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Confidential

Parent on Behalf of Student, ¹ Petitioner, v. District of Columbia Public Schools (Local Education Agency “LEA”) Respondent. Case # 2025-0032 Date Issued: June 6, 2025	HEARING OFFICER’S DETERMINATION Hearing Dates: May 19, 2025 May 20, 2025 Counsel for Each Party listed in Appendix A <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>
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¹ Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

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

BACKGROUND AND PROCEDURAL HISTORY:

The student who is the subject of this due process hearing (“the Student”) resides with the Student's parent in the District of Columbia. The District of Columbia Public Schools (“DCPS”) serves as the Student's local education agency (“LEA”). The Student has been determined eligible for special education under IDEA, classified with autism. The Student attends a DCPS school (“School A”) in its Communication and Educational Support (“CES”) program.

On February 13, 2025, the Student's mother (“Petitioner”) filed a due process complaint (“DPC”) alleging that DCPS (“Respondent”) denied the Student a free appropriate public education (“FAPE”) by (a) failing to provide the Student with an appropriate individualized educational program (“IEP”) and/or placement and location of services (“LOS”) for school year (“SY”) 2024-2025, (b) failing to fully implement the Student's IEP, and (c) failing to comprehensively evaluate the Student.

Petitioner seeks the following as relief: that DCPS be ordered to fund compensatory education.²

DCPS’s Response to the Complaint:

DCPS filed a response to the complaint on February 24, 2025. In its response, DCPS stated, *inter alia*, the following:

On December 7, 2023, the student was referred to DCPS Early Stages. In addition to the evaluation process and initial communications, the parent was provided with procedural safeguards along with other supportive contacts and information. The student was then scheduled for an initial evaluation in January 2024 to identify areas of concern for appropriate assessment. Unfortunately, the parent did not arrive with the student as scheduled for the evaluation.

A second initial evaluation appointment was scheduled for February 12, 2024. Evaluation was completed, and an eligibility meeting was scheduled for March 22, 2024. The Student was evaluated and screened for vision and audiology. As a result of the evaluation procedure and eligibility determination, the parent decided instead of accessing Strong Start, she would enroll the Student in DCPS. A school location had not yet been identified by March 25, 2025; however, Early Stages informed that it would investigate if there was an available seat for the Student. At the March meeting, the Student was determined eligible. The Student’s IEP placement was a full-time removed setting with speech-language, occupational therapy (“OT”), and OT consult. Parent

² Petitioner originally sought an order also directing DCPS to conduct requested evaluations. However, DCPS conducted the evaluations after the DPC was filed and before the due process hearing was held.

provided written consent for the initial provision of services on or about March 22, 2024. In March 2024, the parent indicated she would not be enrolling the Student during that school year.

By early August 2024, DCPS informed parent a location of service identification was in process for the SY 2024-2025. School A was identified. In January 2025, the Student was again placed in a full-time setting with the same items of service and support. DCPS asserts the Student has not been denied a FAPE; therefore, the request for relief is unwarranted, and the DPC should be dismissed with prejudice.

Resolution Meeting and Pre-Hearing Conference:

Petitioners and DCPS participated in a resolution meeting on February 27, 2025. The parties did not mutually agree to shorten the 30-day resolution period. The DPC was filed on February 13, 2025. The 45-day period began on March 15, 2025, and ends [and the Hearing Officer's Determination ("HOD") was originally due on April 29, 2025. DCPS counsel was not available on the hearing dates offered. Petitioner's counsel filed a motion to extend the HOD due date to account for the change in hearing dates requested. With the granting of the motion, the HOD was due on June 2, 2025. At the end of the hearing, DCPS moved for a continuance to allow for written closing arguments, which were submitted by May 29, 2025. The HOD is not due on June 6, 2025.

The undersigned impartial hearing officer ("IHO") conducted a pre-hearing conference and issued a pre-hearing order ("PHO") on March 17, 2025, stating, inter alia, the issues to be adjudicated.

ISSUES:

The issues adjudicated are:

1. Did DCPS deny the Student a FAPE by failing to provide the Student an appropriate IEP, placement, and/or LOS for SY 2023-2024 (March 22, 2024) and SY 2024-2025 (January 30, 2025)?
2. Did DCPS deny the Student a FAPE by failing to implement the Student's IEP during SY 2024-2025?
3. Did DCPS deny the Student a FAPE by failing to comprehensively evaluate or reevaluate the Student?

DUE PROCESS HEARING:

The Due Process Hearing was convened on May 19, 2025, and May 20, 2025. It was conducted via video teleconference on the Microsoft Teams platform.

RELEVANT EVIDENCE CONSIDERED:

The IHO considered the testimony of the witnesses, and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 32 and Respondent's Exhibits 1 through 49) that were

admitted into the record and are listed in Appendix 2.³ The witnesses testifying on behalf of each party are listed in Appendix B.⁴

SUMMARY OF DECISION:

DCPS held the burden of persuasion on issue #1 once Petitioner presented a prima facie case on that issue. DCPS did not sustain the burden of persuasion by a preponderance of the evidence on issue #1. Petitioner held the burden of persuasion on issues #2 and #3 and did not sustain the burden of persuasion by a preponderance of the evidence on those issues. The IHO ordered DCPS to convene an IEP meeting to review the evaluations and review and revise the Student's IEP as appropriate. The IHO also ordered DCPS to provide the Student compensatory education.

FINDINGS OF FACT: ⁵

1. The Student resides with the Student's parent in the District of Columbia. DCPS is the Student's LEA. The Student has been determined eligible for special education pursuant to IDEA with a disability classification of autism. The Student attends School A, where he/she began attending in December 2024 in School A's communication education support CES self-contained special education classroom. (Mother's testimony, Petitioner's Exhibit 28)
2. In April 2021, the Student was seen by a clinical psychologist at Children's National Medical Center ("CNMC") for initial developmental evaluation and diagnostic assessment and diagnosed with autism spectrum disorder ("ASD"). The psychologist concluded that based on the Student's delayed language profile, atypical social communication, and restricted and repetitive behavioral differences, he/she met the diagnostic criteria for ASD. The psychologist made the following recommendations: "weekly speech therapy should be pursued with treatment goals focusing on social foundations for language, especially eye contact, nonverbal gestures, and the coordination of the two to communicate with adults/peers in a social manner are strongly encouraged. Furthermore, speech intervention

³ Any item disclosed and not admitted or admitted for limited purposes was noted on the record and is noted in Appendix A.

⁴ The Petitioner presented four witnesses: (1) an independent board-certified behavior analyst ("BCBA") who testified as an expert witness, (2) Petitioner's education advocate who testified as an expert witness, (3) Petitioner, the Student's mother, and (4) Petitioner's attorney's administrative assistant. The Respondent presented six witnesses, all of whom testified as expert witnesses: (1) the School A special education coordinator and LEA representative, (2) the DCPS board-certified behavior analyst ("BCBA") coordinator (3) the Student's School A occupational therapist, (4) the Student's School A special education teacher, (5) the DCPS Early Stages center director, and (6) the Student's School A speech-language pathologist. The IHO found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the witnesses' testimony that the IHO identified are addressed in the conclusions of law.

⁵ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained. When citing an exhibit submitted by more than one party separately, the IHO may only cite one exhibit.

goals that support expressive language around daily routines and social interactions are suggested as well. Occupational/sensory-integration therapy goals that foster showing and sharing enjoyment of sensory experiences in an interpersonally motivated manner are suggested. Regarding the recommendation for ABA, it is suggested that intervention is provided both at home and in a structured setting where [the Student] is among similar-aged peers. This is likely to effectively provide opportunities to extinguish specific problem behaviors and, more importantly, encourage adaptive social communication skills across settings.” (Respondent’s Exhibit 4)

3. On July 31, 2023, OSSE’s DC early intervention program (“Strong Start”) conducted the following evaluations of the Student: the Battelle Developmental Inventory, 2nd Edition (BDI-2) and the Assessment Evaluation and Programming System (AEPS): BDI- 2 is a standardized assessment battery for children from birth through 7 years. AEPS is an evidence-based, authentic assessment conducted during everyday routines, to identify children at risk for developmental delays, assess the progress of children with disabilities and delays. The Student’s cognitive developmental quotient score of 61 fell in the Significantly Delayed range. Similarly, her/his social-emotional developmental quotient standard score of 62 fell in the Significantly Delayed range. (Respondent’s Exhibit 5)
4. The Student exhibited delays in communication, cognitive, and social-emotional development. As a result, Strong Start determined that the Student was eligible for services with a developmental delay and, on September 25, 2023, developed an individualized family services plan (“IFSP”) that included targeted outcomes and prescribed speech-language services and OT. Strong Start held a transition conference with Petitioner on December 7, 2023. (Respondent’s Exhibit 5)
5. Strong Start referred the Student to DCPS for determination of the Student’s eligibility for IDEA Part B special education services and on December 11, 2023, DCPS contacted Petitioner to start the eligibility process. On January 9, 2024, Petitioner provided DCPS consent to conduct initial evaluation(s). (Respondent’s Exhibits 22, 23, 24)
6. In February 2024, DCPS conducted an analysis of existing data (“AED”) meeting which included a review of the Student’s prior evaluations and reports from the IFSP services. DCPS noted the need to assess the Student’s adaptive daily living skills to assist in the eligibility determination. (Respondent’s Exhibit 26)
7. On February 12, 2024, a DCPS psychologist, speech-language therapist, occupational therapist, and an evaluation coordinator conducted an observational assessment of the Student and interviewed Petitioner. (Respondent’s Exhibit 27)
8. On March 15, 2024, DCPS prepared an evaluation summary report, and on March 22, 2024, found the Student eligible for special education services and developed the Student’s initial IEP. The IEP noted the following areas of concern and provided goals in these areas: communication/speech-language, cognitive, adaptive, and daily living skills, and motor skills/physical development. The IEP prescribed the following services: 25.5 hours of specialized instruction outside general education and the following related services also outside of general education: 2 hours per month each of speech-language pathology and

OT, along with 30 minutes per month of OT consultative services. (Petitioner's Exhibits 24, 25, 27)

9. In the area of adaptive and daily living the IEP noted the following per parent report in the present levels of performance ("PLOP"):

“[The Student] experiences distress when a transition from a preferred activity is anticipated. In response to an undesired transition, [the Student] was observed to whine and vocalize for an extended amount of time. For example, this behavior was seen when the forks [he/she] held in [her/his] hand were taken away. [The Student] was also not observed to consistently complete simple commands and was observed to require significant support (e.g., close proximity, increased volume in voice, and gestures) to complete simple directives. For example, when asked for a piece of [her/his] play dough and when the speaker was over a foot away, [the Student] did not respond or react to the request. However, when the same team member repeated this directive, increased the volume of his/her voice, and put her/his hand out, [the Student] completed the direction. However, per parent report, [the Student] requires substantial support to see a routine through to completion and complete directions. However, [the Student] appeared to be more responsive to simple commands when the speaker was in [the Student's] direct line of sight and in close proximity (e.g., within one foot). Furthermore, [the Student] is not completing routine tasks without significant support.” (Petitioner's Exhibit 25)

10. The IEP included the following goals in adaptive daily living to address the behavior concerns:

Measurable Annual Goal: [The Student] will demonstrate improved safety awareness by responding when an adult calls [the Student's] name or provides familiar instructions (e.g., "look," "wait," "come here," "stop,") without inappropriate behaviors (i.e., elopement from area; continuing to run when told to come here; continuing to engage in unsafe behavior when told to stop) across all environments by complying with the command, given no more than one repetition over 80 percent of opportunities across five consecutive school days

Measurable Annual Goal: Given an egg timer with a two-minute countdown, [the Student] will transition from one scheduled academic activity to the next scheduled academic activity (preferred or not) within 15 seconds of being given a signal or directive (e.g. a bell rung, or the teacher singing a transition song), without showing maladaptive behaviors (e.g. crying, arguing, throwing a tantrum, noncompliance), during 4 out of 5 consecutive opportunities. (Petitioner's Exhibit 25)

11. On March 22, 2024, DCPS issued a prior written notice ("PWN") stating that the Student was found eligible for special education services as a student with ASD. (Petitioner's Exhibit 26)
12. On March 22, 2024, Petitioner provided DCPS written consent for the Student to be provided special education services. However, the Respondent informed DCPS that she would not be enrolling the Student in DCPS. As a result, DCPS did not provide Petitioner a school location for the Student's IEP to be implemented during SY 2023-2024. (Respondent's Exhibits 15)

13. The Student continued to receive services pursuant to the IFSP, and on July 22, 2024, Petitioner participated in an IFSP meeting in which she agreed to terminate the Student's IFSP services effective August 25, 2024. Petitioner terminated the Student's Strong Start services in reliance on the representation from Early Stages that they would promptly identify an appropriate school to implement the Student's IEP. (Parent's testimony, Respondent's Exhibit 8)
14. On October 22, 2024, DCPS Early Stages sent Petitioner a letter indicating that School A could implement the Student's IEP, that a seat was available at School A for the Student, and instructing her to enroll the Student at School A within thirty days of the date of the letter. (Respondent's Exhibit 32)
15. Petitioner reached out to School A and sent the enrollment information immediately after receiving the letter. When the Petitioner had not heard back from School A by November 4, 2025, she sent an email to School A. School A responded on the same day, indicating that the Student could begin school the next school day. However, due to a scheduled surgery, the Petitioner could not transport the Student to school herself and agreed to a two-week delay for the Student to start. By November 20, 2025, School A had finalized the Student's transportation arrangements with OSSE for the Student to begin attending on December 2, 2025. The Student started attending School A on December 2, 2025. The Petitioner maintains that the Student experienced skill regression because of the delay in attending school after the IFSP services ended on August 25, 2025. (Mother's testimony, Petitioner's Exhibits 7, 8, 10)
16. On November 19, 2024, Petitioner's attorney formally requested evaluations from DCPS, including a psychological evaluation, speech-language evaluation, OT evaluation, functional behavioral assessment ("FBA"), and assistive technology ("AT"). (Witness 3's testimony, Petitioner's Exhibit 9)
17. School A worked to obtain parental consent for the requested evaluations and began collecting data on the Student as soon as the Student started in the CES classroom on December 2, 2024. The Student received integrated Applied Behavior Analyst ("ABA") services and sensory supports as part of the CES classroom procedures and curriculum. (Witness 4's testimony)
18. The School A CES classroom has seven students, one teacher, and two paraprofessionals, along with the assistance of an ABA therapist who consults with the classroom staff and assists periodically in the classroom. On average, the ABA therapist pushes into the Student's classroom at least twice per week for 45 minutes. DCPS does not include individual ABA services in a student's IEP because the ABA supports are integrated into the curriculum delivered by the CES classroom staff. (Witness 5's testimony, Witness 7's testimony)
19. When the Student first arrived at School A, she/he would cry for an extended time. The classroom staff allowed time for the Student to adjust, ensuring that the Student's behaviors were not merely a result of being new to the environment. The Student also began to display

aggression by hitting, biting and scratching others. The ABA therapist suggested strategies to the Student's classroom teacher to address these behaviors. (Witness 5's testimony)

20. The Student's behaviors difficulties continued for an extended period, but with the ABA strategies, coupled with the teacher's own strategies, the Student's behaviors decreased and eventually subsided by February 2025. The Student's teacher thought that was a reasonable time for the Student to adjust to the classroom and develop trust for the classroom staff and service providers, and for them to get to know the Student. (Witness 5's testimony, Witness 7's testimony,)
21. On January 30, 2025, DCPS convened an IEP meeting and updated the Student's IEP to include additional goals. The team discussed the requested evaluations. (Witness 2's testimony, Petitioner's Exhibit 28)
22. In addition to the adaptive and daily living goal in the previous IEP to address the Student's difficulty with transitions, the IEP team included goals in the for emotional, social and behavioral development ("SEBD"). The SEBD PLOP stated the following:

"[The Student] continues to demonstrate deficits in his/her emotional, social and behavioral development needs. The data indicates that she continues to require specialized instructions. [The Student] presents with deficits in the social, emotional and behavioral development that adversely affect [the Student's] educational performance. [The Student's] strength in this area lies in [the Student's] ability to arrive to the classroom with mild to moderate levels of support, walking to the bathroom while accompanied by an adult, and taking part in the bathroom routine while assisted by an adult. [The Student] was observed initiating play with a peer by trying to join him on a bouncy ball. [The Student] was also observed running behind a peer while laughing. [The Student] has indicated that [the Student] can sit in a large or small group for 5 - 7 minutes before demonstrating agitation, or before leaving the group without permission. Challenges: The student often demonstrates agitation that may include, loud crying, hitting, biting and scratching. [the Student] experiences difficulty with soothing his/herself and may require intense support to adjust [the Student's] behavior." (Petitioner's Exhibit 28)

23. The IEP included the following SEBD goals to be addressed by the classroom staff with the assistance of the School A ABA therapist:

Measurable Annual Goal: Within one year, while using a total communication approach, given a visual of (2) preferred strategies to self-regulate (e.g., holding a stuffed animal, using a fidget toy, taking deep breaths), the self-regulation tools, and verbal prompts to engage in (1) of the preferred strategies to self-regulate (e.g., "Choose (1) strategy and show me how to use it to calm yourself."), [the Student] will choose (1) strategy to demonstrate, for (4 out of 5) opportunities, as measured in 5 consecutive school days of accuracy.

Measurable Annual Goal: Within one year, using a total communication approach, when given (2) picture cards displaying facial expressions that express familiar emotions (e.g., happy, sad, mad) and a verbal prompt to identify a specific emotion (e.g., "Point to the person with the happy face."), [the Student] will point to the picture card of the person

displaying the specified emotion, for (4 out of 5) opportunities, as measured by 5 consecutive school days of accuracy. (Witness 5's testimony, Witness 7's testimony, Respondent's Exhibit 28)

24. After the Petitioner's DPC was filed, DCPS agreed to conduct the following evaluations: psychological evaluation, speech-language pathology evaluation, occupational therapy evaluation, functional behavioral assessment, and an assistive technology evaluation, and developed a safety plan for the Student. (Petitioner's Exhibits 15 through 23)
25. The Petitioner's educational advocate developed a compensatory education plan to compensate the Student for the alleged denials of FAPE, including the lack of specialized instruction and related services from the beginning of SY 2024-2025 until the Student began attending School A on December 2, 2024. Additionally, the proposal included compensation for the alleged failure to provide BSS services in the Student's IEPs and the alleged failure to conduct evaluations in a timely manner. The advocate asserted that, but for the alleged denials, the Student would not have experienced regression and would have transitioned to School A more effectively and sooner. She initially requested 250 hours of tutoring, which she reduced to 200 hours, and 25 hours each for speech-language pathology and OT, which she then reduced to 20 hours each. The advocate had not observed the Student in any classroom or consulted with the Student's teachers or service providers outside of the IEP meetings. (Witness 2, Petitioner's Exhibit 32)

CONCLUSIONS OF LAW:

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

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

34 C.F.R. § 300.17 provides:

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

Pursuant to 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). DCPS held the burden of persuasion on issue #1 once Petitioner presented a prima facie case on that issue. Petitioner held the burden of

persuasion on issues # 2 and #3.⁶ The burden of persuasion shall be met by a preponderance of the evidence. The normal standard is a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Did DCPS deny the Student a FAPE by failing to provide the Student an appropriate IEP, placement, and/or LOS for SY 2023-2024 and SY 2024-2025?

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

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

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

⁶ DC Code § 38-2571.03 (6) provides:

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

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

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

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

Charles H., 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

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

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

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

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

Petitioner alleged that both the Student's initial IEP dated March 22, 2024, and the IEP developed and School A on January 30, 2025, were inappropriate because they did not include "formal behavioral supports."

The evidence demonstrated that when the Student's initial IEP was developed, it noted, based on the parent's report, that the Student had difficulty with transitions and tended to whine and vocalize for an extended period. In response to this concern, the IEP team included adaptive and daily living goals that addressed the Student's difficulties with transitions. There was no evidence

presented indicating that the Student displayed aggressive behaviors at the time the initial IEP was developed that would have warranted the inclusion of ESBG goals or supported the requirement for formal behavioral support services.

Petitioner presented an expert witness who was a certified behavior analyst. She reviewed the Student's evaluations and records, testifying that DCPS should have included behavior support services ("BSS") in the IEPs and conducted a functional behavior assessment ("FBA"). However, this witness had neither met the student nor communicated with the Student's parents, teachers, or service providers. She opined that, based on the Student's behavior difficulties noted in the records and the IEP, DCPS should have prescribed BSS in the IEP and conducted an FBA by January 2025. Although she claimed to be familiar with the CES classroom structure in DCPS, she had never observed a DCPS CES classroom or conferred with the Student's teacher or service providers to understand how the Student's behaviors were being addressed.

Her testimony was effectively countered by the DCPS witnesses who testified credibly and convincingly about how the Student's behaviors were being addressed through consultation between the ABA therapist, the classroom teacher, and teacher assistants. The evidence indicates that although the Student engaged in behaviors such as crying, screaming, and aggression—including biting—most of the day after his/her arrival at School A on December 2, 2025, those behaviors began to gradually subside as the Student became more trusting of the School A staff and more acclimated to the CES classroom and routines.

By January 2025, School A convened an IEP meeting where the Student's behaviors were addressed more formally in the Student's IEP, including SEBD PLOPS and goals implemented and measured by the CES classroom staff with assistance from the ABA therapist.

The IHO infers from Petitioner's assertion that there was no formal BSS in the IEPs, that the Petitioner is referring to BSS as a related service to be provided by a related service provider, such as a DCPS social worker. However, such an assertion pertains to service methodology, which is generally the purview of the LEA.⁷ DCPS has designed the CES classroom, particularly for the Student's tender age, to ensure that the SEBD goals are appropriately and effectively addressed in the classroom by the teacher and classroom staff with the consultation of the ABA therapist.

The evidence demonstrates that by February 2025, with this methodology, the Student's behavior difficulties subsided significantly. Based upon the evidence the IHO concludes that DCPS met the burden by the preponderance of the evidence that the Student's initial IEP and the January 30, 2025, IEP, along with the placement and location of services at School A, were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

⁷ As the Court points out in *R.B. vs. the District of Columbia* 75 IDELR 102 (September 30, 2019) "Plaintiffs' additional concerns go to the methodology of special education instruction at [Public School] but the methodology to be employed in the future execution of an IEP is not a question for courts to decide. As the Supreme Court stated in *Rowley*, "courts must be careful to avoid imposing their view of preferable educational methods upon the States." 458 U.S. at 207. "The primary responsibility for formulating the education to be accorded ... and for choosing the educational method most suitable to the child's needs, was left by [IDEA] to state and local education agencies in cooperation with the parents or guardian of the child." *Id.* "Therefore, once a court determines that the requirements of the Act have been met, questions of methodologies are for resolution by the States." *Id.* at 208."

ISSUE 2: Did DCPS deny the Student a FAPE by failing to implement the Student’s IEP during SY 2024-2025?

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence that DCPS failed to implement the Student’s IEP from the start of SY 2024-2025 to December 2, 2025, when the Student began attending School A.

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

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

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

Petitioner initially asserted that the Student did not receive any special education and related services from DCPS during the period between the development of her/his initial IEP on March 22, 2024, and December 2, 2024, which was his/her first day of school at School A. However, at the beginning of the hearing, Petitioner’s counsel withdrew any claim concerning SY 2023-2024 and now seeks compensation only for the services the Student missed from the start of SY 2024-2025 through December 2, 2025. Petitioner claims that during this period, the Student was entitled to 25.5 hours per week of specialized instruction outside of general education; 2 hours per month

of speech-language pathology; 2 hours per month of direct OT; and 30 minutes per month of OT consultation.

The evidence clearly demonstrates that on July 22, 2024, Petitioner informed DCPS the Student's ISFP services would terminate on August 25, 2025. This was sufficient prior notice for DCPS to have identified and provided an appropriate school assignment for the Student by the start of SY 2024-2025. However, an appropriate placement was not identified until October 22, 2025. Petitioner immediately attempted to enroll the Student, but there was a two-week delay in the enrollment being finalized, and the Student did not begin attending School A until December 2, 2025.

Although it seems that Petitioner chose to delay the Student's start to school for two weeks due to surgery and her inability to transport the Student herself, this delay is minor compared to the overall delay in the Student receiving services after the IFSP services ended. Consequently, due to DCPS's delay, the Student missed nearly three months of specialized instruction and related services, which is significant and far from de minimis. Petitioner met the burden of persuasion by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to implement the Student's IEP from the start of SY 2024-2025 to December 2, 2025.

ISSUE 3: Did DCPS deny the Student a FAPE by failing to comprehensively evaluate or reevaluate the Student?

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to comprehensively evaluate or reevaluate the Student.

Pursuant to 34 C.F.R. § 300.304 (c) a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that "a full and individual evaluation is conducted for each child being considered for special education and related services." The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5A § 3006.7(a).

All areas "related to the suspected disability" should be assessed, including academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5A § 3006.7(f).

34 C.F.R. § 300.303 provides:

- (a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with Sec. Sec. 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--
- (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.

34 C.F.R. § 300.303(a) makes it clear that "A local education agency ("LEA") *shall ensure* that a reevaluation of each child with a disability is conducted...if the child's parents or teacher requests a reevaluation." and that the reevaluation must be conducted at least once every three years.

Students are also entitled to a reevaluation of their disability upon a parental request, provided that no reevaluation occurs "more frequently than once a year," though a requested reevaluation must occur "at least once every 3 years." 34 C.F.R. § 300.303(a)(2); see *Cartwright v. Dist. of Columbia*, 267 F. Supp. 2d 83, 87 (D.D.C. 2003) ("DCPS' failure to comply with [the parent's] request clearly violates the language of [34 C.F.R. § 300.303].").

34 C.F.R. §300. 324 (a) (2) provides: The IEP Team must— (i) In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior.

Functional Behavior Assessment or "FBA" refers to a systematic set of strategies used to determine the underlying function or purpose of a behavior so that an effective behavior management plan can be developed. See *Banks v. St. James Par. Sch. Bd.*, No. 2:65-CV-16173, 2017 WL 2554472 (E.D.La. Jan. 30, 2017) See, also, Department of Education, Assistance to States for the Education of Children with Disabilities, 71 Fed. Reg. 46540, 46643 (August 14, 2006). (If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted.) An LEA's failure to complete an FBA and develop a Behavior Intervention Plan, when warranted, will constitute a denial of a FAPE. See, e.g., *Long v. District of Columbia*, 780 F.Supp.2d 49, 61 (D.D.C.2011).

While an FBA is the "primary way" for an LEA to "consider the use of positive behavioral interventions and supports," it is not the only way. *Simms v. Dist. of Columbia*, No. 17-CV-970 (JDB/GMH), 2018 WL 4761625, at *14 (D.D.C. July 26, 2018), report and recommendation adopted, No. CV 17970 (JDB)(GMH), 2018 WL 5044245 (D.D.C. Sept. 28, 2018)

IDEA does not mandate that an FBA be conducted and/or a BIP be developed except in the provisions related to disciplinary actions pursuant to 34 C.F.R. 300.530 et. seq. Those provisions do not apply to this case.

The evidence demonstrates that through counsel, Petitioner requested that DCPS conduct evaluations of the Student on November 19, 2025. The Student did not begin attending School A until December 2, 2025. Given the winter break, it was reasonable for School A teachers and service providers to spend time engaging with the Student to assess his/her skill levels prior conducting the requested formal evaluations.

On January 30, 2025, the IEP team met and at which the team reviewed the Student’s progress and

noted the Student's behavior difficulties with transitioning in the Student's IEP. The evidence indicates that Petitioner renewed her request for evaluations at the IEP meeting. On February 13, 2025, Petitioner filed her DPC. However, this short period between the IEP meeting and when Petitioner filed her DPC was not a reasonable period in which DCPS could have conducted the requested evaluations. Based upon representations of both parties, DCPS completed these evaluations and discussed them in a meeting on May 15, 2025. The IHO concludes that, based upon these facts, there was insufficient evidence presented that DCPS engaged in a procedural violation of failing to conduct the requested evaluations prior to the DPC being filed. As a result, the IHO in the order below dismisses Petitioner's allegation of failure to timely evaluate the Student with prejudice.

Remedy:

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

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

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

The Petitioner requested the compensatory education outlined in her educational advocate's proposal. Based on her testimony and expert recommendation, there was sufficient evidence that the amount of services requested was reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.

ORDER: ⁸

1. DCPS shall, within ten (10) business days of the issuance of this order, if it has not already done so, convene an IEP meeting to review the Student's recent evaluations and review and revise the Student's IEP as appropriate.
2. DCPS shall, within ten (20) business days of the issuance of this order, provide Petitioner authorization to obtain the following in compensatory services: 200 hours of independent tutoring and 20 hours each of independent speech-language pathology and OT.
3. Petitioner's allegations of inappropriate IEP/placement/LOS for SY 2023-2024 and SY 2024-2025, and failure to timely conduct evaluation(s) of the Student are hereby dismissed with prejudice.
4. All other relief requested by the Petitioner is denied.

APPEAL PROCESS:

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

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Impartial Hearing Officer
Date: June 6, 2025

Copies to: Counsel for Petitioner
 Counsel for LEA
 ODR hearing.office@dc.gov

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