

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

**Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
June 30, 2025

Confidential

Parent on behalf of Student,¹)	Case Nos. 2025-0042
)	
Petitioner)	Hearing Dates: June 9 and 12, 2025
)	
v.)	Conducted by Video Conference
)	
District of Columbia Public Schools,)	Date Issued: June 30, 2025
)	
Respondent)	Terry Michael Banks,
)	Hearing Officer

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioner is the parent of an X-year-old student (“Student”) attending School A. On February 28, 2025, Petitioner filed a due process complaint notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) denied Student a free appropriate public education (“FAPE”) by failing to implement Student’s IEP and failing to provide an appropriate Individualized Education Program (“IEP”) and placement. On March 4, 2025, DCPS filed *District of Columbia Public Schools’ Response to Administrative Due Process Complaint* (“*Response*”), denying that it had denied Student a FAPE in any way. On March 18, 2025, DCPS filed *District of Columbia Public Schools’ Supplemental Response to Administrative Due Process Complaint* (“*Supplemental Response*”), denying that it had denied Student a FAPE in any way.

SUBJECT MATTER JURISDICTION

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. Section

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

1400 *et seq.*, its regulations, 34 C.F.R. Section 300 *et seq.*, Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-A, Chapter 30.

PROCEDURAL HISTORY

On February 28, 2025, Petitioner filed her *Complaint* alleging that DCPS (1) failed to provide an appropriate IEP and placement for the 2024-25 school year, (2) failed to implement Student's IEP by failing to provide a dedicated aide consistently, failing timely to introduce IEP goals to Student, (3) failing to provide all of the related services prescribed on the IEP, and (4) failed to provide Student consistent access to her/his augmentative and alternative communication ("AAC") device. For relief, Petitioner requested, *inter alia*, (1) an order requiring DCPS to identify and/or fund an appropriate placement for Student including a placement with dedicated medical supports or a non-public placement, (2) an order requiring DCPS to convene a multidisciplinary team ("MDT") meeting to revise Student's Behavior Intervention Plan ("BIP") to include appropriate replacement behaviors, (3) an order requiring DCPS to convene a an IEP meeting to update Student's IEP to account for the new placement and to include appropriately ambitious goals, (4) compensatory education including transportation, and 5) attorneys' fees. On March 4, 2025, DCPS filed its *Response* to the *Complaint* in which it refuted allegations in the *Complaint*. On March 18, 2025, DCPS filed a *Supplemental Response* denying that it had denied Student a FAPE. DCPS asserted, *inter alia*, that (1) since July 2024, the student has been placed in a full-time program in the Communication Education Support ("CES") classroom at School A, (2) Although Student's most recent progress report indicated that a high-tech AAC device had been determined to be inappropriate for Student, s/he uses other AAC devices for his/her communication, (3) Student has received specialized instruction, behavioral support, and occupational therapy ("OT") support using a keyboard for his/her academic goals and communication, (4) DCPS denied that it had failed to provide any prescribed services to any material degree, and (5) DCPS has assigned a consistent and trained dedicated aide for Student.

The parties conducted a resolution meeting on March 13, 2025 that did not result in a settlement. A prehearing conference in this case took place by video conference on April 10, 2025 and the *Prehearing Order* was issued that day.

The due process hearing was conducted on June 9 and 12, 2025 by video conference facilities. The hearing was open to the public at Petitioner's request. Petitioner filed Five-day Disclosures on June 2, 2025, containing a witness list of four witnesses and 29 documents. On June 5, 2025, DCPS filed objections to Petitioner's disclosures. DCPS objected to the expert designations of Witness A and Witness B on grounds of their professional qualifications. DCPS also objected to Petitioner's Exhibits P18-20, P28 and P 29 on grounds of lack of foundation. Petitioner's Exhibits P1-P29 were admitted into evidence.

Respondent also filed Disclosures dated June 2, 2025 containing a witness list of ten witnesses and 56 documents. Petitioner filed objections to DCPS' disclosures on June 5, 2025. Petitioner objected to R4 and R5 on grounds of authenticity and foundation and R14-17 on grounds of relevance as they related to services provided during the 2023-24 school year. Respondent's Exhibits R1-R14 and R18-R53 were admitted into evidence.

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

ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on July 30, 2024. Specifically, Petitioner asserts that the goals in the IEP significantly exceeded Student's documented skills and readiness and were too ambitious enough given her/his present levels of performance. Petitioner also asserts that the IEP did not address Student's need for medical support during the school day as s/he was fed through a G-tube and was not toilet-trained.
2. Whether School A was an appropriate placement for Student for the 2024-25 school year. Specifically, Petitioner asserts that School A was incapable of supporting Student's need to be fed through a G-tube for toileting assistance. She also asserts that School did not employ a speech therapist.
3. Whether DCPS denied Student a FAPE by failing to implement Student's IEP during the 2024-25 school year. Specifically, Petitioner asserts that DCPS failed to (a) provide Student a dedicated aide on a consistent basis including weeks-long interruptions of service among the four dedicated aides assigned to [her/him], (b) introduce goals timely due to staffing issues; the math goal was not introduced until February 2025, (c) provide 150 minutes of OT services, 400 minutes of speech-language pathology ("SLP"), 500 minutes of behavioral support services ("BSS"), (d) provide and document the 150 minutes each of consultative speech services and consultative BSS, and (e) provide Student consistent access to his/her assistive technology ("A/T") device.
4. Whether DCPS denied Student a FAPE by failing to develop an appropriate behavior intervention plan ("BIP") on July 30, 2024. Specifically, Petitioner asserts that the BIP did not identify appropriate replacement behaviors.

FINDINGS OF FACT²

1. Student is an X-year-old student who was in grade L at School A during the 2024-25 school year and was eligible for special education services with a classification of Autism (“ASD”).³

2. On May 30, 2024, when Student was in grade B at School A, DCPS completed an Occupational Therapy Re-evaluation of Student to determine her/his current skills in fine motor, visual motor, handwriting and sensory processing skills.⁴ Examiner A reported that Student had been in a self-contained classroom for all of his/her schooling. S/he did not eat or drink orally; s/he was fed by a gastrostomy tube (“G-tube”) that was placed in July 0f 2023 for a condition that developed in May of that year.⁵ According to Teacher A, his/her teacher, Student was unable to write his/her name; s/he could not recall or know how to form the letters of his/her name. Due to inattention, Student was unable to trace the letters of his/her name. Student struggled with grasping pencils properly and cutting shapes. S/he is not potty trained, but s/he could dress, undress, and change his/her diaper. Student required step-by-step verbal prompts to complete steps in tasks. S/he had an AAC device, but it was broken and s/he disliked using it. Teacher B, another of Student’s teachers, reported that s/he produced minimal work, required “a lot of prompting” to hold a pencil or to engage in tasks. When typing, an adult must point to the letter for her/him to type.⁶ Due to Student’s inability to focus on testing tasks, formal assessment were not completed. Due to teachers’ concerns about Student’s sensory skills, Examiner A conducted a Sensory Processing Measure (“SPM-2”), but due to Student’s lack of consistent cooperation, Examiner A indicated that the results should be viewed with caution.⁷

The SPM-2 involved questionnaires completed by Teacher A and Teacher B. Teacher B’s responses yielded Definite Dysfunction range scores in Social Participation (T-Score = 78), Vision (ability to process and interpret visual input – 70), Touch (80), Body Awareness (73), Planning and Ideas (72), and Total Sensory Systems (70). Teacher A’s responses yielded Definite Dysfunction range scores in Social Participation (78), Vision (76), and Planning and Ideas (66). Teacher A’s Total Sensory System score of 66 was in the Some Problems range.⁸ In Fine Motor Skills, Student demonstrated the ability to use both hands to string five blocked beads and use a pincer pinch to manipulate the string, to manipulate coins from the table using a three-jaw chuck pinch, but struggled with transferring coins from palm of hand to tips of fingers. S/he demonstrated the ability to shift cards and to remove the cap of marker but evinced weak writing pressure.⁹ Student did not cooperate in a test of Ocular Motor Skills. In a test of Visual Motor Integration, Student was able to copy a circle, a triangle, and a square on the table using a marker with 70% accuracy and was able to cut 2” lines with less than 5/16” deviation on 4/4 attempts. In a test of

² The Findings of Fact includes all of the oral and written evidence that I considered material in rendering the decision in this matter. The quotations of oral testimony are from my notes during the hearing, not the transcript.

³ Petitioner’s Exhibit (“P:”) 17 at page 276. The exhibit number is followed by the electronic page number, e.g. P17:276. P12;1 (149).

⁴ P7:85.

⁵ *Id.* at 86.

⁶ *Id.* at 87.

⁷ *Id.* at 89.

⁸ *Id.* at 89-90.

⁹ *Id.* at 92.

Visual Perceptual Skills, Student completed a 24-piece jigsaw puzzle with moderate-maximum assistance.¹⁰ In Handwriting Skills, in an exercise of writing her/his name, Student required assistance to form letters of his/her name one at a time for her/him to copy onto the paper. Student copied the uppercase letters of her/his first and last name with 70% accuracy. S/he struggled with formation. In Sensory Processing Skills, Student struggled with attending to tasks. S/he sought tactile input, such as wiping her/his saliva or wiping the table. S/he preferred writing on the table with the marker instead of writing on the paper and required frequent breaks.¹¹ In Activities of Daily Living, Student could remove his/her coat and backpack and place them in the locker and unzip his/her backpack. Occasionally, s/he struggled with zipping her/his pants and was unable to tie her/his shoelaces. However, s/he was able to put on and take off her/his shoes, put on her/his jacket and zip up her/his coat, but was unable to button it. Student was able to take her/his clothing off and put them clothes back on. S/he was able to change her/his diaper with minimal physical assistance and minimal prompts.¹²

Examiner A concluded that “[Student’s] difficulty with sensory processing impacts [his/her] ability to be available, attend to classroom instruction, and engage in classroom tasks. [His/her] difficulty with fine motor and visual motor skills also impact [his/her] ability to participate in classroom activities.”¹³

3. On June 9, 2024, DCPS completed a Psychoeducational Evaluation of Student to assess her/his academic, behavioral, and adaptive functioning. At that time, Student was receiving 27.5 hours per week of specialized instruction outside general education, two hours per month each of SLP and OT services outside general education, and 30 minutes per month of behavioral consultation services.¹⁴ Petitioner reported to Examiner D that Student had Eosinophilic Esophagitis (“EoE”), which required him/her to be fed through a G-tube.¹⁵ Teacher A reported that Student’s inattention caused him/her to take additional time to attend to academic tasks and to complete tasks. Teacher A found it difficult at times to assess what Student actually knows.

There have been moments where s/he has randomly shown that [s/he] can identify words but would not be able to successfully demonstrate the same accuracy until a month or two months later. [Student] has been able to identify some letters of the alphabet (depending on the modality used). [Student] has made significant gains especially when responding to directives from adults. For example, [s/he] used to act out when [s/he] was told “no.” [S/he] has been more compliant without reacting physically when given directives since the start of the school year. [His/her] social gains have exceeded [his/her] academic gains. When navigating through the hallway, [s/he] doesn’t require the consistent level of hand holding and [her/his] tendencies to run off into classrooms has decreased. [S/he] still will hit but it is not as frequent. [Student] follows commands much better and calms [her/his] body down much easier when it is demonstrated by someone (e.g., putting [her/his] hands together). [Student] also has learned how to wave goodbye appropriately in

¹⁰ *Id.* at 92-93.

¹¹ *Id.* at 93-94.

¹² *Id.* at 94-95.

¹³ *Id.* at 95.

¹⁴ P8:98.

¹⁵ *Id.* at 99.

comparison to when [s/he] arrived to [School A] at the start of the school year. [His/her] vocalization has also increased (e.g., saying good morning).¹⁶

Student gave variable effort during the evaluation, leading Examiner D to conclude “that [her/his] cognitive and achievement batteries may not be the indicators of [her/his] current level of cognitive and academic functioning.”¹⁷ On the Test of Nonverbal Intelligence (“TONI-4”), Student either pointed to multiple picture options for his/her answers or was non-responsive. Thus, no standard scores were obtained. On the Woodcock Johnson Tests of Achievement (“WJ-IV”), Student was again unable to reach baseline level on any subtest due to “severe deficits in expressive and receptive language, under-developed visual spatial perception, and fluctuating attention.”¹⁸ On the Vineland Adaptive Behavior Scales (“Vineland-3”), Teacher A and Teacher B completed rating scales. Their responses placed Student in the <1 percentile in every measured category: Communication, Daily Living Skills, Socialization, and Adaptive Behavior Composite.¹⁹ They also completed rating scales on the Behavior Assessment Scale for Children (“BASC-3”). Both teachers’ scores rated Student in the Clinically Significant range in Atypicality, Withdrawal, on the Behavioral Symptoms Index, Social Skills, Leadership, Functional Communication, and Adaptive Skills Composite. On Study Skills, Teacher A rated him/her Clinically Significant while Teacher B’s rating was At Risk. Both teachers’ scores rated her/him At-Risk in Hyperactivity, Aggression, Conduct Problems, Externalizing Problems Composite, Learning Problems, School Problems, and Adaptability.²⁰ On the Autism Spectrum Rating Scale (“ASRS”), Teacher A’s total rating score placed Student in the Elevated range while Teacher B’s placed her/him in the Very Elevated range.²¹

Examiner D discussed the IDEA criteria for classification of a student with ASD and concluded that Student continued to qualify under this classification.²² Examiner D provided thirteen specific recommendations including that s/he

... [r]equires a highly structured educational program with an emphasis on the systematic presentation of materials, with a small class size and a student-teacher ratio which permits considerable personalized attention. A 1:1 or small group instruction similar to [his/her] current format will be required because of [his/her] difficulties with attention for adult-directed tasks and with understanding and following instructions, as well as the need for behavioral supervision.

[Student] would benefit from a multi-sensory approach to learning and a classroom where there are opportunities to learn and demonstrate [her/his] knowledge through a variety of media, which involves presenting information through as many sense modalities as possible (i.e., music, art, toys, play, electronics, etc.).²³

¹⁶ *Id.* at 103.

¹⁷ *Id.* at 104.

¹⁸ *Id.* at 105.

¹⁹ *Id.* at 106.

²⁰ *Id.* at 107.

²¹ *Id.* at 110.

²² *Id.* at 114-16.

²³ *Id.* at 116.

Examiner D’s recommendations also included continued OT and SLP services and frequent interaction with “typically developing peers.”²⁴

4. On July 11, 2024, DCPS issued a Prior Written Notice (“PWN”) indicating that it had conducted an eligibility meeting and determined that Student remained eligible for services with a classification of ASD. The PWN revealed that Petitioner and Attorney A disagreed with ASD being the only listed disability; they requested a Multiple Disabilities (“MD”) classification including Other Health Impairment (“OHI”) “to capture [her/his] health issues.”²⁵

5. On June 18, 2024, DCPS completed a Speech and Language Evaluation of Student. to measure Student’s current levels of performance, strengths, and needs in the areas of articulation, expressive and receptive language, pragmatic language, voice, and fluency. Petitioner reported that Student first received speech and language therapy in 2015 in Georgia.²⁶ Teacher A and Teacher B reported that Student’s language skills negatively impacted her/his educational progress and social interactions. Both teachers reported that s/he often made sound errors when speaking in single words and that it was often difficult to understand when s/he spoke. Student could follow oral directions and exhibit understanding of simple story meanings. S/he benefitted from repetition of directions, visual models, and direct assistance. Student responded when his/her name was called, but s/he required significant support to engage with other students and adults.²⁷ Examiner B advised that the results of the testing should be viewed with caution due to a number of behavioral outbursts over the course of the week of testing:

[Student] became significantly agitated towards the end of testing and behaviors required assistance from the dedicated aide as well as the SLP to maintain the safety of all present. During the session, [Student] displayed severe behavioral challenges. At one point, [s/he] forcefully threw the stimulus book and attempted to grab and throw a chair. The SLP intervened to prevent further escalation, but [Student] then attempted to strike the SLP. The aide prevented [her/him] from hitting the SLP, assisting with “safe hands” together. The adults managed [her/his] aggressive movements as [s/he] screamed, kicked, and flailed. It took approximately seven minutes for [Student] to calm down, during which the SLP supported [her/him] in using language to communicate effectively when [s/he] no longer wanted to continue with a non-preferred activity or if the activity had become too challenging. Following the incident, the SLP addressed the student's behavior, explaining why it was inappropriate and hurtful. [Student] acknowledged understanding with a verbal “yes” when prompted. Similar outbursts occurred twice more, including throwing the stimulus book and climbing onto unsafe surfaces, despite no clear triggers being evident for such extreme agitation and aggression.²⁸

Student’s articulation was measured on the Goldman-Fristoe Test of Articulation (“GFTA-3”). On the Sounds-in-Words subtest, which evaluates articulation skills when labeling single

²⁴ *Id.* at 117.

²⁵ R34:336.

²⁶ p9:119.

²⁷ *Id.* at 120.

²⁸ *Id.* at 122.

words, Student scored in the <0.1 percentile and 2:0-2:1 age equivalent.²⁹ Examiner B concluded that “[Student] is a nonverbal communicator and would further benefit from resuming use of AAC to enhance [her/his] communication.”³⁰ Student’s receptive and expressive vocabulary could not be tested due to his/her being nonverbal, “with no spontaneous speech being observed in the school setting save unintelligible vocalizations when [s/he] becomes upset/agitated and occasional echolalia.”³¹

The Functional Communication Profile was administered to assess Student’s communication regardless of the form (sign, nonverbal, AAC, etc.). Student’s vision and hearing were within normal limits, and eye contact was fair. Regarding his/her attention, Student intermittently exhibited object preoccupation, fluctuating distractibility, and his/her alertness was reported as adequate to selective with a mixed response rate time, best receptively. Student also exhibited limited environmental awareness. In terms of receptive language, Petitioner reported that Student had a poor understanding of basic concepts, but had an understanding of similarities/differences of objects, recognition of body parts, sizes, shapes, prepositions, and quantities. S/he responded to her/his name when called, though inconsistently. S/he followed routine commands with increased prompting and gestures. Repetition of commands increased his/her follow through as well as verbal and visual cues/modeling. Student responded to nonverbal cues such as gestures and intonation changes. In terms of expressive language, Student “currently does not show a consistent form of communication to express [her/his] wants, needs, and desires... [Student] will now verbalize, when prompted, [his/her] emotions, particularly when [s/he] is ‘mad.’ These attempts however remain limited and at times are vague and must be interpreted loosely, depending on the context.”³²

Examiner B concluded that Student’s “communication is severely limited, affecting both academic progress and social interactions. Despite improvements noted in speech production and some responsiveness to prompts and modeling, {Student} remains predominantly nonverbal and requires extensive support to communicate [her/his] needs effectively.” He recommended, *inter alia*, the use of AAC devices, consistent routines and visual schedules, visual aids, breaking down tasks into smaller steps, and the implementation of a BIP “with specific strategies for managing [Student’s] behaviors in the classroom, such as using positive reinforcement, offering breaks, and providing sensory tools.”³³

6. On July 23, 2024, DCPS completed a Functional Behavior Assessment of Student.³⁴ The concerning behaviors included running out of the classroom, throwing objects, hitting staff members, spitting, jumping on furniture, and flipping furniture over. Antecedents of the behaviors are not being near a staff member, other students receiving attention, transitions, and when s/he must go to the nurse during lunch. Interventions that have been attempted include talking to him/her a calm voice, providing sensory items, allowing him/her to have structured walks with a staff member, providing a choice board, consistent requests/phrasing, positive praise, and

²⁹ *Id.* at 124.

³⁰ *Id.* at 124-25.

³¹ *Id.* at 126.

³² *Id.* at 126-28.

³³ *Id.* at 128-29.

³⁴ P10:132.

attention from staff. Student can complete his/her work when s/he is in proximity staff.³⁵ Examiner C reached the following conclusions:

In summary, [Student] is a student who has had challenges with elopement and being physically aggressive. The function of student's behavior is a means to gain attention from adults as also reported by staff. The functional assessment screening questionnaires completed by staff indicated that access to a specific activity /item and attention have a bearing on this frequency and occurrence of elopement. While escape serves as the primary function for the frequency and occurrence of physical aggression and access to specific activity/item serve as the secondary function. Based on the classroom observations, the student did not have significant challenges with eloping and physical aggression, however the observations took place during Extended School Year and thus may not present a true picture of the student's behavioral challenges mentioned in the previous school year. It should be noted that ESY instruction is only half a day of instruction and Monday through Thursday.³⁶

7. On July 30, 2024, School A developed a BIP. The Targeted Behaviors were Elopement and Physical Aggression. The antecedents to the behaviors were not being in proximity to a staff member, other students receiving attention, transitions, and her/his having to go to the nurse's office during lunch. The Replacement Behavior for Elopement was "Student will appropriately respond to adult directives and rules with consistent verbal prompts, and for Physical Aggression, "Student will display self-control and a regulated mood with minimal loss of self-control." The conditions needed to facilitate the Replacement Behaviors were as follows.

The academic environment should be calm, structured and supportive. Preferred interests should be integrated into learning materials such as drawing, scheduled/movement break with staff, sensory tactile activities, and positive praise. Placement of student's seat next to the teacher's desk should be considered. Create an environment that allows for breaks and sensory items when student feels overstimulated.

The recommended incentives included (1) providing public recognition for work, high fives, verbal praise, and smiles when on task, (2) movement activity, (3) using sensory items like Legos or peg toys, (4) ripping paper, bouncing a ball, (5) providing clear, concise, and consistent rules and expectations. The Reactive Strategy for Elopement was to allow Student to take a break, use sensory fidgets, and spending time with preferred support person. For Physical Aggression, the strategy was to impose pre-determined consequences consistently, to review and/or modify the incentives to ensure that they are effective, and to check in with support staff when Student is not responding to directives.³⁷

8. On July 30, 2024, when Student was rising to grade L at School A, DCPS conducted an IEP Annual Review meeting for Student. Petitioner was represented by Attorney A at the

³⁵ *Id.*

³⁶ *Id.* at 142.

³⁷ P11:145-48.

meeting.³⁸ In Special Considerations, it was noted that Student was nonverbal and uses an AAC device to communicate. In the Assistive Technology section, it was reported that Student uses an I-pad and a pictured exchange system (“PECS”) to communicate.³⁹ In Mathematics, the Present Levels of Academic Achievement/Functional Performance (“PLOP”) reported that Student is performing at a grade Q level, and instruction is limited to counting, identifying the number that is one more or one less than another from 0-10, adding and subtracting single digits, and counting up to 100. The goal was: given two sets of three-digit numbers, Student will identify whether the first set is greater, the same, or less than the second set.⁴⁰ In Communication/Speech and Language (“Communication”), the PLOP reported the findings of the recent Speech and Language evaluation and that s/he remains largely nonverbal. Attempts to verbalize are “vague and must be interpreted loosely, depending on the context.” Student does not consistently respond to her/his name when called, exhibits preoccupation with objects, has limited environmental awareness, and does not understand social behaviors or appropriate responses to environmental stimuli. The goals were: (a) Student will use a total communication approach (i.e., AAC device, visual supports, verbal and nonverbal prompting) with moderate support to express needs or choices during structured activities; (b) Student will initiate or respond to peer interactions using verbal or nonverbal communication (e.g., gestures, AAC) in structured play sessions; (c) S/he will follow a visual schedule to complete daily tasks with minimal prompts, and (d) Student will break down a multi-step task into smaller parts and successfully complete each step with moderate support through visual and verbal prompts.⁴¹

In Reading, the PLOP reported that Student could identify 50% of her/his alphabet uppercase and lowercase. When asked to write the following letters O, A, K, D, G, Q, B, P s/he was unable to write any of them successfully. When asked to write his/her name s/he can do so with a model 2/4 times. Occasionally, s/he requires hand over hand assistance to get started as s/he often stares into space. When responding to instructional level text-based comprehension questions after a read aloud, Student can answer the questions with picture references with 60% accuracy. When provided an image and verbal prompt, Student does not consistently choose opposite words. Student needs multiple prompts to remain on task and to focus on his/her work instead of staring into space. The goals were: (a) given an unfamiliar instructional-level passage with ten teacher-selected words (e.g. words with common prefixes and suffixes, multisyllabic, or irregularly spelled words), Student will read the passage aloud and correctly decode the selected words with (80)% accuracy; and (b) when given a written sentence from a text that contains an underlined word that has multiple meanings (e.g., swing, coast), Student will write the meaning of the underlined word as it is used in the text.⁴² In Written Expression, the PLOP reported on Student’s inability to perform on the WJ-IV. The goal was: given a read aloud of a written instructional-level sentence with two errors in punctuation and/or capitalization, and a writing convention checklist with exemplar corrections, Student will correct the errors by crossing out each error and adding the correct ending punctuation and/or letter.⁴³

³⁸ P12:151.

³⁹ *Id.* at 152.

⁴⁰ *Id.* at 154-56.

⁴¹ *Id.* at 157-62.

⁴² *Id.* at 163.

⁴³ *Id.* at 165.

In Emotional, Social, and Behavioral Development (“Behavior”), the PLOP reported on Student’s behavior during, and the results of, the recent evaluations conducted by DCPS. It also reported that Student has a history of elopement and physical aggression. S/he requires structure in the classroom and verbal reinforcements and prompting to help keep him/her focused. Behavioral services are provided to Student to improve her/his social emotional development: reducing defiant behaviors and improving self-management. The priority is for Student is to continue decreasing the frequency of defiant behaviors and expressing his/her feelings in a healthy manner. The goals were: (a) given a challenging task or unfamiliar situation, Student will use a preferred communication method (e.g., picture card system, sign language) to express frustration or the need for a break; (b) given a visual cue (e.g., picture card, timer) for an upcoming transition, student will move to the new activity calmly and independently with verbal prompts.⁴⁴ In Motor Skills/Physical Development (“Motor”), the PLOP reported that Student can physically navigate the school environment with little to no assistance or adaptations. but s/he requires adult-supervision to prevent him/her from running. Student continues to struggle with safety awareness, socialization, communication, and completing academic tasks without adult assistance. S/he struggles with fine motor skills such as grasping writing utensils appropriately and transferring coins from the palm of his/her hands to the tips of his/her fingers. S/he also struggles with bilateral coordination skills, tying her/his shoelaces, cutting with scissors, completing a 24-piece puzzle independently, and writing his/her name. The goals were: (a) given visual supports as necessary, Student will use both hands to tie his/her shoe laces given no more than minimal physical assistance using a single loop method; and (b) S/he will demonstrate improved pre-keyboarding skills by typing her/his first and last name (with assistance as needed for space between and shift key) using “hunt and peck” method while maintaining right-hand and left-hand keyboard orientation; (c) Using sensory supports and strategies as needed (such as a visual schedule, timer, etc.), Student will attend to a desktop pencil paper task for 5-7 minutes with 2 or fewer verbal cues; and (d) S/he will demonstrate improved fine and visual motor skills by writing his/her name with 80% accuracy for legibility and baseline alignment with no more than 3 verbal cues.⁴⁵ In Adaptive Daily Living Skills, the PLOP reported that Student is easily distracted by his/her environment. When transitioning to different classrooms a teacher holds his/her hand or arm as s/he tries to elope and run down the hall away from the rest of the class. Outbursts typically happen in the morning between 9:00-9:30, during lunch between 12:00-1:00, and the afternoon between 2:00-3:00, typically, when the other students are eating or getting ready to eat. If something is wrong Student does not make her/his needs known; if asked if s/he needs her/his diaper changed, or to go for a walk, Student will answer but only after the option is provided to her/him. The goal was: Student will improve her/his adaptive and daily living skills by achieving the following objectives with 80% accuracy - s/he will request to use the bathroom or a walk by using a picture symbol, AAC device. or a verbal expression, and s/he will keep his/her hands to her/himself when next to adults during transitions.⁴⁶

The IEP team prescribed 24 hours per week of specialized instruction outside general education, two hours per month each of OT, SLP and BSS outside general education, and 30 minutes per month each of SLP and behavioral consultation services. The IEP noted Student’s diagnosis of EoE and that feeding through a G-tube would be coordinated with the school’s nurse.

⁴⁴ *Id.* at 166, 173.

⁴⁵ *Id.* at 169-72.

⁴⁶ *Id.* at 176.

The IEP team also prescribed a dedicated aide for Student throughout the school day and transportation with an attendant to hold her/his hand.⁴⁷

9. DCPS issued a PWN on July 30, 2025 reporting the development of the IEP that day. The PWN does not reflect any disagreement with any aspect of the IEP by Petitioner or her attorney.⁴⁸

10. On August 30, 2024, the IEP team amended the July 30, 2024 IEP by correcting the frequency of Student's specialized instruction from 24 hours daily to weekly.⁴⁹ The IEP also indicated that Student would receive these services from the Special Education Coordinator through August 30, 2024; thereafter, services would be provided by a special education teacher.⁵⁰

11. On November 15, 2024, DCPS issued Student's Progress Report for the reporting period ending on November 4, 2024.⁵¹ In Mathematics, the goal had not yet been introduced. In Communication, Student was reported to be Progressing on the goal of using a total communication approach:

SLP, teachers and dedicated aid are using a total communication approach for communication to support. A low tech communication board that stays on [her/his] desk will be implemented in therapy cycle 2. This communication board will include functional words/visuals such as: break, help, yes, no, done, more, bathroom, tired, happy, angry, etc. In regard to spoken language, [Student] is able verbalize "yes," and "bathroom" but needs to be prompted by staff. The next goal is for [Student] to use [his/her] communication board in at least 3/5 functional ways/opportunities provided only one cue/prompt from educator and clinician.⁵²

Three of the remaining goals had not been introduced; the comments indicated that two of the three would be introduced during the next reporting period with the use of the communication board. There had been No Progress on the goal of breaking down tasks into smaller parts:

This goal has been targeted during individual session and joint session with occupational therapist during themed activities such as sequencing steps for game/cooking activities and crafts related to classroom activities. This will be further targeted in therapy cycle 2. [Student] is currently needing maximum prompting and some physical assistance to redirect to tasks. [His/her] new aide is working diligently to provide fading cues in order to support [Student] with completing steps for activities in the classroom and during therapy activities. [S/he] is beginning to warm up to new clinicians and demonstrates excitement related to themed activities. [S/he] benefits from First/Then language and will benefit from a

⁴⁷ *Id.* at 177. The IEP indicated Student would receive 24 hours of specialized instruction "daily" instead of weekly, an obvious oversight.

⁴⁸ R40:408.

⁴⁹ P13:189 and 216.

⁵⁰ *Id.* at 216.

⁵¹ P15:267.

⁵² *Id.*

simple visual schedule that demonstrates the current activity and the break/reward following the activity. Further progress is expected with implementation of fading prompts/cues, a simple two-visual FIRST/THEN schedule and a low-tech Core Picture Board for communication that stays on/attached to [Student's] desk.⁵³

The goals in Reading and Written Expression had not been introduced.⁵⁴ His/her first Behavior goal had been Just Introduced by Witness C, an art therapist.⁵⁵ Student was Progressing on the second goal of transitioning independently given a visual cue,⁵⁶ In Motor, Student was progressing on the desktop pencil and paper task. OT Therapist A reported that "Step by step verbal prompts appear to improve [her/his] participation and ability to complete pencil and paper tasks," but the shoelace tying and typing goals had not yet been introduced.⁵⁷

12. On February 20, 2025, DCPS issued Student's Progress Report for the reporting period ending on January 27, 2025.⁵⁸ In Mathematics, the goal had not been introduced.⁵⁹ In Communication, Student was reported to be Progressing on three goals; the goal involving breaking down multi-step tasks into smaller parts had not been introduced.

A total communication approach with mod[erately] support is being implemented via picture cards, visual calendar and binary choice to support [Student] in expressing needs or choices in 4/5 opportunities during structured activities. [S/he] requires extra verbal and visual prompting however is beginning to indicate [her/his] needs and express needs for breaks, (e.g., walking). At this time, a high-tech MC device is not appropriate... With moderate visual and verbal prompts, [Student] is responding to peer interactions using verbal or nonverbal communication (e.g., gestures, AAC) in 3/5 structured play sessions. [S/he] is not yet initiating greetings however will reach for their hand when initiating contact for a transition... [Student] is following directions for routines and transitions using a consistent schedule and visual calendar. [S/he] is bonding well with [her/his] new aide. [His/her] aide is receptive to communication strategies and use of sensory breaks (e.g., painting, breathing, bouncing, walking).⁶⁰

In Reading and Written Expression, the goals had not been introduced.⁶¹ In Behavior, Student was reported to be Progressing on both goals:

During behavior support sessions [s/he] has been able to at time use one word responses during feeling check in or point to image of current feeling. When prompted can verbalize in one word if [s/he] needs a break... During behavior support sessions student receives a verbal reminder or is visually introduced to new

⁵³ *Id.* at 268.

⁵⁴ *Id.* at 268-69.

⁵⁵ *Id.* at 269.

⁵⁶ *Id.* at 270-71.

⁵⁷ *Id.* at 269-70.

⁵⁸ R48:644. Neither party disclosed a more current or final Progress Report for the 2024-25 school year.

⁵⁹ *Id.*

⁶⁰ *Id.* at 644-45.

⁶¹ *Id.* at 645-46.

therapeutic activity and instructions are repeated several times to student and visually demonstrated. [S/he] has been given a movement break or incentive of engaging in a preferred art material when completing activity. To prepare for transition when session ends, and it is time to return back to class, [s/he] is given verbal reminders. [S/he] has made some progress in ability to transition with assistance of 1:1 aide.⁶²

In Motor, Student was reported to be Progressing on three goals; the fine and visual motor skills goal had been Just Introduced. OT Therapist A reported:

[Student] is continuing to learn how to lace. [S/he] is able [to] take a lace through the hole. [S/he] has not been able to cross the lace to complete the necessary steps to make a loop... [Student] is able to locate the keys on the keyboard to type [her/his] first name. [S/he] prefers [to] stand by assistance and hand over hand to guide [her/his] hand to where [s/he] will strike the letter. When [s/he] does not have close supervision, [s/he] is able to type [his/her] first and last name... [Student's] tolerance for activity participation fluctuates. There are days where [s/he] will engage in tabletop activities for less than 2 minutes. [She] is learning how to request breaks and walks when [s/he] needs them. [S/he] is able to maintain [her/his] participation in the activity for up to 6 minutes with at least 2 verbal cues.⁶³

In Adaptive, Student was reported to be Progressing on his/her goal.⁶⁴

13. On April 1, 2025, Staff Member A sent a letter to parents at School A conceding that “DCPS recently experienced a capacity gap in the Speech-Language Pathology services assigned [to School A]. DCPS is working hard to secure additional Speech-Language Pathologist to implement speech therapy services for your child. Please note that when the assigned Speech-Language Pathologist is secured he/she will provide a letter to you introducing themselves, begin serving your child's IEP goals.” The letter did not indicate when the “capacity gap” began.⁶⁵

14. During the 2024-25 school year, Student was entitled to 120 hours per month of BSS, OT, and SLP services, or approximately 1140 minutes during the year for each service, considering months with a late start (August), early ending (June), and week-long vacations (December and April). In OT, Student was entitled to 1140 minutes of services;⁶⁶ Student received 655 minutes.⁶⁷ In SLP, Student was entitled to 1095 minutes of services;⁶⁸ s/he received 620

⁶² *Id.* at 646 and 648.

⁶³ *Id.* at 646-47.

⁶⁴ *Id.* at 648.

⁶⁵ P21:353.

⁶⁶ For sessions which the service provider documented Student's absence, I reduced Student's entitlement by the typical recent length of the service provider's sessions. P27:443, P28:449, Respondent's Exhibit (“R.”) 4 at page 44. The exhibit number is followed by the electronic page number, e.g. R4:44, R18:196, and R19:218.

⁶⁷ This includes 500 minutes of services conceded by Petitioner (P27:447) and 155 minutes documented in R18:196-217.

⁶⁸ Student was absent on September 17, 2024 for which Respondent was credited 45 minutes. R19:219.

minutes.⁶⁹ In BSS, Student was entitled to 1060 minutes of services;⁷⁰ Student received 1060 minutes.⁷¹

15. On May 16, 2025, Witness A developed a Compensatory Education Proposal.⁷² The period of harm for the failure to implement the IEP was August 26, 2024 through June 9, 2025. The period of harm for the failure to provide an appropriate IEP, and placement was the same.⁷³ The “Harm” section of the Proposal described the nature of the denials of FAPE but offered no quantification of the academic achievement Student lost or failed to gain during the period of harm.⁷⁴ Witness A opined that but for the denials of FAPE, Student “would likely be further along in the development of expressive communication, behavioral and emotional regulation, adaptive independence, and instructional access. Instead, persistent and compounding implementation failures, coupled with a misaligned program and service model, have stalled his/her growth across every domain of need.”⁷⁵ Witness A proposed 30 hours of “Communication/Speech and Language, to include 10 hours of AAC device-specific support,” 25 hours of BSS provided by a licensed psychologist or social worker, and 20 hours of OT services.⁷⁶

16. Witness A was Petitioner’s educational advocate. She conceded that Student was “essentially nonverbal” with the articulation skills of a 1-2 year-old. She testified that Student’s behavioral issues are caused by her/his speech disability because s/he becomes frustrated when s/he cannot communicate her/his wants or needs. Witness A testified that School A’s BIP for Student was inappropriate because it did not specify replacement behaviors. With respect to the IEP, Witness A testified that the 24 hours per week of specialized instruction prescribed was a “fair” amount; she did not opine that the amount was insufficient. However, she did opine that 120 minutes per month of SLP was not enough based on the lack of progress Student made during the school year. She testified that she was not saying they should have known beforehand, but “at some point down the road, they could have looked at the progress reports and increased it.” Witness A testified that the IEP was inappropriate because the goals exceeded Student’s ability. The triple-digit Math goal was too ambitious because Student was working with single-digit numbers. The Reading goal requiring him/her to read out loud and decode was unattainable because s/he is nonverbal. The Written Expression goal involving making corrections requires an ability to read, which s/he did not have; “capitalization and writing conventions are far above [her/his] capability.” Witness A opined that the November 2024 Progress Report indicted a lack of progress due to the school’s failure to introduce the Math goal, two Communication goals, and the Reading and Written Expression goal, and there was no progress on one Communication goal.

⁶⁹ This includes 200 minutes of services conceded by Petitioner (P27:444) and 420 minutes documented in R19:218-32.

⁷⁰ Student was absent on October 7, 2024 and February 21, 2025 for which Respondent was credited 80 minutes. Witness C conceded on cross examination that R4:44 erroneously listed Student as absent on December 9, 2024.

⁷¹ R4:44-45.

⁷² P29:453.

⁷³ *Id.* at 472.

⁷⁴ *Id.* at 472-73.

⁷⁵ *Id.* at 473.

⁷⁶ *Id.* at 474-75.

Witness A testified that from the beginning of the 2024-25 school year until January 14, 2025, Student was not consistently provided with a trained dedicated aide; Witness A testified that during this period, Student did not have the support of a dedicated aide on 53 school days.⁷⁷ She testified that without an aide, “the situation is more volatile for [her/him]. The aide is there to support communication, behavior, adaptive and social interaction needs, [helping with the] AAC device, and toileting needs.” Witness A opined that during the post-January 2025 period with the consistent presence of an aide, there was a lower incidence of behaviors. Witness A opined that the art therapy services provided by Witness C did not qualify as BSS because the therapy provided addressed Student’s feelings rather than communication. With respect to the Compensatory Education Proposal she developed, I asked Witness A where Student would be academically but for the denial of FAPE. She replied, “That’s difficult to say. If goals had been at [his/her] level, perhaps [s/he] would have been able to show growth. With an AAC device, we may have seen more progress. We might have seen [her/him] regulate [her/his] behavior.” On cross-examination, Witness A conceded that Student is in a self-contained CES classroom that is grounded in Applied Behavior Analysis (“ABA”) principles and that CES classrooms are designed for students with communication delays.⁷⁸

17. Witness B was Petitioner’s speech and language expert witness. She testified that Student was an “emerging communicator,” was primarily a one-word communicator, requires modeling, has intelligibility issues, needs support to remain safe, is non-compliant, has difficulty expressing her/his needs, and has difficulty responding. “Overall, a young [man/woman] with significant communications challenges.” She opined that the lack of a speech therapist during the school year had a significant impact on Student’s success in class and on her/his IEP goal attainment. Witness B opined that Student needed access to assistive technology to communicate safely. His/her communication when not supported is unsafe: throwing things. Student had no access to A/T until April 2025. Witness B opined that Student would have difficulty making progress without access to A/T.⁷⁹

18. When asked what challenges Student faced, Petitioner listed behavioral, due to an inability to communicate, elopement, frustration over not being able to eat orally, not being potty-trained, writing her/his name, and completing her/his work. She reiterated Witness A’s testimony that Student did not have a consistent dedicated aide until January 2025. She also referenced the letter she received in April 2025 indicating that School A did not have a speech therapist on the staff.⁸⁰

19. Witness C was the DCPS art therapist that provided Student’s BSS during the 2024-25 school year. She testified that she was assigned to School A on September 24, 2024. Witness C testified that the initial sessions with Student were thirty minutes long and the goal was to soothe her/him so that s/he could complete tasks. Witness C testified that she never observed Student engaging in elopement or physical aggression. Student needed less prompting as the year went on, particularly from March 2025 until the end of the school year. Witness C testified that

⁷⁷ P28:449-50.

⁷⁸ Testimony of Witness A.

⁷⁹ Testimony of Witness B.

⁸⁰ Testimony of Petitioner.

she provided Student more BSS during the year than the IEP prescribed, but Witness C conceded on cross-examination that Student received no BSS prior to September 23, 2024.⁸¹

20. Witness D was Student's special education teacher during the 2024-25 school year. There were six students in the class, two certified special education teachers, two paraprofessionals, and Student's dedicated aide. Witness D testified that after the winter break, once Student had a consistent dedicated aide, "we were able to work on [his/her] goals." Student had five dedicated aides during the school year; the last was assigned in January 2025. Witness D estimated that with all the changes, Student was not supported by an aide for "a couple of weeks;" the first three aides were replaced after "one or two days," but when fourth aide did not return, Student was not supported for "a couple of weeks." Witness D opined that Student's functional communication increased during the year, both voice and her/his use of the i-Pad. Student had the i-Pad at the beginning of the year but was throwing it, so she withheld it from Student. Witness D testified that she printed out the pages from the i-Pad that Student used for communication so s/he could then point to the laminated pages to indicate her/his wants and needs. At the beginning of the year, Student engaged in a number of maladaptive behaviors: ripping paper, spitting, hitting, disruption, elopement, standing on top of tables, and running around the room. After the aide was assigned in January, the behaviors decreased. In response to my question as to the percentage of the school day Student engaged in maladaptive behaviors, Witness D responded: about one minute in the morning and another five minutes after 2:00, or less than 10 minutes per day. The behaviors stopped in February 2025. Student started eating lunch with her/his classmates two months before the hearing, which made her/him feel better about her/himself. Before that time, s/he would go to the nurse's office at lunchtime to be fed through the G-tube; s/he continues to get fed through the G-tube but began eating solid food snacks in April 2025. There was one instance during the year that s/he did not receive her/his G-tube feeding due to aggression with staff members. Witness D testified that the staff developed a toileting schedule for Student after the winter break that significantly reduced his/her accidents; Student used one of the laminated sheets to indicate the need to go to the bathroom. On cross-examination, Witness D testified that Student received a new AAC device in April 2025. In response to my questions, Witness D testified that Student was using a number of one-word requests/responses by the end of the year that s/he was not using at the beginning of the year: "break, finish, chips, bathroom, walk, yes, and no."⁸²

21. Witness E was the LEA Representative for School A. When asked why an art therapist was assigned to provide BSS instead of a social worker, Witness E responded that due to Student being nonverbal, "we thought it was a better fit." When asked why Student was placed in a CES classroom, Witness E responded that the classroom is designed students with communications deficiencies and uses multiple communications methodologies. Witness E confirmed the use of low-tech A/T for Student to make his/her needs known. She testified that Student was not using an i-Pad because it was broken. She also confirmed Student's maladaptive behavior at the beginning of the 2024-25 school year, the toileting schedule, the ability to eat some solid food, and the lack of a speech therapist after April 1, 2025. Witness E testified that while

⁸¹ Testimony of Witness C.

⁸² Testimony of Witness D.

there was disagreement at the disability meeting as to Student's classification, there was no disagreement at the IEP meeting with the terms of the IEP.⁸³

CONCLUSIONS OF LAW

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

Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.⁸⁴

The issues in this case include the alleged failure of DCPS to provide an appropriate IEP and placement. Under District of Columbia law, DCPS bears the burden of persuasion as to these issues. Petitioner bears the burden as to all other issues.⁸⁵

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on July 30, 2024. Specifically, Petitioner asserts that the goals in the IEP significantly exceeded Student's documented skills and readiness and were too ambitious enough given her/his present levels of performance. Petitioner also asserts that the IEP did not address Student's need for medical support during the school day as s/he was fed through a G-tube and was not toilet-trained.

The Supreme Court's first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act ("EHA"), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.⁸⁶ The Court noted that the EHA did not require that states "maximize the potential of handicapped children 'commensurate with the opportunity provided to other children.'"⁸⁷ Rather, the Court ruled that "Implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is

⁸³ Testimony of Witness E. On cross-examination, Witness E was questioned about disagreement at the IEP meeting about the classification but not as to her assertion that there was no disagreement with the terms of the IEP.

⁸⁴ D.C. Code § 38-2571.03(6)(A)(i).

⁸⁵ *Schaffer v. Weast*, 546 U.S. 49 (2005).

⁸⁶ 458 U.S. 176, 187 (1982).

⁸⁷ *Id.* at 189-90, 200

provided be sufficient to confer some educational benefit upon the handicapped child...⁸⁸ Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”⁸⁹

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.⁹⁰ The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”⁹¹ The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.⁹²

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

When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly... awaiting the time when they were old enough to drop out...” The IDEA demands more. The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.⁹³

IDEA regulations require that parents are included on every IEP team.⁹⁴ The regulations compel the local education agency to take particular steps to ensure parents’ participation in IEP meetings and to document their efforts to ensure that participation.

⁸⁸ *Id.* at 200.

⁸⁹ *Id.* at 203-04.

⁹⁰ *Andrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

⁹¹ *Id.* at 997.

⁹² *Id.* at 1000-01 (citations omitted).

⁹³ 137 S.Ct. at 1000-01.

⁹⁴ 34 C.F.R. §300.321.

Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
 - (2) Scheduling the meeting at a mutually agreed on time and place...
- (c) If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls...
- (d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—
- (1) Detailed records of telephone calls made or attempted and the results of those calls;
 - (2) Copies of correspondence sent to the parents and any responses received; and
 - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.⁹⁵

These provisions are not cited because Respondent failed to afford Petitioner the opportunity for complete and meaningful participation in the July 30, 2024 IEP meeting. Rather, they are cited to stress the importance IDEA places on parents' role in the development of IEPs. Here, not only did Petitioner participate in the July 11, 2024 eligibility meeting and the July 30, 2024 IEP meeting, she was represented at both meetings by her trial attorney, Attorney A. The record reflects that while Petitioner and Attorney A disagreed with the classification of a single disability, ASD, rather than MD (ASD and OHI), they did not express disagreement with the terms of the IEP. The PWN on July 11th reflected the disagreement with the classification determination, but the PWN on July 30th reflected no disagreement with the terms of the IEP, Witness E testified that there was no disagreement at the meeting with the terms of the IEP, and Attorney A did not challenge this assertion on cross-examination. He challenged Witness E only on the issue of the disagreement with the classification. It is one thing for an unrepresented, unsophisticated parent to rely on the expertise of school staff in the development of an IEP but subsequently to become suspect of their recommendations. It is quite another thing to be represented by a special education law firm at an IEP meeting, to raise no procedural issue as to not having received a draft of the IEP in advance of the meeting, to express no disagreement with the terms of the IEP at the IEP meeting, then to allege the inappropriateness of the IEP halfway through the school year. “[N]either the statute nor reason countenance “Monday Morning Quarterbacking.”⁹⁶

The goals were too ambitious

Witness A testified that the IEP was inappropriate because the goals exceeded Student's ability. The triple-digit Math goal was allegedly too ambitious because Student was working with

⁹⁵ 34 C.F.R. §300.322.

⁹⁶ *H.S. v. District of Columbia*, Civil Action No. 1;23-cv-2982(, 2025 WL 1019300 at 8 (D.D.C. Apr. 4, 2025), citations omitted.

single-digit numbers. The Reading goal requiring him/her to read out loud and decode was allegedly unattainable because s/he is nonverbal. The Written Expression goal involving making corrections required an ability to read, which s/he did not have. Witness A opined that the November 2024 Progress Report indicted a lack of progress due to the school's failure to introduce the Math goal, two Communication goals, and the Reading and Written Expression goal, and there was no progress on one Communication goal.

These arguments fail because of Petitioner's failure to afford realistic consideration of Student's unique circumstances. At Student's relatively advanced age, s/he remains virtually nonverbal. On the recent psychoeducational evaluation, s/he was unable to reach even benchmark levels on cognitive and achievement assessments. During the speech and language evaluation, Student's receptive and expressive vocabulary could not be tested due to his/her being nonverbal. Student was aggressively disruptive during the evaluation and physically attacked the examiner. Student not only cannot read or conduct mathematical exercises at a pre-K level, s/he cannot consistently write his/her name or even identify 50% of the alphabets, or write O, A, K, D, G, Q, B, P on demand. Thus, in my view, it was not inappropriate for the IEP team, with the tacit approval of Petitioner and her attorney, to prioritize improving Student's adaptive functionality including addressing his/her ability to focus on completing tasks, curtailing maladaptive behaviors, and learning how to express words orally. In fact, this strategy was vindicated. The maladaptive behaviors had virtually ended by February 2025; Witness D testified that the misbehaviors lasted less than ten minutes per day, toileting accidents significantly declined with the implementation of a fixed schedule, support of the dedicated aide, and Student improving ability to communicate the need to use the bathroom. Student's ability to communicate using the laminated sheets improved, and by the end of the school year, s/he was able to enunciate "break, finish, chips, bathroom, walk, yes, and no," which s/he could not do at the beginning of the year, and s/he was able to transition appropriately with the assistance of his/her dedicated aide. It was also not a denial of FAPE to include stretch, aspirational goals such as learning to read, to recognize and understand the relationship of integers, and basic writing conventions such as capitalization and punctuation. Unfortunately, due to Student's profound cognitive delays, s/he simply did not progress to the functional level at which it was possible to introduce these concepts.

Medical Support/Toilet Training

Petitioner has failed to meet her burden of establishing a prima facie case on either of these issues. While Student must be fed through a G-tube and is not potty-trained, it is not apparent that either party deemed it necessary to address either issue in the IEP. During the 2024-25 school year, Student went to the nurse's office daily at lunchtime to be fed by a G-tube. There was an issue regarding Student's G-tube on but one occasion during the school year, when s/he became physically aggressive with the dedicated aide and was not fed that day. By the end of the school year, Student had begun to eat some solid food at lunchtime. As for potty-training, this is a common issue for children classified with ASD. The staff was aware that Student was not potty-trained, but the IEP included the assignment of a dedicated aide to assist in this regard. The record includes rare instances of accidents during the school year and reflects that the staff developed a schedule after the winter break that helped reduce accidents. Moreover, Student had a consistent dedicated aide after the winter break and s/he also became more adept at expressing his/her needs throughout the year. His/her teacher, Witness D, testified that Student improved throughout the year in expressing his/her

needs using the laminated sheets, and in the final months of the year was able to say “bathroom.”

For all of these reasons, I conclude that DCPS has met its burden of proving that the IEP it developed on July 30, 2024, with the participation and approval of Petitioner and her special education attorney, was reasonably calculated to enable Student to make progress consistent with her/his unique circumstances.

Whether School A was an appropriate placement for Student for the 2024-25 school year. Specifically, Petitioner asserts that School A was incapable of supporting Student’s need to be fed through a G-tube for toileting assistance. She also asserts that School did not employ a speech therapist.

To establish that a placement or, in this case, location of service, is inappropriate, a petitioner must make a prima facie showing that the school is incapable of implementing the child’s IEP.

The benchmark under IDEA for determining the appropriateness of a student's educational placement is that DCPS “must place the student in a setting that is capable of fulfilling the student's IEP.” *Johnson v. District of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013). “[C]ourts have identified a set of considerations ‘relevant’ to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the school, ... and the extent to which the placement represents the least restrictive educational environment.” *Branham v. District of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005). School districts “need only demonstrate that the student's placement was appropriate; a placement need not satisfy a parent's every desire and need not represent the best possible programming for the student.” *Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 143 (D.D.C. 2018); *see Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C. Cir. 1988) (“[P]roof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act.”).⁹⁷

Petitioner offered no credible evidence that School A was incapable of implementing Student’s IEP. Petitioner did not question the appropriateness of the level of specialized instruction prescribed in the IEP. She could not realistically do so because Student was assigned to a self-contained special education classroom, in a class of only six students, led by two certified special education teachers. Moreover, the placement in a CES classroom, which is designed specifically for students with profound communication deficits, addresses Student’s most pervasive disability. While Petitioner has legitimate concerns as to the implementation of Student’s SLP services, this violation was caused by staff departures during the school year: dedicated aides who quit or were terminated and a speech therapist who left in April 2025. That is an issue of an alleged failure to implement the IEP, not the inappropriateness of School A as a placement. As for Student’s need to be fed through a G-tube, this was successfully accomplished daily at lunchtime throughout the school

⁹⁷ *R.B. v. District of Columbia*, Civil Action No. 18-662, 2019 WL 4750410 at 12 (D.D.C. Sep. 30, 2019).

year by the school nurse except on one occasion when Student became physically aggressive with his/her aide.

I conclude that DCPS has met its burden of proving that when the IEP was developed in July 2024, School A was capable of implementing Student's IEP.

Whether DCPS denied Student a FAPE by failing to implement Student's IEP during the 2024-25 school year. Specifically, Petitioner asserts that DCPS failed to (a) provide Student a dedicated aide on a consistent basis including weeks-long interruptions of service among the four dedicated aides assigned to her/him, (b) introduce goals timely due to staffing issues; the math goal was not introduced until February 2025, (c) provide 150 minutes of OT services, 400 minutes of speech-language pathology ("SLP"), 500 minutes of behavioral support services ("BSS"), (d) provide and document the 150 minutes each of consultative speech services and consultative BSS, and (e) provide Student consistent access to his/her assistive technology ("A/T") device.

An LEA is culpable for failing to implement a child's IEP if the services provided materially deviate from the services prescribed in the IEP.⁹⁸ A material deviation requires more than a minor discrepancy or a "de minimis failure to implement all elements of [the student's] IEP."⁹⁹ It is "...[t]he proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement."¹⁰⁰

The Office of the State Superintendent's Special Education Process Handbook provides the following guidance on missed related services:

If a student is regularly or chronically missing services, it is best practice for the service provider to collaborate with the parent on attendance support and service implementation. The occasional missed related service session may be unavoidable; however, the LEA must always consider the impact of the missed session on the student's progress and performance and ensure the continued provision of FAPE. If the IEP team determines that missed services constitutes a denial of FAPE, it should consider the need for compensatory services. LEAs are encouraged to develop and make available a related services policy that details internal procedures for missed services.¹⁰¹

⁹⁸ *Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 144 (D.D.C. 2018); *Van Duyn ex rel. Van Duyn v. Baker School District 5J*, 502 F.3d 811, 822 (9th Cir. 2007).

⁹⁹ *Johnson v. District of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013), quoting *Catalan ex rel. E.C. v. District of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). See *J.B. ex rel. Belt v. District of Columbia, Report and Recommendation*, Case No. 17-cv-1298, 2018 WL 10399853 at 17 (D.D.C. May 8, 2018)(a deviation of less than 10% of the school day was deemed *de minimus*).

¹⁰⁰ *Turner v. District of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), citing *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).Fe

¹⁰¹

https://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/OSSE%20Special%20Education%20Process%20Handbook%20%28Sept%202023%29.pdf at 23.

As documented in paragraph 14 above, School A failed to provide Student's related services with fidelity. During the 2024-25 school year, Student was entitled to 1140 minutes of OT services;¹⁰² Student received 655 minutes.¹⁰³ In Communication, Student was entitled to 1095 minutes of services;¹⁰⁴ s/he received 620 minutes.¹⁰⁵ In BSS, Student received all of the services to which s/he was entitled. Although the behavioral services were provided by an art therapist rather than a social worker, the therapist was licensed as a behavior specialist by the District, and the record supports a finding that Student made significant progress in behavior and adaptive functioning during the 2024-25 school year.

Petitioner offered Petitioner's Exhibit P28:449-50 as evidence that School A did not provide Student a dedicated aide "for approximately 53 days." The exhibit is not a DCPS service tracker, and there was no other documentation or testimony as to how the number of days was derived. Student's teacher during the 2024-25 school year, Witness D, testified that the first three aides who left the job were replaced "within a day or two" while the fourth took about two weeks to be replaced. While the parties disagree as to the amount of time Student was deprived of an aide prior to January 2025, the fifth and final aide, who was assigned to Student in January, was credited with playing an integral role in assisting Student to improve his/her focus and attention, assisting with Student's toileting needs, assisting Student with transitions in the classroom and throughout the building, and in minimizing behavioral disruptions. I conclude that Petitioner has failed to meet her burden of proving that there was a material deviation from DCPS' obligation to provide a dedicated aide throughout the school year.

Finally, Petitioner, Witness A, and Witness B testified that School A failed to provide Student consistent access to his/her A/T device. Again, there was conflicting testimony on this issue. Witness E, School A's LEA Representative, testified that Student did not have access to the device because it was broken. However, Witness D, Student's teacher, testified that she took the device from Student early in the school year for safety reasons because Student was throwing it in the classroom. Witness D testified that she downloaded the pages from the i-Pad that Student needed to access to point to items to indicate his/her wants and needs, printed the pages, laminated them, and made them available to Student in a binder. Student used these laminated pages throughout the school year to communicate with the staff. As previously discussed, Student's behavior, focus, interaction with the staff and peers, toileting, and ability to communicate improved steadily throughout the school year. Unlike Witness E, Witness D was with Student throughout each school day. Thus, her explanation for the use of the laminated pages is persuasive. More importantly, even though it was laminated pages rather than an AAC device, Student had access to materials that facilitated his/her ability to make his/her needs and wants known. In a class with two teachers, two paraprofessionals, Student's dedicated aide, and only six students, the record supports a finding that Student was provided with the means to communicate, whenever necessary, throughout the school day.

¹⁰² For sessions which the service provider documented Student's absence, I reduced Student's entitlement by the typical recent length of the service provider's sessions. P27:443, P28:449, Respondent's Exhibit ("R.") 4 at page 44. The exhibit number is followed by the electronic page number, e.g. R4:44, R18:196, and R19:218.

¹⁰³ This includes 500 minutes of services conceded by Petitioner (P27:447) and 155 minutes documented in R18:196-217.

¹⁰⁴ Student was absent on September 17, 2024 for which Respondent was credited 45 minutes. R19:219.

¹⁰⁵ This includes 200 minutes of services conceded by Petitioner (P27:444) and 420 minutes documented in R19:218-32.

Whether DCPS denied Student a FAPE by failing to develop an appropriate behavior intervention plan (“BIP”) on July 30, 2024. Specifically, Petitioner asserts that the BIP did not identify appropriate replacement behaviors.

Witness A, Petitioner’s educational advocate, opined that the July 30, 2024 BIP was inappropriate because it did not identify appropriate replacement behaviors. The Replacement Behavior identified in the BIP for Elopement was “Student will appropriately respond to adult directives and rules with consistent verbal prompts, and for Physical Aggression, “Student will display self-control and a regulated mood with minimal loss of self-control.” Neither Witness A nor any other witness for Petitioner offered testimony explaining why the replacement behaviors identified in the BIP were inappropriate. Moreover, the BIP adopted the recommendations offered by Examiner B in his Speech and Language Evaluation, which included: “specific strategies for managing [Student’s] behaviors in the classroom, such as using positive reinforcement, offering breaks, and providing sensory tools.” Therefore, I conclude that Petitioner has failed to establish a prima facie case on this issue.

RELIEF

For relief, Petitioner requests, *inter alia*, (1) an order requiring DCPS to identify and/or fund an appropriate placement for Student including a placement with dedicated medical supports or a non-public placement, (2) an order requiring DCPS to convene a multidisciplinary team (“MDT”) meeting to revise Student’s Behavior Intervention Plan (“BIP”) to include appropriate replacement behaviors, (3) an order requiring DCPS to convene a an IEP meeting to update Student’s IEP to account for the new placement and to include appropriately ambitious goals, (4) compensatory education including transportation, and 5) attorneys’ fees.

ORDER

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

ORDERED, that within fifteen business days of the issuance of this order, DCPS shall provide Petitioner authorization for eight (8) hours each of independent OT services and independent speech and language services at OSSE approved rates.

APPEAL RIGHTS

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

Terry Michael Banks
Hearing Officer

Date: June 30, 2025

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