

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, NE, 3rd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
June 22, 2025

PARENT, on behalf of STUDENT, ¹)	Date Issued: June 22, 2025
)	
Petitioner,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2025-0057
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Dates:
Respondent.)	June 10 and 11, 2025
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner parent under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the parent seeks compensatory education and other relief for her child (STUDENT) from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied Student a free appropriate public education (FAPE) by, *inter alia*, failing ensure that the child was appropriately evaluated and his/her Individualized Education Program (IEP) was timely and appropriately revised when Student transferred from a public charter school and enrolled in a DCPS school for the 2024-2025 school year.

¹ Personal identification information is provided in Appendix A.

Petitioner's Due Process Complaint, filed on March 21, 2025, named DCPS as Respondent. The undersigned hearing officer was appointed on March 24, 2025. The parties met for a Resolution Session Meeting on April 4, 2025 and did not resolve the issues in dispute. On April 3, 2025, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, set the hearing date and address other matters. The due process hearing was set for June 10 and 11, 2025. On April 10, 2025, I granted Petitioner's April 9, 2025 motion for leave to file an amended due process complaint. The amendment restarted the IDEA hearing timelines as of April 9, 2025. I issued a prehearing order on June 2, 2025. On June 3, 2025, I granted DCPS' request to extend the prehearing disclosures due date to June 4, 2025. The final decision due date for this case is June 23, 2025.

With the parent's consent, the due process hearing was held online and recorded by the hearing officer using the Microsoft Teams videoconference platform. The hearing, which was open to the public, was convened before the undersigned impartial hearing officer on June 10 and 11, 2025. MOTHER appeared online for the hearing and was represented by PETITIONER'S COUNSEL 1 and PETITIONER'S COUNSEL 2. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL. Petitioner's Counsel 1 made an opening statement.

Petitioner testified and called as additional witnesses EDUCATIONAL ADVOCATE 1, EDUCATIONAL ADVOCATE 2, PRIVATE AUDIOLOGIST and BEHAVIOR ANALYST. DCPS called as witnesses DCPS AUDIOLOGIST, SPEECH-

LANGUAGE PATHOLOGIST, SCHOOL SOCIAL WORKER, CASE MANAGER, LEA Representative, and MODIFIED INSTRUCTION DIRECTOR. Petitioner's Exhibits P-1 through P-63 were admitted into evidence, with the exceptions of Exhibits P-6, P-15, P-42, P-57 and P-58. Exhibits P-7, P-8, P-12, P-17, P-18, P-20, and P-55 were admitted over DCPS' objections. Exhibits P-57 and P-58 were withdrawn. I sustained DCPS' objections to Exhibits P-6, P-15 and P-42. DCPS' Exhibits R-1 through R-38 were admitted into evidence without objection.

On June 11, 2025, after the close of all of the evidence, Petitioner's Counsel 1 and DCPS' Counsel made oral closing arguments. There was no request to file written closings.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and 5A DCMR § 3049.1.

ISSUES AND RELIEF SOUGHT

The issues raised by Petitioner against DCPS are as follows:

A. Whether DCPS denied the student a FAPE when the District failed to develop and/or timely develop a Behavior Intervention Plan (BIP) for Student beginning in the fall of 2024;

B. Whether DCPS failed to provide the student with an appropriate Individualized Education Program (IEP) during the 2024-2025 school year, in that the May 2024 and February 2025 IEPs (1) did not contain sufficient specialized instruction hours (2) were not based on sufficient and comprehensive evaluative data (3) failed to include the dedicated aide services received by the student (4) and failed to provide adequate behavior support; and.

C. Whether DCPS failed to comprehensively evaluate and/or timely evaluate

and/or re-evaluate the student after enrollment in DCPS and/or pursuant to the parent's written request on or about January 29, 2025 by 1) failing to proceed with a comprehensive evaluation of the student following his/her enrollment 2) failing to conduct or timely conduct a comprehensive psychological evaluation that included cognitive and achievement testing, an Auditory Processing Evaluation, a Speech Language Pathology evaluation and/or a Functional Behavioral Assessment (FBA), requested by the parent in writing on or about January 29, 2025.

For relief, the Petitioner requests that the hearing officer order DCPS as follows:

Order DCPS to immediately revise the student's IEP to provide for an increase in specialized instruction both inside and outside the general education setting and behavior support services, develop a BIP, and amend the IEP to provide for a dedicated aide; Order DCPS to provide the student with compensatory education for the denials of FAPE alleged and reserve the parent's right to request additional compensatory education upon completion of outstanding evaluations; Order DCPS to provide the student transportation services, as needed, to secure compensatory education; Order DCPS to ensure that independent providers secured by the parent are timely compensated for their services; Order DCPS to conduct or fund evaluations of Student, including a comprehensive psychological evaluation that includes cognitive and achievement testing, a Functional Behavioral Assessment (FBA), and an Auditory Processing Evaluation and provide copies to the parent; Order DCPS to timely review the evaluations and revise the student's IEP as warranted and Order DCPS to develop a BSS.

FINDINGS OF FACT

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE child, resides with Mother in the District of Columbia.

Testimony of Mother.

2. Student is eligible for special education as a child with Multiple Disabilities (MD) based on coexisting Emotional Disturbance (ED) and Other Health Impairment (OHI) impairments. Exhibit R-4.

3. For the 2024-2025 school year, Student was enrolled in CITY SCHOOL 1, a DCPS public school, in GRADE. For the 2022-2023 and 2023-2024 school years, Student was enrolled in PUBLIC CHARTER SCHOOL (PCS). Exhibit P-20, Testimony of Mother. PCS is located in the District of Columbia and serves as its own local education agency (LEA). Hearing Officer Notice.

4. Beginning November 2023, PCS conducted an initial special education eligibility evaluation of Student upon Mother's referral. Student's teachers were concerned that the child's behavior was affecting his/her academic progress. Academic assessment data considered by PCS included Measures of Academic Progress (MAP) assessments in reading and math, Skills Block curriculum assessment for reading, Heggerty phonemic awareness assessment and the Bridges math curriculum assessments. The PCS classroom teacher reported that in the classroom, behaviors of Student observed included physical aggression towards teachers and kids (hitting, kicking), refusal to do work which looked like yelling, eloping from the classroom, walking around classroom, throwing materials and writing on classroom boards. During whole group lessons Student often was targeting other students and disrupting them. These behaviors were consistent across all settings. Mother had also told the PCS staff that Student had Sick cell trait. Exhibit P-7.

5. The PCS evaluators conducted an occupational therapy (OT) evaluation of Student using the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2); Developmental Test of Visual Perception, Third Edition (DTVP-3); the

Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition (VMI-6) and the Sensory Processing Measure, Second Edition (SPM-2). Exhibit P-8.

6. PCS CLINICAL PSYCHOLOGIST conducted a clinical evaluation of Student in January 2024. She administered the Northwest Evaluation Association Measures of Academic Progress (MAP). To assess Student's Emotional, Social and Behavioral Development, PCS Clinical Psychologist administered the Behavior Assessment System for Children, Third Edition (BASC-3) Teacher Rating Scale and Parent Rating Scale and the Conners Fourth Edition (Conners 4) Attention-Deficit/Hyperactivity Disorder (ADHD) assessment. In her February 4, 2024 clinical evaluation report, PCS Clinical Psychologist reported, *inter alia*, that Student had been referred for a clinical evaluation to assess his/her behavioral and social-emotional functioning for educational purposes; that Student had difficulty regulating his/her emotions and behaviors in both the school and home settings; that problems with emotional dysregulation, conduct, and depression were consistently seen; that Student overreacted to stressful situations, argued when denied his/her own way; actively refused to do what adults told him/her to do; was easily frustrated, irritable, lost his/her temper, said mean or hurtful things to others, and had difficulty calming down when angry. In school, Student would speak out of turn during class, disrupt the schoolwork of other children, and avoid things that take a lot of effort and were not fun. When angry, Student would kick, hit, yell at, and punch teachers or peers. Additionally, Student was often tired and slept at school. PCS Clinical Psychologist diagnosed Student with Unspecified

neurodevelopmental disorder, rule out; Attention-deficit/hyperactivity disorder, Combined presentation; Oppositional defiant disorder; and Disruptive mood dysregulation disorder. Exhibit P- 7.

7. The PCS eligibility team determined on February 6, 2024 that Student was a child with an OHI disability. In the initial March 1, 2024 IEP, PCS identified Mathematics, Reading, Written Expression, Emotional, Social and Behavioral Development and Motor Skills/Physical Development as goal areas for Student. For special education and related services, the PCS initial IEP provided for Student to receive 1 hour and 30 minutes per week of Specialized Instruction in the general education setting, 2 hours per week of Specialized Instruction outside general education, 3 hours per month of counseling and 30 minutes per week of OT. The March 1, 2024 IEP also provided for Student to have the full time support of a dedicated aide. In the IEP, Student was determined eligible for Extended School Year (ESY) services. Exhibit P-11. The March 1, 2024 IEP was amended on April 23, 2024 and May 20, 2024, apparently without change to Student's special education and related services hours. Exhibit P-12.

8. In early 2024, PCS Clinical Psychologist conducted a Functional Behavioral Assessment (FBA) of Student. According to her March 25, 2024 FBA report, the functions of Student's behaviors were hypothesized to be Social (attention/preferred items) and (escape from tasks/activities). The problematic behaviors typically occurred when Student was denied access to preferred items or activities or when Student was

asked to perform a task or participate in activities. Clinical Psychologist reported that Student's behaviors were unsafe and disruptive to the learning environment. She reported that community-based services had been recommended to the family, but the family had not engaged in community supports or outpatient services. Clinical Psychologist recommended that a Behavior Intervention Plan (BIP), connected to positive rewards and reinforcement, be developed to assist Student with emotional management. Exhibit P-20. If PCS developed a BIP for Student, it was never seen at City School 1. Testimony of School Social Worker.

9. Over the summer of 2024, Mother enrolled Student in City School 1, a DCPS public school, for the 2024-2025 school year. Before the start of school, LEA Representative spoke with Mother and obtained Student's PCS IEP. LEA Representative also issued an invitation to Mother for a 30-day IEP review meeting. Testimony of LEA Representative.

10. When Student entered City School 1, the DCPS School implemented Student's PCS IEP "from day one." The City School 1 team decided to accept Student's PCS IEP because it was recent and the IEP goals seemed appropriate. The City School 1 team wanted to implement the PCS IEP and see how Student responded. Testimony of LEA Representative.

11. At the beginning of the 2024-2025 school year, the educators at City School 1 did not have any behavior concerns for Student. The IEP support, including counseling and a dedicated aide were working for him/her. Close to the Thanksgiving

break, the City School 1 staff started to see increasing concerning behaviors, including Student's being off-task, leaving the teaching area, profanity, fighting and bullying. This was in the time period when the classroom was moved to a temporary space during a school renovation project. Testimony of School Social Worker, Testimony of LEA Representative.

12. On or about January 29, 2025, Petitioner's Counsel 2 wrote the principal of City School 1 to request that Student "be evaluated for special education and its related services." Counsel wrote that the evaluations requested included, but were not limited to, a Comprehensive Psychological Evaluation that includes cognitive and achievement testing, FBA and an Auditory Processing Evaluation. She wrote that the parent was making the evaluation request because of Student's "ongoing academic difficulties." Exhibit P-43.

13. An IEP meeting for Student had been scheduled for February 4, 2025. Mother and Petitioner's Counsel attended the meeting. In light of the attorney's January 29, 2025 request for Student to be evaluated, the team also considered whether to proceed with an evaluation and to order additional assessments. In the February 4, 2025 IEP, the City School 1 IEP team identified OHI as Student's disability and Mathematics, Reading, Written Expression, Emotional, Social and Behavioral Development and Motor Skills/Physical Development as goal areas for Student. For special education and related services, the February 4, 2025 IEP provided for Student to receive 5 hours per week of Specialized Instruction in the general education setting, 7½

hours per week of Specialized Instruction outside general education, 2 hours per month of Behavioral Support Services and 2 hours per month of OT. The February 4, 2025 IEP also provided for Student to have the support of a dedicated aide. In the February 4, 2025 IEP, Student was determined not eligible for Extended School Year (ESY) services. Exhibit R-29. All team members agreed with the IEP as developed. Exhibit R-20

14. At the February 4, 2025 IEP team meeting, the team decided to order a psychological/educational assessment and an auditory assessment. The team also agreed that a BIP would be completed. An eligibility/IEP review meeting for Student was scheduled for April 1, 2025. Exhibit R-20.

15. After the February 4, 2025 IEP team meeting, Speech-Language Pathologist did an observation of Student and a screener. She noted Student had language processing difficulties and recommended a speech language assessment, but not an auditory processing evaluation. The parent was informed that a DCPS audiologist would provide input, but the assessments that would be ordered for Student would be psychological, educational and speech-language. The family and Petitioner's attorneys agreed to proceed in this manner and Mother provided evaluation consent. However, they noted their objection to DCPS' not ordering an auditory processing assessment. Exhibit P-37. DCPS has not conducted an auditory processing evaluation of Student. Testimony of Speech-Language Pathologist. Mother executed a consent for DCPS to reevaluate Student on February 5, 2025. Exhibit R-19.

16. On March 6, 2025, Educational Advocate 2 wrote LEA Representative by email. She requested that the increase to 7.5 hours of Specialized Instruction outside general education, provided in the February 4, 2025 IEP, be revisited once the updated evaluations of Student were completed; stated the belief that Student required additional Behavioral Support Services hours, as well as enhanced behavioral management support; wrote of their concern that the February 4, 2025 IEP was not based on sufficient and comprehensive evaluative data; advised that Mother believed that Student's dedicated aide appeared to be escalating Student's behaviors not de-escalating; noted that at the time of the IEP meeting, no behavior management skills were being used with Student and that Student's parents were concerned because they frequently received calls about his/her negative behaviors at school and were also upset that Student's recess has been taken away due to uncompleted homework. Exhibit P-44.

17. School Social Worker completed a Functional Behavioral Assessment, Level 2, for Student on March 31, 2025. Based on her FBA-2, School Social Worker developed a Behavior Intervention Plan, Level 2 (BIP-2) for Student on April 1, 2025. Testimony of Social Worker, Exhibits R-13, R-14.

18. Student's IEP team reconvened on April 1, 2025. Student's parents, Petitioner's Counsel 1 and Petitioner's Counsel 2, and Educational Advocate 2 attended. The DCPS school psychologist went over her psychological reevaluation of Student. Speech-Language Pathologist discussed her Speech and Language reevaluation of Student. The team changed Student's disability classification to MD, based on co-

existing Emotional Disturbance and OHI impairments. It was stated that the new FBA of Student and BIP would be discussed at a later meeting. Exhibits P-16, R-21.

19. At the April 1, 2025 meeting, the IEP team proceeded to review and revise Student's IEP. The team increased Student's Specialized Instruction Services to 22 hours per week outside general education and reported that Student required a small, individualized setting to help manage behavioral and academic needs. The April 1, 2025 IEP provided for Student to receive 2 hours per month of OT services and 4 hours per month of Behavioral Support Services. The IEP provided for Student to continue to receive the support of a dedicated aide. Exhibit R-2. The parent has no complaints about the April 1, 2025 IEP, but is concerned about where it will be implemented.²

Representation of Petitioner's Counsel 1.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this hearing officer's own legal research, my Conclusions of Law are as follows:

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the parent in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the

² DCPS proposed to implement the April 1, 2025 IEP in an Early Learning Support (ELS) classroom at City School 1 for the remainder of the 2024-2025 school year and move Student to a Behavior and Education Support (BES) classroom at a different school for the 2025-2026 school year. The parent objected to the ELS classroom service location. Implementation of the April 1, 2025 IEP is not at issue in this case and I do not reach the suitability of Student's proposed placement in the ELS program.

appropriateness of the child's IEP 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. See D.C. Code § 38-2571.03(6).

ANALYSIS

In this proceeding, the parent seeks compensatory education and other relief from DCPS for alleged denials of FAPE to Student after he/she transferred to City School 1 from PCS at the start of the 2024-2025 school year. For the reasons explained below, I conclude that there has been no denial of FAPE by DCPS and the parent is not entitled to relief.

Revaluation upon Transfer from PCS to DCPS School

1. Did DCPS fail to comprehensively evaluate and/or timely evaluate and/or re-evaluate the student after enrollment in DCPS and/or pursuant to the parent's written request on or about January 29, 2025 by a) failing to proceed with a comprehensive evaluation of the student following his/her enrollment or b) failing to conduct or timely conduct a Comprehensive Psychological Evaluation that included cognitive and achievement testing, an Auditory Processing Evaluation, a Speech Language Pathology evaluation and/or a Functional Behavioral Assessment (FBA) requested by the parent in writing on or about January 29, 2025?

Student was enrolled in PCS, a separate Washington, D.C. local education agency (LEA), for the 2021-2022 and 2022-2023 school years. Mother transferred the child

from PCS to City School 1, a DCPS public school, for 2024-2025 school year. The core of the parent's complaint in this case appears to be that DCPS did not promptly reevaluate Student when Mother transferred the child from PCS to the DCPS school.

PCS conducted an initial eligibility evaluation of Student in November 2023. On February 6, 2024, the PCS eligibility team determined that Student was a child with an OHI disability. PCS' initial March 1, 2024 IEP provided for Student to receive 1 hour and 30 minutes per week of Specialized Instruction in the general education setting, 2 hours per week of Specialized Instruction outside general education, 3 hours per month of counseling and 30 minutes per week of occupational therapy (OT). The March 1, 2024 PCS IEP also provided for Student to have the full time support of a dedicated aide.

In this proceeding, the parent contends that PCS did not comprehensively evaluate Student for its initial evaluation, and therefore, DCPS was obliged to conduct a reevaluation upon the child's enrollment at City School 1 in the fall of 2024. I disagree. The District of Columbia Municipal Regulations (DCMR) provide regarding children who transfer between LEA's within the District as follows:

If a child transfers from an LEA within the District of Columbia, the new LEA shall determine whether to adopt the existing IEP or develop a new IEP within thirty (30) calendar days of enrollment, as follows:

- (a) If the LEA determines that the existing IEP is appropriate, the LEA shall document adoption of the IEP within thirty (30) calendar days of enrollment; or
- (b) If the LEA determines that the existing IEP is not appropriate, the LEA shall develop and finalize a new IEP within sixty (60) calendar days of enrollment.

5A DCMR § 3020.9. Here, Student transferred from one LEA within the District, PCS, to a new LEA, DCPS. Under 5A DCMR § 3020.9, therefore, DCPS had the option of adopting the child's PCS LEA, providing that DCPS did not determine that the PCS IEP was not appropriate. DCPS adopted and implemented Student's PCS LEA "from day one" of the 2024-2025 school year.³ The evidence did not establish how DCPS documented its adoption of the PCS IEP, but Mother testified that City School 1 staff contacted her in the summer of 2024 and she knew that City School 1 would be implementing the PCS IEP for Student. Petitioner's Counsel 2 made a written request to City School 1 for Student to be reevaluated on January 29, 2025. The parent has cited no persuasive authority which would have required DCPS to reevaluate Student before then.

An LEA must ensure that a reevaluation of a child with a disability is conducted if the parent requests a reevaluation, subject to the limitation that a reevaluation may not occur more than once a year, unless the parent and LEA agree otherwise. *See* 34 C.F.R. § 300.303. In this case, following counsel's January 29, 2025 reevaluation request, on February 4, 2025, Mother and City School 1 agreed that Student would be reevaluated. Mother provided her written consent on February 5, 2025. Pursuant to 5A DCMR § 3007.5, DCPS was then obliged to complete its reevaluation of Student and make an eligibility determination, if appropriate, within sixty (60) days from the date of parental consent. In this case, the 60-day period ended on April 6, 2025. DCPS timely

³ Petitioner's attorney contended in closing argument that DCPS was required to hold an IEP team meeting to determine whether it would adopt the existing PCS IEP. The hearing officer finds no authority for this supposed requirement.

completed its reevaluation of Student and the eligibility determination on April 1, 2025.

DCPS' reevaluation of the child included a psychological evaluation, a speech and language evaluation and an FBA Level 2. The City School 1 team elected not to conduct an auditory processing evaluation, which DCPS Audiologist and the school Speech-Language Pathologist considered unnecessary. Mother contends that as a result, DCPS' reevaluation was not comprehensive. She did not meet her burden of persuasion on this claim.

The IDEA regulations require that a child be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. *See* 34 C.F.R. § 300.304(c)(4). At the due process hearing, Petitioner's expert, Private Audiologist, explained that auditory processing concerns how the brain takes in information through the ears, so that the brain can make sense of the information. Private Audiologist opined that because Student's speech and language evaluation results indicated that the child's receptive language abilities were very poor compared with his/her expressive language abilities, DCPS should have administered an auditory processing evaluation to Student.

DCPS' experts, DCPS Audiologist and Speech-Language Pathologist disagreed. DCPS Audiologist opined that based on her classroom observation of Student, the child was able to follow along in discussions with peers at his/her classroom table, respond appropriately without delay and answer questions – even in a noisy classroom and at a

distance from the teacher. The classroom teacher told DCPS Audiologist that she did not have any concerns regarding Student's hearing or how he/she listened or performed in the classroom. DCPS Audiologist opined that Student did not need an auditory processing assessment.

Speech-Language Pathologist also did a classroom observation and obtained information from the classroom teacher. Speech-Language Pathologist observed that Student was "tuned-in" to the teacher and was able to answer a question when asked. Speech-Language Pathologist also spoke to Mother, who told her that she had no concerns with Student's language or understanding. In her speech and language evaluation of Student, Speech-Language Pathologist did not detect that Student had any problem hearing and answering questions. She observed that the child did not ask for clarification or repetition, or misunderstand words. Speech-Language Pathologist testified that she had no concerns with Student's auditory processing.

I found DCPS' experts' opinions more credible than that of Private Audiologist. Private Audiologist never assessed Student or even met the child. He based his opinion that Student needed an auditory processing evaluation solely on scores he reviewed from Student's speech and language evaluations. As noted, DCPS Audiologist and Speech-Language Pathologist both observed Student in the classroom and spoke to the child's teacher. Speech-Language Pathologist also spoke to the child's parent and conducted a comprehensive speech and language evaluation. I conclude that Petitioner

did not establish that Student needed an auditory processing evaluation as part of a comprehensive reevaluation.

In sum, I find that Petitioner did not meet her burden of persuasion that DCPS denied Student a FAPE by failing to appropriately reevaluate the child after the parent enrolled him/her in City School 1 in the fall of 2024 or pursuant to the parent's evaluation request in January 2025.

Appropriateness of IEPs

2. Did DCPS fail to provide Student with an appropriate Individualized Education Program (IEP) during the 2024-2025 school year, in that the May 2024 and February 2025 IEPs (1) did not contain sufficient specialized instruction hours (2) were not based on sufficient and comprehensive evaluative data (3) failed to include the dedicated aide services received by the student (4) and failed to provide adequate behavior support?

Petitioner contends that DCPS denied Student a FAPE by providing inappropriate IEPs in May 2024 and February 2025. In *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 (D.D.C. 2018), U.S. District Judge Rudolph Contreras explained how a court or a hearing officer must assess an IEP:

In reviewing a challenge under the IDEA, courts conduct a two-part inquiry: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (footnotes omitted).

Middleton at 128. With regard to the May 2024 IEP, the measure and adequacy of an IEP can only be determined as of the time it is offered to the student. *See, e.g., S.S. ex*

rel. Shank v. Howard Road Academy, 585 F.Supp.2d 56, 66 (D.D.C. 2008). Student was enrolled in PCS, his/her prior LEA, when the May 2024 IEP was developed. PCS developed Student's initial IEP on March 1, 2024 and the IEP was amended on April 23, 2024 and May 20, 2024, while Student was still enrolled in PCS. The initial IEP was not scheduled to expire until February 28, 2025. Petitioner's claims regarding the appropriateness of the May 2024 IEP are misdirected toward DCPS and must be dismissed.

With regard to the appropriateness of the February 4, 2025 IEP, the parent does not contend that DCPS failed to comply with IDEA procedures when the District developed the IEP. Therefore, I turn to the second prong of the *Rowley* inquiry: Was the February 4, 2025 IEP "reasonably calculated to enable [Student] to make progress appropriate in light of the child's circumstances"? See *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). Through her experts, the parent made a *prima facie* showing as to the IEP's inadequacies. Therefore, DCPS must bear the burden of persuasion on the IEP's appropriateness.

In *A.D. v. Dist. of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570, (D.D.C. Mar. 8, 2022), U.S. District Judge Beryl Howell explained the IDEA's IEP requirement:

A "free and appropriate public education," or "FAPE," is delivered by local education authorities through a uniquely tailored "individualized education program," "or 'IEP.'" *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 993-994 (2017); *see also* 20 U.S.C. §§ 1401(9)(D), 1412(a)(1). To be IDEA-compliant, an IEP must reflect "careful consideration of the child's individual circumstances" and be

“reasonably calculated to enable the child to receive educational benefits,” *Endrew F.*, 137 S. Ct. at 994, 996 (cleaned up), “even as it stops short of requiring public schools to provide the best possible education for the individual child,” *Z.B. v. District of Columbia*, 888 F.3d 515, 519 (D.C. Cir. 2018). . . . An IEP failing to satisfy these statutory directives may be remedied through an IDEA claim to the extent the IEP “denies the child an appropriate education.” *Z.B.*, 888 F.3d at 519.

A.D., 2022 WL 683570 at *1. “[A]n IEP’s adequacy thus ‘turns on the unique circumstances of the child for whom it was created,’ and a reviewing court should defer to school authorities when they ‘offer a cogent and responsive explanation’ showing that an IEP ‘is reasonably calculated to enable the child to make progress appropriate in light of [her] circumstances.’” *A.D.* at *7, quoting *Endrew F.*, *supra*, 137 S. Ct. at 1001-02.

For this claim, Petitioner alleges that the February 4, 2025 IEP was inappropriate for Student because (1) it did not contain sufficient specialized instruction hours, (2) was not based on sufficient and comprehensive evaluative data, (3) failed to include the dedicated aide services received by the student and (4) failed to provide adequate behavior support.

For special education and related services, the February 4, 2025 IEP provided for Student to receive 5 hours per week of Specialized Instruction in the general education setting, 7½ hours per week of Specialized Instruction outside general education, 2 hours per month of Behavioral Support Services and 2 hours per month of OT. In her hearing testimony, Petitioner’s expert, Educational Advocate 2, opined that at the time the February 4, 2025 IEP was developed, Student needed increased Specialized Instruction hours. However, in her March 6, 2025 “dissent letter” to LEA

Representative, Educational Advocate 2 requested that the February 4, 2025 increase in Student's Specialized Instruction outside general education be revisited *once the updated evaluations of Student were completed*. That is what occurred. At the February 4, 2025 IEP team meeting, the team agreed to reevaluate Student for special education needs. Student was assessed by a DCPS' psychologist, a speech-language pathologist and a social worker in March 2025. On April 1, 2025, Student's IEP team met again, reviewed DCPS' reevaluation of Student, including the comprehensive psychological evaluation, and increased Student's Specialized Instruction Services to 22 hours per week. Petitioner's Counsel 1 stated in closing argument that the parent had no concerns about the content of the April 1, 2025 IEP.

With regard to Behavioral Support Services for Student, in her hearing testimony, Petitioner's expert, Behavior Analyst, opined that the February 4, 2025 IEP provision for Student to receive 2 hours per month of Behavioral Support Services was inadequate. Behavior Analyst stated that she would have expected 4 hours per month of behavior services. DCPS' behavior support expert, School Social Worker, explained in her testimony that at the time the Social, Emotional and Behavioral Support goals were developed for Student's February 4, 2025 IEP, she believed that Student would be able to make progress with 2 hours per month of Behavioral Support Services. However these services were also increased following the March 2025 reevaluation of Student – to 4 hours per month in the April 1, 2015 IEP. In addition, the April 1, 2025 IEP team

proposed to move Student to a self-contained Behavior and Education Support classroom for the 2025-2026 school year.

It is incorrect that the February 4, 2025 and April 1, 2025 IEP teams did not determine that Student would have a dedicated aide. Both IEPs provided for Student to have a dedicated aide, however due apparently to technological problems, the IEP print-outs initially provided to the parent did not have the box checked indicating that Student required the support of a dedicated aide. At the hearing, there was no dispute that DCPS has provided Student a dedicated aide since the start of the 2024-2025 school year.

In sum, considering that all participants in the February 4, 2025 IEP team meeting understood that the IEP developed at that meeting would be updated as soon as DCPS completed its reevaluation of Student – and that is what occurred on April 1, 2025, I find that DCPS has provided a “cogent and responsive explanation” for the special education and related services decisions reflected in the February 4, 2025 IEP. I conclude that, that with the proviso that the IEP would be revised following the March 2025 reevaluation of Student, DCPS has met its burden of persuasion that as of the time it was offered to the child, the February 4, 2025 IEP was reasonably calculated to enable Student to make appropriate progress in light of his/her circumstances.

Behavior Intervention Plan

3. Did DCPS deny Student a FAPE when the District failed to develop and/or timely develop a Behavior Intervention Plan (BIP) for Student beginning in the fall of 2024?

In the spring of 2024, when Student was enrolled in PCS, PCS Clinical Psychologist conducted a Functional Behavioral Assessment (FBA) of Student. According to PCS Clinical Psychologist's March 25, 2024 FBA report, the functions of Student's behaviors were hypothesized to be Social – attention/preferred items and escape from tasks/activities. PCS Clinical Psychologist reported that Student's behaviors were unsafe and disruptive and she recommended that a Behavior Intervention Plan (BIP) be developed. It appears that PCS did not develop a BIP for the child. As noted above, Mother enrolled Student in City School 1 for the 2024-2025 school year. At City School 1, School Social Worker completed a new FBA Level 2 (FBA-2) for Student in March 2025 and developed a Behavior Intervention Plan Level 2 (BIP-2) for the child on April 1, 2025. The parent contends that DCPS denied Student a FAPE by not ensuring that a BIP was developed for the child in the fall of 2024.

The IDEA requires that, in the case of a student whose behavior impedes his or her learning or that of others, the IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. *See* 20 U.S.C. § 1414(d)(3); 34 C.F.R. § 300.324(a)(2)(i). *See, also*, Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46540, 46643 (August 14, 2006). (If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted.) An LEA's failure to complete an FBA and develop a Behavior Intervention Plan, when warranted, will constitute a denial of a FAPE. *See, e.g., Long v. District of Columbia*, 780 F.Supp.2d 49, 61 (D.D.C.2011).

“FBA” refers to a systematic set of strategies that are used to determine the underlying function or purpose of a behavior so that an effective behavior management plan can be developed. *See Banks v. St. James Par. Sch. Bd.*, No. 2:65-CV-16173, 2017 WL 2554472 (E.D.La. Jan. 30, 2017).

Petitioner’s expert, Behavior Analyst, opined in her hearing testimony that DCPS should have ensured that a BIP was developed for Student within 60 days of the child’s starting at City School in fall 2025. She apparently based that assertion on 34 C.F.R. § 300.301(c), which provides that an initial evaluation must be conducted within 60 days of receiving parental consent. *See, also*, 5A DCMR § 3007.5 (LEA must complete reevaluation of Student and make an eligibility determination, if appropriate, within sixty (60) days from the date of parental consent.) However, Petitioner has not cited, and the hearing officer is not aware of any requirement to develop a BIP for a child within 60 days of enrollment.

The evidence in this case is that when Student started at City School 1 in the fall of 2024, there was a “honeymoon” period for the child and the school did not have any behavior concerns until around December 2024. DCPS’ expert, School Social Worker opined in her testimony that until December 2024, Student did not need a BIP. The child already had good strategies in place, including a supportive classroom, 2 hours per month of Behavioral Support Services and a dedicated aide. School Social Worker explained that before developing a BIP for Student, she wanted to give Student an opportunity to adjust to the new environment at City School 2. As noted, School Social

Worker developed a BIP for Student, after conducting an FBA-2 in March 2025. This was another situation where Petitioner's expert never met Student prior to offering her opinion testimony. Nor did she talk to any of Student's educators at City School 1. I found her opinion that DCPS should have developed an BIP for Student within 60 days of the start of the 2024-2025 school year unconvincing and I find that the Petitioner did not meet her burden of persuasion that DCPS denied Student a FAPE by not developing an IEP for the child in the fall of 2024.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED:

All relief requested by the Petitioner herein is denied.

June 22, 2025

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

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

cc: Counsel of Record
Office of Dispute Resolution