29/23 and found that Student was “VERY HIGH” in Overall Stress, Emotional Distress, Hyperactivity and Concentration Difficulties, Difficulties Getting Along with Other Children, and Impact of Any Difficulties on the Child’s Life; the only categories that were not Very High were Behavioral Difficulties (close to average) and Kind and Helpful Behavior (Very Low).<sup>25</sup>

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<sup>14</sup> P25p306,321.

<sup>15</sup> P31p428; P32p430; P32; P16p178; P36p448; P39 (AED); Educational Advocate.

<sup>16</sup> P39p456,459; P16p185; Educational Advocate.

<sup>17</sup> P19p198,199.

<sup>18</sup> P18p194-95; Educational Advocate.

<sup>19</sup> P18p196.

<sup>20</sup> P19p198,199,201; Social Worker; Educational Advocate.

<sup>21</sup> Educational Advocate; P39p458; Social Worker.

<sup>22</sup> P10p203; Special Education Teacher.

<sup>23</sup> P32p430-37.

<sup>24</sup> P6p48-49; P16p178; School Psychologist.

<sup>25</sup> P8p73; Social Worker.

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DCPS made efforts to get consent to evaluate from Parent, who missed evaluation appointments on 9/19/22 and 10/3/22.<sup>26</sup> Parent gave consent for evaluation on 1/11/23.<sup>27</sup>

4. Psychological Reevaluation. Student's 1/26/24 Psychological Reevaluation noted that Student's difficulties were evident in writing skills, that Student had a unique cognitive profile with significant weaknesses in some key areas, and struggled on tasks requiring complex reasoning skills.<sup>28</sup> Student continued to have difficulties engaging in learning without significant support.<sup>29</sup> Student's general education teacher provided 1:1 instruction time to Student, using hand-over-hand to complete written tasks.<sup>30</sup> On 12/7/23, School Psychologist wanted to delve into Autism Spectrum Disorder ("ASD"), recognizing Parent's concerns about ASD.<sup>31</sup> Student's 1/26/24 Psychological Reevaluation found symptoms consistent with ASD, which was Student's recommended disability classification.<sup>32</sup>

5. Student's 2/10/23 AED stated that there did not appear to be any concerns related to Student's cognitive development.<sup>33</sup> The Developmental Assessment of Young Children – Second Edition ("DAYC-2") on 1/8/24, found that Student was average cognitively.<sup>34</sup> On the Woodcock-Johnson IV Test of Early Cognitive and Academic Development ("WJ-IV-ECAD"), Student's Verbal Analogies subtest was below 40 and Severely Delayed; Student's other subtests and clusters were generally in the 90s or above.<sup>35</sup>

6. Student needed OT services and support, with constant redirection to listen to assessment directives.<sup>36</sup> Within the 1/29/24 OT Reevaluation, the Peabody Developmental Motor Scales Second Edition ("PDMS-2") indicated that Student performed in the Very Poor range for grasping, the Poor range for Visual-Motor Integration, and Very Poor range for Fine Motor Quotient; Student was having challenges accessing the curriculum based on the areas of concern.<sup>37</sup> Petitioner did not raise concerns about OT goals.<sup>38</sup>

7. Eligibility. On 3/7/23, Student's Multi-disciplinary Team ("MDT"), including Parent, concluded that Student met the eligibility criteria for Developmental Delay, but that Student was not eligible for special education services; Student needed services to bridge gap.<sup>39</sup> By 1/26/24, Student's Psychological Reevaluation concluded that the degree of

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<sup>26</sup> P34p442 (PWN).

<sup>27</sup> P37p450; Educational Advocate.

<sup>28</sup> P8p88.

<sup>29</sup> P8p65; School Psychologist.

<sup>30</sup> P8p69; Educational Advocate.

<sup>31</sup> P18p195-96.

<sup>32</sup> P8p65,87,89.

<sup>33</sup> P39p456; Educational Advocate; School Psychologist (no cognitive concerns).

<sup>34</sup> P8p76; Educational Advocate.

<sup>35</sup> P8p77.

<sup>36</sup> P9p99; Occupational Therapist.

<sup>37</sup> P9p96,108-09 (skill deficits in many areas).

<sup>38</sup> P28p415; Occupational Therapist.

<sup>39</sup> P15p173-74; P16; Educational Advocate.

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challenges reported was significant and hindered Student's day-to-day school functioning, so a formal plan of support should have been considered to support Student's development so that Student could better access and engage in learning activities in school.<sup>40</sup>

8. Services/Setting. Petitioner's 4/17/24 letter following the IEP sought an increase in specialized instruction to at least 20 hours/week and inclusion in a self-contained Communication & Education Support ("CES") classroom.<sup>41</sup> Special Education Teacher testified that Student does not need CES or 20 hours/week of specialized instruction; Student's IEP team is willing to increase specialized instruction hours in the future, if necessary.<sup>42</sup> Special Education Teacher was clear that 5 hours/week of specialized instruction would be sufficient to cover the goals on Student's IEP.<sup>43</sup> Student's general education teacher emphasized at the 3/8/24 IEP meeting that removing Student from the general education setting entirely would not be helpful for Student's progress; a few hours outside general education would be sufficient for Student.<sup>44</sup> Special Education Teacher proposed specialized instruction of 3 hours/week inside general education and 2 hours/week outside general education to cover all proposed goals.<sup>45</sup>

9. Goals. Student's 3/8/24 IEP contained an annual goal for Adaptive Daily Living (describing object's position), 2 annual goals for Cognitive (repeat the names of objects; select object that is different), 2 annual goals for Communication/Speech and Language (not in issue), and 3 annual goals for Motor Skills/Physical Development (OT) (copying, coloring, cutting; sensory processing); all of Student's goals were challenging but achievable by Student.<sup>46</sup>

10. Documents. Student's education records had been requested on 12/7/23.<sup>47</sup> On 3/7/24, Petitioner's counsel acknowledged receipt of certain Student records and continued to seek other documents, particularly a March 2023 psychological evaluation.<sup>48</sup> On 4/15/24, Petitioner's counsel asked for the March 2023 psychological evaluation and on 4/17/24, School Psychologist responded that the report was "unavailable."<sup>49</sup> Special Education Teacher has never seen the March 2023 document.<sup>50</sup> Petitioner requested the document

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<sup>40</sup> P8p87.

<sup>41</sup> P78p669-70; P28 (dupl.).

<sup>42</sup> Special Education Teacher.

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

<sup>44</sup> P23p245-47; P22p219.

<sup>45</sup> P23p250.

<sup>46</sup> Special Education Teacher; Occupational Therapist; P25p308,309-10,315-16,319-20.

<sup>47</sup> P18p195; P75p661.

<sup>48</sup> P71p603-04.

<sup>49</sup> P77p665-66.

<sup>50</sup> Special Education Teacher.

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again on 4/17/24.<sup>51</sup> The lack of the requested March 2023 psychological evaluation indicated that an evaluation was not completed.<sup>52</sup>

11. Compensatory Education. Educational Advocate submitted a detailed Compensatory Education Proposal seeking 450 hours of tutoring, 32 hours each of SLP, OT and BSS services, and 20 hours of ABA behavior services, among other things, as a result of the denial of FAPE set forth in the due process complaint.<sup>53</sup> Educational Advocate testified that the compensatory education sought in her detailed plan would put Student in the position Student would have been but for the denials of FAPE alleged.<sup>54</sup>

### Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994, quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(14); *Andrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. at 1001. The Act's

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<sup>51</sup> P78p669.

<sup>52</sup> P22p216-17; Educational Advocate.

<sup>53</sup> P93; P93p774.

<sup>54</sup> Educational Advocate.

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FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen 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.” *Andrew F.*, 137 S. Ct. at 1001.

Importantly, the local education agency (“LEA”) must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Andrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at \*3 (D.D.C. 2018).

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z. B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

**Issue 1:** *Whether DCPS denied Student a FAPE by failing its child-find obligations when it did not timely and comprehensively evaluate and/or find Student eligible and provide an appropriate IEP during 2022/23 and 2023/24. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden of persuasion on whether DCPS should have evaluated and identified Student as eligible for special education and developed an IEP prior to when it did so on 3/8/24. The D.C. Circuit Court emphasized in *DL v. Dist. of Columbia*, 860 F.3d 713, 717 (D.C. Cir. 2017), that child-find is among the most important IDEA requirements, in

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order to identify, locate and evaluate every child in need of special education. *See* 34 C.F.R. § 300.111. Student was one of those children.

The child-find obligations of an LEA are triggered either by awareness of the child's circumstances or by parental request. *See Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 57 (D.D.C. 2011). Here, DCPS should have been aware of Student's need for a special education evaluation through Student's circumstances, as well as parental request. While various screeners were administered to Student, a screener is not an evaluation for determining eligibility for special education and related services. 34 C.F.R. § 300.302. There were also several referrals for evaluation or reevaluation of Student, which led DCPS to seek consent from Parent to evaluate Student. But Parent missed appointments to evaluate Student on 9/19/22 and 10/3/22 and did not give her consent to evaluate until 1/11/23, which prevented DCPS from moving forward earlier.

Shortly thereafter, however, Student's MDT team, including Parent, concluded on 3/7/23 that Student met the eligibility criteria for Developmental Delay, but that Student was not eligible for special education services, despite needing help to bridge the gap in Student's education. By 1/26/24, Student's Psychological Reevaluation concluded that Student was facing significant challenges which hindered Student's day-to-day school functioning. The Psychological Reevaluation emphasized Student's unique cognitive profile and struggles on tasks requiring complex reasoning skills. Student's development should have been supported earlier so that Student could better access and engage learning in school.

Based on the facts of this case as set forth above, the undersigned concludes that DCPS's child-find obligations were triggered at least by 3/7/23 when Student should have been found eligible for special education. Parent met her burden of persuasion, showing at that point that DCPS did not meet its child-find obligations to evaluate Student and determine eligibility for special education and related services. That failure directly impacted Student's education and denied Student the educational benefits to which Student was entitled, which constitutes a denial of FAPE and is the basis for most of the tutoring awarded as compensatory education, below. *See* 34 C.F.R. § 300.513(a).

**Issue 2:** *Whether DCPS denied Student a FAPE by failing to propose an IEP and/or placement/location of services to enable Student to make progress on or after 3/8/24 when the IEP did not provide (a) appropriate goals in academics and daily living skills, (b) goals in OT and/or BSS, and/or (c) enough specialized instruction outside general education and/or services in a self-contained setting. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a *prima facie* case concerning deficiencies in Student's IEP through expert testimony and documents, except as to BSS, shifting the burden to DCPS, which met its burden of persuasion as discussed below apart from the need for an increase in specialized instruction. Petitioner did not establish a *prima facie* case as to BSS goals, as Student had no behavior concerns and there was an insufficient explanation of needed BSS goals in the challenged IEP. More is required than bare assertions and the undersigned concludes that a reasonable trier of fact could not find in Petitioner's favor on this subissue.

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*See, e.g., St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 527, 113 S. Ct. 2742, 2758, 125 L. Ed. 2d 407 (1993) (a *prima facie* case requires enough evidence to raise an issue for the trier of fact); *W.S. v. Dist. of Columbia*, 502 F. Supp. 3d 102, 121 (D.D.C. 2020) (then-Judge Ketanji Brown Jackson) (“[i]n determining the sufficiency of a *prima facie* case . . . a hearing officer must determine whether, after considering all of a plaintiff's evidence, a reasonable trier of fact could find in favor of the plaintiff”).

The applicable legal standard for analyzing the appropriateness of the IEP at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. As the U.S. Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* “raised the bar on what counts as an adequate education under the IDEA,” requiring more than “merely some” educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be “reasonably calculated to produce meaningful educational benefit”). The measure and adequacy of the IEP are determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at \*12 (D.D.C. 2021); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student’s IEPs is analyzed by focusing on the specific concerns raised by Petitioner, which are considered next.<sup>55</sup> *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(a) *Goals in academics and daily living skills.* IEPs are required to contain measurable annual goals pursuant to 34 C.F.R. § 300.320(a)(2). Here, Student’s 3/8/24 IEP contained an annual goal for Adaptive Daily Living, which was to describe an object’s position, and 2 annual goals for Cognitive, which was to repeat the names of objects and to select the object that was different. DCPS’s experts convincingly testified that each of these goals was challenging but achievable by Student.

(b) *Goals in OT and/or BSS.* In addition to the requirement to contain measurable annual goals, related services must be provided if required to assist a student with a disability to benefit from special education. *See* 34 C.F.R. § 300.34(a); *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883, 890, 104 S. Ct. 3371, 82 L. Ed. 2d 664 (1984). The issue is whether as written the IEP for Student was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. Here, Student’s 3/8/24 IEP contained 3 annual goals for Motor Skills/Physical Development (OT), which involved Student copying, coloring, cutting, and sensory processing. As clarified by DCPS’s experts, each of these goals was challenging but achievable by Student. Notably, Petitioner did not raise concerns about OT goals.

(c) *Specialized instruction.* Finally, Student’s IEP must provide sufficient personalized instruction so that the child can benefit educationally, which in the case at hand

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<sup>55</sup> A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. Procedural issues are discussed herein.

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requires the inclusion of additional specialized instruction in the 3/8/24 IEP. *See Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203; *cf. Andrew F.*, 137 S. Ct. at 1000. Here, Special Education Teacher credibly proposed 3 hours/week inside general education and 2 hours/week outside general education to cover the goals in Student's IEP, which was an increase above the 2 hours/week of specialized instruction inside general education included in the 3/8/24 IEP. By contrast, in the weeks following Student's IEP, Petitioner sought an increase in specialized instruction to at least 20 hours/week and preferably inclusion in a self-contained CES classroom. Special Education Teacher testified that Petitioner's request would grossly overshoot the mark, for Student does not need a self-contained classroom or even 20 hours/week of specialized instruction. Special Education Teacher was instead clear that 5 hours/week of specialized instruction was sufficient.

Similarly, Student's general education teacher emphasized at the 3/8/24 IEP meeting that removing Student from the general education setting entirely would not help Student's progress, and that a few hours/week outside general education would be sufficient for Student. Cognitive testing indicated that Student was average, so placement in a self-contained CES classroom would not be needed. Importantly, as noted above, the IDEA expressly mandates that students with disabilities be educated in their LRE to the maximum extent appropriate. 20 U.S.C. § 1412(a)(5); *see Leggett v. Dist. of Columbia*, 793 F.3d 59, 72 (D.C. Cir. 2015). Here, the undersigned is persuaded that an increase from 2 hours/week of specialized instruction inside general education to 5 hours/week of specialized instruction with 3 hours/week inside and 2 hours/week outside general education is appropriate as Student's Least Restrictive Environment ("LRE") at this time and contributes modestly to the compensatory education ordered below.

*Placement.* As for placement, the applicable legal standard under the IDEA requires "school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student's IEP." *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 143 (D.D.C. 2018), *citing O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student's IEP requirements). *See also A.T.*, 2021 WL 1978792, at \*12 (D.D.C. 5/18/21). Here, the IEP at issue initially required only 2 hours/week of specialized instruction inside general education, which is being increased to 5 hours/week of specialized instruction. The undersigned is persuaded that this modestly increased level of services can readily be provided at Public School.

**Issue 3:** *Whether DCPS denied Student a FAPE by failing to provide Parent full access to education records, including a March 2023 evaluation. (Petitioner has the burden of persuasion on this issue.)*

Petitioner did not meet her burden of persuasion on the issue of access to education records. As a general matter, parents of a child with a disability have the right to examine all education records that pertain to the identification, evaluation, and educational placement of the child, and provision of a FAPE. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a), 34 C.F.R. § 300.613(a) (parents must be permitted to inspect and review any education records relating to their child that are collected, maintained, or used by an agency). *See also Jalloh*

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*ex rel. R.H. v. Dist. of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) (“parents have the right to examine records and DCPS must give parents the opportunity to inspect, review, and copy records”). An “education record” under IDEA is defined by the regulations implementing the Family Educational Rights and Privacy Act (“FERPA”). 34 C.F.R. § 300.611(b). Under FERPA, an education record includes records, files, documents, and other materials which “(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. Part 99.

Here, Student’s education records had been requested often by Petitioner, including on 12/7/23, 3/7/24 and 4/17/24, with emphasis on a March 2023 psychological evaluation, which DCPS was never able to provide, School Psychologist stated was “unavailable,” and Special Education Teacher had never seen. In short, if DCPS doesn’t have a record, it cannot make it available to Parent, regardless of how many times it is requested. An order by the undersigned to produce the record would not change that basic reality, but certainly DCPS cannot rely on a document that it cannot make available.

### Remedy

Having analyzed and resolved the issues in this case, what remains is to consider the compensatory education necessary to make up for the denial of FAPE found above. In determining the amount of compensatory education for denials of FAPE, there is often “difficulty inherent in figuring out both what position a student would be in absent a FAPE denial and how to get the student to that position,” *B.D. v. Dist. of Columbia*, 817 F.3d 792, 799 (D.C. Cir. 2016), but that does not permit the effort to be avoided. See *Henry v. Dist. of Columbia*, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse). Moreover, a student is not required “to have a perfect case to be entitled to compensatory education.” *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (citations omitted).

Here, Educational Advocate testified that the compensatory education sought in her detailed plan would put Student in the position Student would have been but for the denials of FAPE. But that plan must be adjusted significantly to match the denial of FAPE actually found herein, which was limited to a delay in child-find in Issue 1 and a modest increase of specialized instruction in Student’s IEP in Issue 2.

Based on experience and careful analysis, the undersigned awards 200 hours of 1:1 academic tutoring in the Order below. This determination by the undersigned has been specifically tailored to address Student’s unique needs as a matter of equity, as “hearing officers are reminded that ‘[t]he essence of equity jurisdiction’ is ‘to do equity and to mould each decree to the necessities of the particular case.’” *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), quoting *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005). All compensatory education hours are to be used within 24 months to avoid administrative burdens on Respondent, although the undersigned encourages Parent to get Student engaged as quickly as possible to ensure that the remedial

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services that Student needs are obtained without delay.

**ORDER**

Petitioner has prevailed on portions of Issue 1 and Issue 2, as set forth above. Accordingly, **it is hereby ordered that:**

As compensatory education for the denials of FAPE found herein, within 10 business days after request by Petitioner, DCPS shall provide a letter of authorization for 200 hours of 1:1 academic tutoring from independent providers chosen by Petitioner; all hours are to be used within 24 months and any unused hours shall be forfeited.

Any and all other claims and requests for relief are **dismissed with prejudice.**

**IT IS SO ORDERED.**

Dated in Caption

*/s/ Keith Seat*

Keith L. Seat, Esq.  
Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

Copies to:

Counsel of Record (Appendix A, by email)  
ODR ([hearing.office@dc.gov](mailto:hearing.office@dc.gov))