

District of Columbia
Office of the State Superintendent of Education

Office of Dispute Resolution
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Parent, on behalf of Student,¹)	
Petitioner,)	Hearing Dates: 5/27/25, 5/29/25.
)	6/2/25, 6/4/25.
v.)	Hearing Officer: Michael Lazan
)	Case No. 2025-0063
Local Educational Agency,)	
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This case involves an X-year-old student (the “Student”) who is currently eligible for special education services. On April 2, 2025, a due process complaint (“Complaint”) was received by Local Educational Agency (“LEA”), a public charter school in the District of Columbia (“Respondent”). The Complaint was filed by the Student’s parent (“Petitioner”), pursuant to the Individuals with Disabilities Education Act (“IDEA”). On April 14, 2025, Respondent filed a response.

II. Subject Matter Jurisdiction

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

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

III. Proceedings

The parties waived the prehearing conference, since a prehearing conference was held in a virtually identical case (2024-0208), and the parties agreed that it would be appropriate to reissue the previous prehearing conference order with the new case number. On May 13, 2025, a prehearing order was issued, summarizing the rules to be applied in the hearing and identifying the issues in the case. This order was corrected on May 14, 2025.

The matter proceeded to hearings on May 27, 2025; May 29, 2025; June 2, 2025; and June 4, 2025. Petitioner was represented by Attorney A, Esq., and Attorney B, Esq. Respondent was represented by Attorney C, Esq. The hearings were conducted via the Microsoft Teams videoconferencing platform, without objection. After testimony and evidence, the parties presented oral closing statements on June 4, 2025. Respondent provided a list of citations, without objection, on June 4, 2025. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-73, without objection. Respondent moved into evidence exhibits LEA-1 through LEA-64, without objection.

Petitioner presented as witnesses, in the following order: Witness A, a speech-language pathologist (expert in communication, reading, writing, and social and emotional issues); Witness B, a special education consultant (expert in special education as it relates reading, math, writing, and social-emotional-behavioral issues); Witness C, a special education advocate (expert in special education compliance); Petitioner; Witness D, a teacher at School A; and Witness E, a teacher at School A. Respondent presented as witnesses in the following order; Witness F, a school psychologist (expert in special education and school psychology); Witness G, a clinical psychologist (expert in clinical

psychology); Witness H, a Board Certified Behavior Analyst (“BCBA”) (expert in behavioral analysis and support); and Witness I, a special education consultant (expert in special education).

IV. Issues

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

1. Did Respondent deny the Student a Free Appropriate Public Education (“FAPE”) by failing to propose an appropriate Individualized Education Program (“IEP”) for the Student for the 2023-2024 school year?

Petitioner alleged that the IEP’s hours of specialized instruction were insufficient and that the IEP should have provided the Student with more speech-language pathology. Petitioner also contended that the IEP’s goals, accommodations, and supplemental aids and services were insufficient, and that the present levels of performance in the IEP were inadequate.

2. Did Respondent deny the Student a FAPE by failing to evaluate the Student in all areas of suspected disabilities?

Petitioner alleged that, from the start of the 2021-2022 school year through the date of the Student’s July 2023 IEP, the Student should have been assessed through a psychoeducational assessment, an adaptive assessment, a behavioral assessment, and a speech assessment.

3. Did Respondent fail to conduct a Functional Behavior Assessment (“FBA”) and create a Behavior Intervention Plan (“BIP”) for the Student during the 2023-2024 school year? If so, did Respondent deny the Student a FAPE?

4. Did Respondent deny Petitioner the right to participate in the IEP process in the two years prior to the filing of the Complaint?

Petitioner contended that she was not provided with information about her due process rights.

V. Findings of Fact

1. The Student is an X-year-old who is currently eligible for special education services. The Student has attended School A, a public charter school, during his/her academic career. The Student first received services at home. Testimony of Petitioner. In July 2018, on testing through the Battelle Developmental Inventory-2nd Edition (“BDI-2”), the Student received a cognitive functioning score of 63, indicating significant developmental delay. LEA-17. The Student tested at below the 1st percentile in receptive language and at the 5th percentile in expressive language. The Student’s “adult interaction” score was at the 16th percentile, and his/her peer interaction and adaptive self-care scores were at the 25th percentile. P-9-88-89. The Student was also assessed in a “supplemental educational assessment” report from District of Columbia Public Schools (“DCPS”), dated February 8, 2019. On the Developmental Assessment of Young Children-2nd Edition (“DAYC-2”), the Student’s cognitive score was 90, in the average range. P-3.

2. Entering the 2021-2022 school year, the Student was performing below grade level in all academic areas. The Student started the school year at the 16th percentile in math and at the 5th percentile in reading, according to the Northwest Evaluation Association Measures of Academic Progress (“NWEA-MAP”). Most of the twenty-five to thirty students in the Student’s class also functioned below grade level in academics. The Student regularly missed academic instruction by being absent from class, coming late to class, being lethargic during class, and sleeping for parts of the day.

The Student was placed in the lowest academic group in class and worked with the assistant teacher one-on-one. When the Student was taught through one-on-one or small-group instruction, the Student would progress. Testimony of Witness E. In the spring of 2022, the Student was still at the 16th percentile in math but at the 12th percentile in reading. P-68. On the Strategic Teaching and Evaluation of Progress (“STEP”) assessment, which shows growth in foundational reading skills, the Student made less growth than peers. The Student knew eighty-three percent of letters names and sounds that were measured, but none of the high-frequency words that were measured. The Student’s attendance declined significantly in the spring of 2022, with twenty-two absences. P-55 at 386; Testimony of Witness I.

3. Petitioner was not provided with any written notices about her due process rights during this period. Testimony of Petitioner. By the end of the 2021-2022 school year, the Student had made little progress on reading, according to the STEP measure, though the Student did make some growth in math, according to the NWEA-MAP. P-55.

4. During the 2022-2023 school year, the Student continued at School A. The Student’s NWEA-MAP scores in the fall of 2022 were at the 16th percentile in math and at the 15th percentile in reading. In or about January 2023, Petitioner spoke to school staff about interventions for the Student. Testimony of Petitioner. By the spring of 2023, the Student’s scores on the NWEA-MAP had dropped to the 7th percentile in math and the 6th percentile in reading. P-69 at 418. The Student’s attendance improved when compared to the previous school year, with approximately fifteen unexcused absences during the 2022-2023 school year. P-69 at 419.

5. Toward the end of the 2022-2023 school year, Petitioner was convinced that the Student's program was not working for him/her, even though the Student's teachers indicated that the Student was trying. Testimony of Petitioner. The Student's report cards for the 2022-2023 school year indicated that the Student continued to make little progress in reading, according to the STEP measure, and that the Student had made about a half a year's worth of progress in math. P-56.

6. Respondent proceeded to evaluate the Student. On July 25, 2023, a psychological evaluation report was issued regarding the Student. The evaluator tested the Student through the Wechsler Intelligence Scale for Children-5th Edition ("WISC-V"); the Woodcock-Johnson Tests of Achievement-4th Edition ("WJ-IV"), Form A; the Vineland Adaptive Behavior Scales-3rd Edition ("Vineland-3"), a teacher report and parent report; and three interviews with teachers. The evaluator also interviewed the Student and Petitioner. On the WISC-V, the Student's full-scale IQ score was 60, in the extremely low range, at the 0.4th percentile. On the WJ-IV, the Student's "Brief Achievement" score of 67 for academic abilities fell within the very low range, at the 1st percentile. The Student's skills in reading and writing were measured at the 1st percentile or below. On the Vineland-3, the Student's adaptive skills fell within the moderately low range on the teacher rating scale, higher than twelve percent of other children of the Student's age. The report indicated that the Student's general verbal skills, such as verbal fluency, ability to understand and use verbal reasoning, and verbal and basic word knowledge, were in the extremely low range. As a result, the report stated, the Student was likely to struggle with organizing the information needed to engage in language-based tasks (such as reading and writing). The report also indicated

that the Student was likely to struggle with articulating an understanding of information. The Student was diagnosed with Specific Learning Disorder with impairment in reading (dyslexia, double-deficit type), Specific Learning Disorder with impairment in written expression, and Specific Learning Disorder with impairment in mathematics (accurate math reasoning). P-2; Testimony of Witness B.

7. An initial IEP meeting was held for the Student on July 31, 2023. The IEP team expressed concerns about the Student's expressive and receptive speech, and the team agreed that additional testing was warranted. The IEP that resulted from the meeting stated that the Student required intensive supports outside the general education setting to focus on foundational skills that would be difficult to address in the general education setting. The Student's reading, writing, and math word problem skills were below level. In reading, the IEP indicated that the Student should have been at STEP Level 7, but instead was at STEP Level 0 as of May 2023 (even though the Student began the 2022-2023 school year at a higher level, on STEP Level 1). The Student's ability to produce complex sentences after being given a variety of demands was deemed to be at a pre-kindergarten level. The IEP reported that an analysis of the Student's writing indicated that s/he sometimes failed to recall the order in which letters should be positioned. The IEP reported that the Student had "significantly underdeveloped cognitive functioning," suggesting the possible presence of an intellectual disability. The IEP also stated that the Student had significant communication challenges that impeded his/her ability to understand directions and effectively show what s/he knew. The IEP said that the Student's ability to solve mathematical calculations was better than his/her cognitive functioning and comparable to other students of his/her age. The IEP stated

that the Student required specialized instruction to make progress in the school setting, through small-group instruction and modifications as needed. The IEP contained goals in math, reading, and writing. The IEP also suggested the following supports for the Student: visual aids; seating in front, next to the teacher, during structured times; repetition of directions; modeling; prompting; manipulatives; a visual timer; token rewards; frequent movement breaks incorporating heavy work activities; and breaks within the classroom setting as needed. The Student was recommended for five hours per week of specialized instruction inside general education, with two hours per week of specialized instruction outside general education. P-15.

8. The Student continued at School A for the 2023-2024 school year. The Student was given modified work. Testimony of Witness D. Petitioner was called numerous times during this school year because of the Student's increasing behavioral issues. Testimony of Petitioner. A speech and language evaluation of the Student was conducted on or about December 6, 2023. The Comprehensive Assessment of Spoken Language for Ages 7 to 9 ("CASL-2"), the Goldman-Fristoe Test of Articulation-3 ("GFTA-3"), and the Stuttering Severity Instrument-3rd edition ("SSI-3") were administered. The evaluation report stated that the Student demonstrated a significant deficiency in articulation and did not speak clearly. The report also indicated that the Student's inability to accurately repeat sounds might suggest a "more profound" phonological disorder. The Student demonstrated a "significant deficiency" in the ability to produce fluent speech. The Student's stuttering consisted of part-word and whole-word repetition, and the Student displayed secondary behaviors such as head movements, using unnecessary words, and avoiding social situations. The report concluded that the

Student exhibited delays in pragmatics, articulation, fluency, expressive language, and receptive language, and that the Student should receive speech therapy to improve his/her communication skills. The evaluator also reported on an observation of the Student, where the Student participated in a group math activity and was able to follow classroom routines, ask questions, work in a group, and interact with peers appropriately, though s/he was not able to answer questions. P-5; P-6; Testimony of Witness A.

9. An occupational therapy evaluation of the Student was conducted on May 10, 2024. The evaluation indicated that the Student had below-average fine motor precision, average manual coordination, and below-average handwriting. The Student was also found to present with below-average abilities when processing visual information. The Student's sensory processing skills fell within age expectations, and sensory issues were deemed to have no impact on the Student's environment. P-7.

10. In May 2024, Witness H wrote an FBA for the Student that identified the Student's behaviors as work avoidance/refusal, verbal aggression (including statements of self-harm during escalated or frustrated moments), disruption, and physical aggression (such as grabbing, hitting, and kicking). Observations occurred during times when the Student participated in a group lesson with his/her class or completed independent work. The Student was also observed during recess. P-8.

11. The FBA recommended a check-in/check-out program to provide the Student with extra support during the day. In this program, the Student would start the day with a positive check-in from an adult to review his/her goals. Throughout the day, teachers would indicate on a daily tracker how the Student performed in the following target areas: staying in class, treating others with kindness, completing work and

persisting through challenging tasks, using a calming strategy when upset, and keeping a safe body when upset. The Student would also have a check-out with an adult to review how s/he performed on his/her goals during the day. The FBA underscored that fidelity of implementation and consistency would be important factors for success with the Student. P-8; Testimony of Witness H.

12. An IEP meeting was held for the Student on May 21, 2024, and May 28, 2024. The ensuing IEP said that, based on teacher feedback and classroom observations, the Student struggled to solve mathematical word problems beyond the kindergarten level, showed improvement in decoding familiar words, and could identify beginning letter sounds, but struggled with digraphs and blending sounds. The IEP indicated that picture cues helped the Student sequence events in a story, and that the Student could compose a simple sentence with the support of a sentence-starter and the teacher. The IEP contained new language recommending strategies to address the Student's behaviors, including giving the Student an opportunity to make choices, where possible; giving the Student structured opportunities to build and practice positive conversation and play skills with peers; using replacement strategies; and ensuring that behavioral systems like the Student's check-in/check-out system were used with fidelity. The IEP contained goals in math, reading, written expression, motor skills/physical development, and emotional, social and behavioral development. The IEP recommended that the Student receive the following specialized instruction weekly: five hours inside general education for reading, four hours inside general education for math, four hours outside general education for reading, and 5.5 hours outside general education for math. The IEP also recommended related services, including four hours of occupational therapy per month in

a group and four hours of behavior support services per month in a group (two hours inside general education and two hours outside general education). The IEP provided similar “Other Classroom Aids and Services” to the prior IEP. P-17.

13. The Student’s report cards for the 2023-2024 school year indicated that s/he received a “U” for “unsatisfactory” or “N” for “needs improvement” in math, English language arts, and classroom participation for every term. P-57. On NWEA-MAP testing during the 2023-2024 school year, the Student’s math scores were at the 3rd percentile in the fall of 2023 and at the 9th percentile in the spring of 2024, and the Student’s reading scores were at the 9th percentile in the fall and at the 13th percentile in the spring. P-69-418. The Student’s IEP progress reports for the 2023-2024 school year indicated that s/he had made progress in math, mastering one goal, but had not made progress on any goals in reading or written expression during the first term. P-62. During the second term, progress was indicated in math, reading, and written expression, with one written expression goal mastered. P-63. The IEP progress report for the third term reflected the goals from the May 2024 IEP, which were just introduced. P-64.

14. A comprehensive psychological evaluation report on the Student was issued on October 22, 2024. Witness F administered the Kaufman Assessment Battery for Children-2nd Edition (“KABC-II”), the Kaufman Test of Educational Achievement-3rd Edition (“KTEA-3”), the Behavior Assessment System for Children-3rd Edition (“BASC-3”), the Comprehensive Test of Nonverbal Intelligence-2nd Edition (“CTONI-2”), and Autism Rating Scales. On the KABC-II, a cognitive measure, the Student scored 70 in general cognitive ability, at the 2nd percentile. On some subtests, including on fluid reasoning and long-term retrieval, the Student’s scores were far below average. On

the CTONI, a non-verbal assessment when compared to the KABC-II, the Student scored in the average range. On the KTEA-3, the Student scored at the 4th percentile in reading and at the 1st percentile in writing, but in the average range in math. On the BASC-3, the Student's scores revealed significant concerns across multiple domains. All ratings indicated that the Student had clinically significant or at-risk levels in externalizing problems (particularly aggression), conduct problems, and hyperactivity. P-1; Testimony of Witness F.

15. The October 2024 psychological evaluation also reported on Witness F's teacher interviews. According to the Student's general education teacher, the Student was eager to learn and participated in class activities like reading aloud, but sometimes struggled with reversing letters, maintaining focus for extended periods, and staying seated. The teacher indicated that the Student's then-current reading level was kindergarten/first grade, due to difficulties with basic reading skills and comprehension, and that, at times, the Student exhibited attention-seeking behaviors that were typical for his/her age, such as leaving his/her seat or raising his/her voice louder than others. The teacher indicated that the Student might need additional support to help him/her stay focused and develop reading abilities. According to the Student's special education teacher, the Student exerted significant effort but experienced difficulties with letter-sound associations, letter identification, and the foundational skills necessary for reading acquisition. The special education teacher indicated that mathematics appeared to be the Student's area of relative strength, and that the Student frequently provided positive reinforcement and praise to his/her classmates. P-1; Testimony of Witness F.

16. The October 2024 psychological evaluation included two observations. In one observation, the Student was in a general education classroom with one teacher and twenty-three students. The Student listened to a read-aloud session with the entire group, sat quietly, and listened attentively, but did not raise his/her hand to volunteer answers. At certain points, the Student rested his/her head on the desk, but complied when instructed to sit upright. After the teacher posed comprehension questions, the Student began raising his/her hand to participate in the discussion. The Student was also observed in a small-group instructional setting consisting of one teacher and six students. The class was engaged in a game focused on consonant-vowel-consonant (“CVC”) words. The Student engaged in behaviors such as verbalizing the answers aloud and had difficulty remaining seated. As the class progressed, the Student engaged in non-instructional behaviors, including chewing on a lanyard, standing up, and moving in close proximity to the board. The class transitioned to independent work on the Lexia program, during which time the Student struggled to maintain engagement, displaying several distracting and work-avoidant behaviors, including repeatedly requesting bathroom breaks, visually scanning the classroom environment, and rapidly clicking on computer keys multiple times. P-1; Testimony of Witness F.

17. The Student continued at School A for the 2024-2025 school year. On the Dynamic Indicators of Basic Early Literacy Skills (“DIBELS”) reading measure, the Student’s score regressed significantly over the summer, dropping from 370 to 272, lower than the Student’s DIBELS score in the fall of 2023. P-57; P-58. The Student has struggled with word sounds, spelling, and using evidence from a text to support his/her reasoning through writing. The Student has also been a “huge distraction” to other

students. P-58. Still, the Student's school year has been "going well," and s/he has benefitted from the check-in/check-out system. Testimony of Petitioner.

18. In December 2024, another FBA was written for the Student, by Witness F. The Student would sometimes get out of his/her seat, walk around the classroom, kick material, and make physical contact with peers. Based on the FBA, Witness F concluded that the function of the Student's behavior was to gain peer and adult attention and avoid non-preferred tasks. The targeted behavior was defiance, defined as any instance during which the Student did not comply with the request of the teacher or engaged in disruptive behaviors. P-44.

19. The December 2024 FBA included an observation of the Student in his/her math intervention block. At the start of the observation, the Student was talking to a friend, and the teacher had to ask the Student twice to resume his/her task. The teacher also had to ask him/her three times to stop banging a white board on a computer before s/he complied. The Student got out of his/her seat and walked around the classroom for about one minute before returning to his/her seat without being prompted. When the students in the class were instructed to close their computers, the Student slammed his/her machine and walked to the window. The teacher asked the Student to come to the teacher's desk, but the Student continued to walk around the class, kick items, and hit desks with his/her hands. The Student continued to pout and make loud noises as the teacher asked him/her again to come to the teacher's desk. The Student first walked to the door, then went to sit at the teacher's desk. The Student told the teacher that s/he was upset because s/he could not figure out the correct answer. The FBA indicated that, overall, the Student appeared to struggle with behavioral and academic expectations in

the classroom, but did better after receiving positive individual attention. When such attention was not provided, the Student continued to engage in the target behavior. P-44

20. In March 2025, at a meeting between Petitioner and School A staff, Witness C expressed that the specialized instruction hours on the Student's IEP were insufficient, since all the data indicated that s/he was significantly below grade level and all his/her behaviors occurred in the general education setting. Witness C said that the Student did not misbehave when s/he was pulled out for the special education setting, where the Student did not have to function on grade level. Testimony of Witness C.

21. The Student's report cards for the first two terms of the 2024-2025 school year indicated that the Student received "U" or "N" grades for math and English language arts for both terms, and that the Student was on a behavior chart. P-58. The Student's IEP progress report for the first term of the 2024-2025 school indicated that s/he had progressed on some goals, but that other goals had not been introduced. By the second term, the Student was reported to be progressing on all goals. P-66.

VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was established 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.” D.C. Code Sect. 38-2571.03(6)(A)(i).

Accordingly, on Issue #1, the burden is on Respondent if Petitioner presents a *prima facie* case. On Issue #2, Issue #3, and Issue #4, the burden of persuasion is on Petitioner.

1. Did Respondent deny the Student a FAPE by failing to propose an appropriate IEP for the Student for the 2023-2024 school year?

July 2023 IEP

Petitioner alleged that the IEP’s recommendation for seven hours per week of specialized instruction (five hours inside general education, two hours outside general education) was not sufficient, and that the IEP should have provided the Student with speech-language pathology. Petitioner also contended that the IEP’s goals were insufficient, that the IEP’s accommodations and supplemental aids and services were insufficient, and that the present levels of performance in the IEP were inadequate.

The IDEA was enacted to “ensure that children with disabilities have available to them free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” M.G. v. Dist. of Columbia, 246 F. Supp. 3d 1, 7 (D.D.C. 2017) (citing 20 USC 1400(d)(1)(A); 34 CFR 300.300). The Court’s decision in Andrew F. v. Douglas County School District, 580 U.S. 386 (2017), stated that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that a student’s program should be “appropriately ambitious,” a standard “markedly more demanding than the ‘merely more than de minimis’ test applied by the Tenth Circuit.” Id. at 1000-1002. Finding that “instruction that aims so low” would be tantamount to “sitting idly...awaiting the time when they were old enough to drop out,” the Court held that IDEA “demands” a higher standard. Id. The District of

Columbia Circuit Court of Appeals has accordingly found that Andrew F. raised the bar on what counts as adequate education under the IDEA. Z. B. v. District of Columbia., 888 F.3d 515, 517 (D.C. Cir. 2018).

At the time of the IEP meeting in July 2023, the team had information suggesting that the Student might not be able to function in a large classroom and might need a smaller setting with more small-group and one-on-one attention. The Student's full-scale IQ score was 60, in the extremely low range, at the 0.4th percentile, lower than more than ninety-nine percent of other children his/her age. A report indicated that the Student's general verbal skills, such as verbal fluency, ability to understand and use verbal reasoning, and verbal and basic word knowledge, were also in the extremely low range. The Student's skills in reading and writing were at or below the 1st percentile. The July 2023 IEP itself suggested that the Student needed to be instructed in a smaller setting. The IEP said that the Student's ability to produce complex sentences after being given a variety of demands was deemed to be at a pre-kindergarten level. The IEP said that the Student sometimes even failed to recall the order in which letters should be positioned. The IEP concluded that the Student's "significantly underdeveloped cognitive functioning" suggested the possible presence of an intellectual disability and that the Student should be given additional practice opportunities, visual supports, manipulatives when appropriate, and small-group instruction or intervention whenever possible to increase his/her exposure to instruction. The IEP stated that the Student required specialized instruction to make progress in the school setting, through small-group instruction and modifications as needed. The IEP said that the Student required intensive supports outside the general education setting to focus on foundational skills that would

be difficult to address in the general education setting. All this is consistent with the testimony of Witness E, the Student's former teacher, who suggested that the Student made progress when s/he was taught through one-on-one or small-group instruction.

Despite all this language in the IEP, the Student was not assigned to small classes, except for two hours of pull-out instruction per week. Instead, the IEP team assigned the Student to large general education classes, including for reading and writing, even though s/he was functioning well below grade level in those areas. The IEP recommended five hours per week of specialized instruction inside general education and two hours per week of specialized instruction outside general education. Respondent's position was merely that this was a "reasonable start" for a student with a new IEP, but Respondent provided no authority for the proposition that the standards are different for initial IEPs.

Respondent suggested that the Student's test scores supported its position that the IEP was reasonably calculated to allow the Student to make meaningful benefit with the recommended program during the 2023-2024 school year. But the IEP itself rebuts that argument. In regard to the Student's reading skills, the IEP indicated that the Student should have been at STEP Level 7, but instead was at STEP Level 0 as of May 2023, even though the Student began the 2022-2023 school year at STEP Level 1 in reading. The Student's skills in reading and writing were at the 1st percentile or below, according to testing at that time. Moreover, at the start of the 2022-2023 school year, the Student's NWEA-MAP scores were at the 16th percentile in math and the 15th percentile in reading. By the spring of 2023, the Student's scores had dropped to the 7th percentile in math and the 6th percentile in reading. Respondent did not meet its burden to show that

the recommendation for seven hours of specialized instruction for the 2023-2024 school year was appropriate.

Even more persuasive were the allegations that the IEP should have provided the Student with speech-language pathology. The IEP itself stated that the Student's communication challenges impeded his/her ability to understand directions and effectively show what s/he knew, and that the Student's ability to produce complex sentences after being given a variety of demands was at a pre-kindergarten level. The minutes for the IEP meeting indicated that the team agreed that the Student qualified for special education services under the disability classification of speech and language impairment, and that a formal speech and language evaluation of the Student should be conducted. That evaluation, completed in December 2023, said that the Student should have received a mandate of speech-language pathology in his/her IEP. Respondent argued that this was an oversight and that the IEP could have been amended to add speech. However, Respondent provided no legal authority for the proposition that a defective IEP can be deemed to be lawful because it can, theoretically, be amended in the future if a LEA decides to evaluate a student and then changes its mind about the services it provides to that student.

Petitioner also claimed that the IEP goals denied the Student a FAPE. An IEP must include a "statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability."

34 CFR 300.320 (a)(2)(i); J.B. by & through Belt v. D.C., No. 17-CV-1298 (CRC/GMH),

2018 WL 10399853, at *20 (D.D.C. May 8, 2018), report and recommendation adopted, 325 F. Supp. 3d 1 (D.D.C. 2018) (on standards for IEP goals).

Witness I, Respondent's main expert, admitted that the Student's writing goals were deficient and that s/he did not receive a goal for decoding, which was necessary. Witness I also did not rebut Witness B's contention that the July 2023 IEP should not have contained math goals with word problems, which were inappropriate because the Student was weak at reading. Nor did Witness I explain how the lack of speech-language goals could possibly be appropriate for the Student, given language in the IEP meeting minutes indicating that the Student needed speech-language services.

This Hearing Officer is less convinced about Petitioner's other goal-related claims. Though the BASC scales in the Student's July 2023 psychological evaluation indicated that s/he had challenges regulating behavior, the record contains insufficient evidence to establish that the Student's behavioral issues were so significant in July 2023 that the failure to include behavioral goals in the IEP amounted to FAPE denial. Petitioner, through Witness B, also contended that the Student's IEP goals relating to putting jumbled words together and copying were pointless, but the record suggests that the Student could have benefitted from these goals, because of his/her issues with formulating words and handwriting. Witness B's testimony to the effect that the Student's math and reading goals were unmeasurable was also not convincing. These goals, like many goals in IEPs, were to be measured by informal testing to assess the Student's ability achieve at eighty percent accuracy over four to five attempts. Petitioner did not provide any legal authority to support the contention that this kind of goal measurement is contrary to the principles of the IDEA.

Finally, during closing argument, Petitioner did not clearly address the contentions that the IEP's accommodations and supplemental aids and services were insufficient, or that the present levels of performance in the IEP were so inadequate that the Student's substantive rights were affected.

In sum, Respondent denied the Student a FAPE through the July 2023 IEP, which was insufficient because the specialized instruction mandate was inadequate, no speech services were recommended, and some of the goals were insufficient.

May 2024 IEP

Petitioner's contention in Issue #1 was that the Student was not provided with appropriate IEPs for the 2023-2024 school year. The May 2024 IEP was scheduled to go into effect on May 21, 2024, only a few weeks before the school year was to end. This IEP included a significant increase in specialized instruction, from seven hours (five hours inside general education, two hours outside general education) to 18.5 hours (nine hours inside general education, 9.5 hours outside general education). This approach has clearly helped the Student, since Petitioner herself stated at the hearing that the current school year is "going well." This IEP should have included a recommendation for direct speech-language pathology, but since this IEP was only in effect for a few weeks during the subject school year, this issue must be considered de minimis and insufficient to form the basis of FAPE denial. Likewise, any inadequacies with the goals in this IEP must be considered de minimis, because the goals were only just introduced, according to the final IEP progress report for the 2023-2024 school year. The same analysis applies to the claims that this IEP contained inadequate supplemental aids and services and present levels of performance. Claims relating to the May 2024 IEP must therefore be dismissed.

2. Did Respondent deny the Student a FAPE by failing to evaluate the Student in all areas of suspected disabilities?

Petitioner alleged that, from the start of the 2021-2022 school year through the date of the July 2023 IEP, the Student should have been located and identified as a child with a possible disability and evaluated through a psychoeducational assessment, an adaptive assessment, a behavioral assessment, and a speech assessment.

Claims accruing prior to April 2, 2023

Petitioner contended that Respondent violated the Child Find provisions of the IDEA (“Child Find”) when it failed to evaluate the Student during the 2021-2022 and 2022-2023 school years, prior to April 2, 2023. Child Find requires each state to have policies and procedures in effect to ensure that all children with disabilities who reside in the state and who need special education services are identified, located, and evaluated. 20 USC 1412(a)(3)(A); 34 CFR 300.111(a). Child Find obliges a school district to oversee any child suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade. 34 CFR 300.111(c)(1); Reid v. District of Columbia, 401 F.3d 516, 518-19 (D.C. Cir. 2005); Hawkins v. District of Columbia, 539 F. Supp. 2d 108 (D.D.C. 2008). Child Find is an “affirmative obligation.” Montuori v. District of Columbia, No. CV 17-2455 (CKK), 2018 WL 4623572, at *6 (D.D.C. Sept. 26, 2018). The District of Columbia Circuit Court of Appeals has stated that the Child Find obligation is among the IDEA’s “most important” requirements for the LEA. D.L. v. District of Columbia, 860 F.3d 713, 717 (D.C. Cir. 2017).

Still, Child Find claims must be brought within the statute of limitations for IDEA claims. A parent or agency must request an impartial due process hearing within two

years of the date that the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. 1415(f)(3)(C). As Respondent pointed out, Petitioner's claims accruing prior to April 2, 2023, relate to events that are more than two years old and therefore must be barred by the applicable statute of limitations, absent the application of an exception.

The IDEA specifies two exceptions to the statute of limitations. The first explicit exception concerns misrepresentation, specifically providing that the statute of limitations shall not apply if the parent was prevented from requesting the hearing due to specific misrepresentations by the LEA that it had resolved the problem that formed the basis of the complaint. 20 USC 1415(f)(3)(D). This exception is not raised in this case. The second explicit exception, however, is at issue here. That exception applies if the parent was prevented from requesting the hearing due to the LEA withholding required information from the parent. 34 CFR 300.511(f). Petitioner contended that she did not receive any information from Respondent during the 2021-2022 and 2022-2023 school year that would have alerted her to her due process rights under the IDEA.

However, a causation requirement is associated with this exception. For this exception to the statute of limitations to apply, the LEA's withholding of the information must have actually prevented the parent from filing a claim. D.K. v. Abington School District, 696 F.3d 233 (3d Cir. 2012). And the evidence here suggests that Petitioner would not have filed a claim, even if she had received written notice of her rights from Respondent. When Petitioner was asked, on cross-examination, about whether she read official school-related documents, she said, "if [the notice] is not [to the effect that] we're gonna die, I try to avoid it." When asked about report cards, Petitioner said, "They gave

them to me, but I didn't look at it.” And when another school district sent Petitioner notices that advised her about her due process rights in 2019, Petitioner apparently did not review language that stated:

“Parents of a student with a disability have specific rights under IDEA, Part B that are outlined in the procedural safeguards notice. Please feel free to contact the person listed below to receive a copy of the procedural safeguards notice, receive assistance understanding the procedural safeguards notice, or receive additional information about the Part B process.”

This Hearing Officer therefore agrees with Respondent that all claims relating to evaluations prior to April 2, 2023, should be dismissed, due to the applicable two-year statute of limitations.

Claims accruing after April 2, 2025

The evaluation procedures of the IDEA are designed to position an IEP team to create an IEP tailored to a student’s special educational needs. Failure to follow those procedures may yield an IEP that is not appropriately tailored to the student, denying the student an appropriate education. Z. B. v. District of Columbia., 888 F.3d 515, 522–23 (D.C. Cir. 2018). A child’s initial evaluation or reevaluation must consist of two steps. First, the child’s evaluators must “review existing evaluation data on the child,” including any evaluations and information provided by the child’s parents, current assessments, classroom-based observations, and observations by teachers and other service providers. 34 CFR 300.305(a)(1). Then, based on a review of the existing data and input from the child’s parent, the LEA must identify what additional data, if any, is needed to assess whether the child has a qualifying disability and, if so, administer such assessments and other evaluation measures as needed. 34 CFR 300.305(a)(2)(c). The LEA must use “a variety of assessment tools and strategies to gather relevant functional, developmental,

and academic information about the child, including information provided by the parent.” 34 CFR 300.304(b). A student must be “assessed in all areas related to the suspected disability.” 34 CFR 300.304(c)(4).

Prior to the July 2023 IEP meeting, which was the Student’s first IEP meeting with Respondent, the LEA conducted one assessment of the Student, a comprehensive psychological assessment. Respondent did not conduct a speech evaluation of the Student at the time, and during the hearing, Respondent did not clearly explain its failure to evaluate the Student for speech and language services. Respondent’s own records make it obvious that the Student did need a speech evaluation prior to the July 2023 IEP meeting. The July 2023 IEP indicated that the Student’s communication challenges impeded his/her ability to understand directions and effectively show what s/he knew. And the minutes from the IEP meeting stated unequivocally that the team agreed that the Student qualified for special education services under the disability classification of speech and language impairment, and that a formal speech and language evaluation of the Student should be conducted. That evaluation, completed in December 2023, said that the Student should have received a mandate of speech-language pathology in his/her IEP. The evaluation indicated that the Student was sixty-percent unintelligible to people who were not familiar with him/her, which would include many peers and staff that the Student would have to engage with to function effectively in the general education setting. The evaluation report also stated that the Student demonstrated a significant deficiency in articulation and that s/he did not speak clearly. The report indicated that the Student’s inability to accurately repeat sounds demonstrated a significant deficiency in the ability to produce fluent speech, that the Student stuttered

with part-word and whole-word repetition, and that s/he engaged in secondary behaviors such as head movements, using unnecessary words, and avoiding social situations. The report also indicated that the Student's inability to accurately repeat sounds might indicate a "more profound" phonological disorder. The report concluded that the Student exhibited delays in pragmatics, articulation, fluency, and expressive and receptive language, and that the Student should receive speech therapy to improve his/her communication skills. This Hearing Officer therefore agrees with Petitioner that the Student should have been evaluated for speech and language issues prior to the IEP meeting in July 2023.

Parenthetically, since the July 2023 psychological evaluation did include adaptive testing, as well as the administration of a BASC scale to assess the Student's behavioral concerns, this Hearing Officer does not agree that any additional evaluations were needed prior to the development of the July 2023 IEP. Still, Respondent did deny the Student a FAPE by failing to assess his/her speech and language needs prior to the IEP meeting in July 2023.

3. Did Respondent fail to conduct an FBA and create a BIP for the Student during the 2023-2024 school year? If so, did Respondent deny the Student a FAPE?

The United States Department of Education's Office of Special Education and Rehabilitative Services ("OSERS") has stated that schools are expected to have properly trained professionals available to conduct FBAs and to formulate and provide positive behavioral interventions and supports. Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, 81 IDELR 138 (OSERS 2022). Courts in the District of Columbia have also found that if a school district fails to

recommend appropriate behavioral supports for a student, in particular an FBA, FAPE denial may be found. Courts find that an FBA is required in many cases because the FBA can be essential to address a child's behavioral difficulties and, as such, can play an integral role in the development of an IEP. Jackson v. District of Columbia, No. CV 19-197 TJK/DAR, at *2 (D.D.C. June 2, 2020), report and recommendation adopted, No. CV 19-197 (TJK/DAR), 2020 WL 3298538 (D.D.C. June 18, 2020). The District of Columbia Circuit Court of Appeals has stated that the failure to conduct an adequate FBA is a procedural violation that can have substantive effects because it may prevent the IEP team from obtaining necessary information about a student's behaviors, leading to those behaviors being addressed inadequately or not at all. Z. B., 888 F.3d at 524.

In this case, the record does not contain much information about the Student's behavioral issues during the 2022-2023 school year, except in a BASC scale that was administered as part of the Student's July 2023 psychological evaluation. This evaluation reported that, pursuant to BASC scales completed by one of Respondent's teachers, the Student was either at-risk of clinically significant for anxiety, depression, atypicality, and functional communication. But there is nothing in the record to suggest that the Student's behaviors were so severe that an FBA was required at the time. The record instead indicates that the Student's behavioral issues developed over the course of the 2023-2024 school year, as the Student became more and more frustrated at school. Respondent then arranged for a BCBA, Witness H, to create an FBA for the Student in May, 2024. Observations of the Student were conducted during classes in the morning and afternoon, when the Student was participating in a group lesson in class, completing independent work, and during recess. Witness H, who came across credibly, said that

throughout all the observations, the Student followed teacher directions and demonstrated consistent on-task behavior. The FBA then recommended a check-in/check-out program to provide the Student with extra support during the school day. There is no dispute that this check-in/check-out program has been successful for the Student, who is doing relatively well in the current school year. Respondent's timing of the FBA makes sense, given the chronology of the Student's behavioral issues, so Respondent should not be held liable for its failure to write an FBA (or a BIP, which Witness H found to be unnecessary) for the Student during the 2023-2024 school year. Accordingly, this claim must be dismissed.

4. Did Respondent deny Petitioner the right to participate in the IEP process in the two years prior to the filing of the Complaint?

School districts must afford parents an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. 34 CFR 300.501 (b). Most claims pertaining to these provisions involve contentions that the school district did not provide the parent with a fair opportunity to be heard during an IEP meeting. Deal v. Hamilton Cnty. Bd. of Educ., 392 F.3d 840, 866 (6th Cir. 2004).

This claim is not about Respondent's failure to let Petitioner participate in an IEP meeting. Indeed, the record indicates that at both of the subject IEP meetings, Petitioner and her representatives received a fair opportunity to speak and explain the parent's positions to the LEA. Instead, the contention here is that the parent was not given written notice about her due process rights during the 2021-2022 and 2022-2023 school years. This issue was explored in the analysis of the statute of limitations for Issue #2, which concluded that any failure of Respondent to provide additional notice to Petitioner during

the 2021-2022 and 2022-2023 school years is excusable because Petitioner had already received written notice of her due process rights, and Petitioner would likely not have read further notices sent by Respondent, given her testimony that she would only read written correspondence if it involved life or death. For the same reasons as expressed in the analysis of Issue #2, this Hearing Officer finds that the two-year statute of limitations bars this claim, which must be dismissed.

RELIEF

As relief, Petitioner, through Witness B, seeks the following for the Student: a total of 1,560 hours of compensatory tutoring; a psychological evaluation for Attention-Deficit/ Hyperactivity Disorder (“ADHD”) and autism; a detailed assessment to determine specific areas of weakness related to reading and spelling; a detailed assessment to determine specific areas of weakness related to math, using a test instrument such as the Feifer Assessment of Mathematics; a complete assistive technology evaluation; an updated IEP; daily progress monitoring in the form of objective data with weekly reports; education and support services to enable the Student and his/her family to learn about his/her diagnosed disabilities; assistive technology services to provide training and support to staff involved in implementing the Student’s IEP; and specialized instruction through the summer. Petitioner also seeks, through Witness A, 150 sessions of compensatory speech-language pathology services.

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to “grant such relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S.

359, 371 (1985). The ordinary meaning of these words confers broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.”

Hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). The 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. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a “qualitative, fact-intensive” inquiry used to craft an award “tailored to the unique needs of the disabled student”). A petitioner need not “have a perfect case” to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011).

Witness B’s tutoring proposal is based on the premise that the Student was denied a FAPE over the course of three school years. Since the finding here is that the Student was denied a FAPE only during the 2023-2024 school year, only the request for 520 hours of tutoring, corresponding to the 2023-2024 school year, will be considered.

However, Witness B’s tutoring calculation included compensatory education corresponding to missed summer services, missed assistive technology services, and missed family services. None of these issues were mentioned in the prehearing conference order, and none of these issues were the basis for any findings of FAPE denial. This Hearing Officer will therefore disregard these additional bases for relief.

Witness B's testimony also did not carefully connect her proposed award to the standards set forth in Reid. Respondent argued that its own compensatory education plan was superior. However, Witness I's plan recommended a modest 136 hours of compensatory education, which comes to less than one hour of services per one full school day. After due deliberation, this Hearing Officer finds that an award of 325 hours of tutoring is fair and consistent with Reid, given the extent of the FAPE deprivation and the difficulty of educating this Student, who remains well below grade level in reading and writing and is obviously in need of intensive instruction to recover what s/he lost during the 2023-2024 school year.

For compensatory speech-language pathology services, Witness A proposed 150 hours and Witness I recommended 31 hours. Witness A appeared to be more credible than Witness I on this issue, since Witness I is not a speech-language expert, but Witness A's proposal was again based on three years of FAPE denial. Since the finding here is that the Student was denied a FAPE only during the 2023-2024 school year, the Student's compensatory award will be fifty hours of speech-language pathology.

The record does not sufficiently support Petitioner's other requests for relief. Either the requested relief (like the requests relating to assistive technology and family-related services) does not correspond to the findings of FAPE denial, or the record does not establish why the requested relief (like the request for detailed assessments to determine the Student's specific areas of weakness related to reading, spelling, and math) is needed in light of evaluations of the Student that have already been conducted.

VII. Order

As a result of the foregoing:

1. Respondent shall pay for 325 hours of tutoring for the Student, to be provided by a certified special education teacher, at a usual and customary rate in the community;
2. Respondent shall pay for 50 hours of speech-language pathology for the Student, to be provided by a licensed speech-language pathologist, at a usual and customary rate in the community;
3. All other requests for relief are denied.

Dated: June 16, 2025

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
Attorney C, Esq.

VIII. Notice of Appeal Rights

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

Dated: June 16, 2025

Michael Lazan
Impartial Hearing Officer