

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

Office of Dispute Resolution  
1050 First Street, N.E., Washington, DC 20002  
(202) 698-3819 www.osse.dc.gov

---

<b>Parent, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioner,</b>	)	
	)	<b>Hearing Dates: 6/17/25; 6/18/25</b>
<b>v.</b>	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No. 2024-0239</b>
<b>District of Columbia Public Schools,</b>	)	
<b>Respondent.</b>	)	

---

**HEARING OFFICER DETERMINATION**

**I. Introduction**

This case involves an X-year-old student (the “Student”) who is currently eligible for services under the Individuals with Disabilities Education Act (“IDEA”). Pursuant to the IDEA, a due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) on December 16, 2024. The Complaint was filed by the Student’s mother (“Petitioner”). On March 25, 2025, Respondent filed a response. A resolution meeting was held on January 14, 2025, without an agreement being reached. The resolution period expired on January 15, 2025.

**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.

---

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

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.

### **III. Procedural History**

DCPS filed a response to the Complaint on December 27, 2024. After a series of email exchanges, the parties chose to litigate the case on March 18, 2025, and March 19, 2025. A prehearing conference was held on January 23, 2025. Appearing were Attorney A, Esq., representing Petitioner, and Attorney B, Esq., representing DCPS. A prehearing conference order was issued On January 27, 2025, outlining the issues in the case.

On January 27, 2025, Petitioner filed a motion to amend the Complaint, together with an amended due process complaint (“Amended Complaint”). The Amended Complaint also named the Office of the State Superintendent of Education (“OSSE”) as a respondent. This motion was granted by written order on January 29, 2025. OSSE filed a response to the Amended Complaint on February 7, 2025, and then an amended response on March 5, 2025. After a series of email exchanges, all three parties agreed to try the case on April 28, 2025, and April 29, 2025, because of witness availability, party availability, and related factors. On March 12, 2024, Petitioner moved on consent to extend the Hearing Officer Determination (“HOD”) deadlines from March 13, 2025 (which reflected the OSSE HOD due date), and April 12, 2025 (which reflected the DCPS HOD due date), to May 6, 2025. An order was signed granting the motion on March 13, 2025. A second prehearing conference was held on April 21, 2025. Appearing were Attorney A, Esq., representing Petitioner, Attorney B, Esq., representing DCPS, and Attorney C, Esq., representing OSSE. A second prehearing conference order was issued on April 22, 2025.

Just prior to the hearing dates, on April 23, 2025, an attorney at Petitioner's counsel's office emailed a request to adjourn the hearing dates because of a medical emergency. Neither Respondent objected. The hearing dates were accordingly rescheduled to June 17, 2025, and June 18, 2025. On May 5, 2025, Petitioner filed a corresponding motion to extend the HOD deadline to June 30, 2025, because of the medical emergency. On May 20, 2025, Petitioner filed a motion to dismiss the claims against OSSE. This motion was granted by written order dated June 5, 2025.

The matter proceeded to trial on June 17, 2025, and June 18, 2025. On June 18, 2025, the parties presented oral closing statements. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. During the proceeding, Petitioner was again represented by Attorney A, Esq., and DCPS was again represented by Attorney B, Esq. Petitioner moved into evidence exhibits P-5 through P-20, P-25 through P-27; P-31 through P-34; and P-40 through P-41, without objection. DCPS moved into evidence exhibits R-1 through R-17 and R-22 through R-30, without objection.

Petitioner presented as witnesses, in the following order: Witness A, a speech-language pathologist (expert in speech-language pathology); Petitioner; and Witness B, an educational advocate (expert in special education as it relates to Individualized Education Program ("IEP") programming). DCPS presented as witnesses, in the following order: Witness C, a school psychologist (expert in school-based psychology); Witness D, an evaluation coordinator and special education teacher (expert in special education); Witness E, a speech-language pathologist (expert in speech-language

pathology); Witness F, a speech-language pathologist (expert in speech-language pathology); and Witness G, a special education teacher (expert in special education).

#### **IV. Issues**

As identified in the prehearing conference order and in the Complaint, the issues to be determined in this case are as follows:

**1. Did DCPS fail to implement the Student’s IEP(s) during the 2023-2024 school year?**

Petitioner claimed that DCPS failed to provide the Student with the full mandate of speech-language pathology. Claims relating to the failure to comply with IEP requirements relating to transportation were withdrawn at the hearing.

**2. Did DCPS fail to timely and comprehensively evaluate/reevaluate the Student during the 2023-2024 school year? If so, did DCPS deny the Student a Free Appropriate Public Education (“FAPE”)?**

Petitioner contended that DCPS failed to comprehensively evaluate the Student by failing to timely conduct an occupational therapy evaluation, a speech and language evaluation, an assistive technology evaluation, and a Functional Behavior Assessment (“FBA”). Claims relating to the need for a comprehensive psychological evaluation were withdrawn at the hearing.

**3. Did DCPS fail to provide the Student with appropriate IEPs during the 2022-2023 and 2023-2024 school years? If so, did DCPS deny the Student a FAPE?**

Petitioner contended that DCPS failed to develop appropriate IEPs for the Student on or about June 30, 2023, and March 26, 2024, because the IEPs issued on those dates:

1) were not based on evaluation data; 2) did not contain appropriate behavior interventions, such as a Behavior Intervention Plan (“BIP”) or behavioral support services; 3) contained inappropriate present levels of performance; 4) did not recommend

occupational therapy services; and 5) in the March 2024 IEP only, contained inadequate speech and language pathology hours.

**4. Did DCPS and OSSE fail to provide the Student with appropriate transportation services during the 2023-2024 school years? If so, did DCPS deny the Student a FAPE?**

Petitioner contended that the transportation services for the Student were not reliable, safe, or timely, and that Petitioner was not provided with appropriate notice of the transportation issues. This claim against OSSE was withdrawn before the hearing. This claim against DCPS was withdrawn at the hearing.

As relief, Petitioner seeks for the Student: compensatory education; evaluations for assistive technology, occupational therapy, and speech and language; an FBA; an independent comprehensive psychological evaluation that measures the Student's cognitive, adaptive, and social-emotional development; appropriate behavior support intervention and/or an appropriate BIP; a reconvened IEP team to review, revise, and/or amend the Student's IEP as appropriate, based on the updated data from the evaluations; transportation for the Student; an order that DCPS shall reimburse Petitioner for mileage; a finding that any of the Student's absences resulting from transportation failures should be excused; and related relief.

**V. Findings of Fact**

1. The Student is an X-year-old who is currently eligible for IDEA services. The Student has severe issues with communication and can only put two or three words together, at most. The Student can count to twenty and write and identify some letters. The Student tends to get frustrated with very simple questions. Testimony of Petitioner.

2. On or about February 24, 2023, the Student was assessed through the Battelle Developmental Inventory, Second Edition, Normative Update (“BDI-2 NU”), which was administered by an occupational therapist and a speech-language pathologist. In the attention and memory subtest, the Student scored in the second percentile. In the reasoning and academic skills subtest, the Student scored in the twelfth percentile. In the perception and concepts subtest, the Student scored in the ninth percentile. The Student earned an overall developmental quotient score of 76, in the fifth percentile. The Student scored in the eighth percentile for cognitive ability, in the seventh percentile for adaptive skills, and in the fourth percentile for personal-social skills, reflecting delays. The BDI-2 NU also assessed the Student for communication skills. In both expressive and receptive communication, the Student scored below the first percentile. In expressive communication, the evaluator noted that the Student communicated using a few words such as “dad, mom, and stop” and said “hi” and “bye,” but did not use these words purposefully or appropriately. The Student repeated phrases that s/he had heard on television. The Student did not label any colors, even when prompted. It was observed that the Student generally got his/her needs met by using various gestures, such as pulling a person to what or where s/he wanted. The Student did consistently imitate speech sounds or words when prompted, but did not respond consistently when his/her name was called. The Student also did not follow novel, one-step directions or answer yes/no questions. The occupational therapist who administered this portion of the test found that the Student was at the seventy-fifth percentile in fine motor skills, above average, and that the Student’s developmental quotient in motor skills was at the sixty-first percentile,

indicating no delay. P-7; R-8-162. At the time of this assessment, the Student was receiving occupational therapy through Program A. R-9-6.

3. An interview with Petitioner was conducted on May 16, 2023. Petitioner indicated that the Student was supposed to be receiving occupational therapy services at the time, but had not been serviced for months. Petitioner also said that the Student had progressed over the previous two months in regard to communication, that s/he was using more language, and that s/he had improved in following directions and responding to safety awareness commands such as “stop” and “come back.” However, the Student could not dress him/herself and was not toilet trained. P-7-2.

4. On or about May 16, 2023, the Student was observed by Witness D. The Student was shy initially, covering his/her eyes when the clinicians approached or attempted to maintain eye contact. The Student preferred to play independently and would change places in the room if a clinician approached him/her. S/he enjoyed playing with a toy car, rolling it back and forth. The Student demonstrated the ability to match items by color and benefitted from “hand over hand” support to participate in play. The Student also benefitted from repetition of directions. Testimony of Witness D; P-7-2; R-8-161. At this time, Petitioner reported progress with the Student’s level of engagement and vocalization, though the vocalizations were not for a functional purpose. Witness D felt that the Student did not possess a functional form of communication, reporting that the Student’s eye contact, response to his/her name being called, response to sounds in the environment, and joint attention were below age-level expectations. Witness D also suggested that the Student had the functional sensory processing skills for in-person classroom performance. P-7-11; R-9-3; P-8-10.

5. On or about May 16, 2023, the Student was assessed through the Childhood Autism Rating Scale, Second Edition (“CARS-2”), which helps to identify individuals with an Autism Spectrum Disorder (“ASD”). The Student’s scores were consistent with the presence of mild-to-moderate ASD, though the Student generally presented in a calm, neutral emotional state. Elevated ratings were indicated in the areas of relating to others, imitation, adaptation to change, object use, visual and listening response, and verbal and nonverbal communication. The Student was standoffish and unresponsive at times, self-directed in play, and interested in objects rather than playing with or observing others in the room. Visually, the Student demonstrated inconsistent eye contact with others in the room, as s/he often covered his/her eyes to avoid looking at people. In terms of listening, the Student was generally unresponsive when his/her name was called. S/he made sounds, but the sounds were not for social purposes. R-9-4-5.

6. On or about May 16, 2023, the Student was assessed through the Autism Spectrum Rating Scales (“ASRS”), a standardized, norm-referenced instrument designed to quantify observations of a child that are associated with ASD to determine the likelihood that a child has symptoms associated with ASD. Based on a parent survey, the Student was assessed to be in the “very elevated” range. The parent rating reflected the Student’s difficulties using appropriate non-verbal communication for social contact, relating to children and adults, and providing appropriate emotional responses to people in social situations. The parent rating also reflected the Student’s unusual and stereotypical behaviors, his/her difficulty tolerating changes in routine, and his/her issues with inattention and/or motor and impulse control. R-9-5.

7. On June 29, 2023, Witness C issued a supplemental psychological assessment report on the Student. Witness C concluded that the Student could attend to an activity for approximately two minutes, occupy him/herself for at least ten minutes, play functionally, and imitate some play actions and facial expressions. Witness C also concluded that the Student did not consistently attend to sounds or respond when his/her name was called, did not show interest in listening when a story was read, did not sort items by color, did not show affection to children his/her age, and demonstrated stereotypical behaviors such as flapping his/her hands and shaking his/her head. Witness C indicated that, as per a parent interview, the Student was talking more and recognized and labeled letters of the alphabet. R-9.

8. An IEP meeting was held for the Student on June 30, 2023. Petitioner did not have any questions about the proposed draft IEP, including the goals and services, and shared that the Student was starting to progress with his/her ability to imitate actions in play. P-10. The ensuing IEP stated that the Student needed assistive technology devices and services because his/her expressive language delays impacted his/her ability to communicate in the classroom; that s/he did not possess a functional form of communication to express his/her wants or needs; that s/he had limited exposure to same-age peers; that exposure to sign language was not successful; and that s/he would benefit from the exploration of various forms of communication to assist him/her in the classroom. The IEP suggested visual and tactile cues to assist with comprehension; support cues such as timers, and advanced warnings to support learning and responding; and social stories to assist with novel experiences and peer interactions. The IEP recommended that the Student receive 26.5 hours of specialized instruction per week

outside general education, with 240 minutes per month of speech-language pathology. R-9.

9. The Student attended School A for the 2023-2024 school year. The Student's classroom included a teacher and two aides. The teacher followed the general education curriculum when needed and provided the children with visuals. Testimony of Witness G. Through February 2024, Witness F provided the Student with speech-language pathology through a "push-in" model, with the speech-language pathologist coming into the classroom with the main teacher. Testimony of Witness F. After February 2024, Witness E provided the Student with speech. Testimony of Witness E.

10. An IEP progress report on the Student's June 2023 IEP, reflecting the period of August 28, 2023, to November 3, 2023, was written on January 15, 2024. Two of three of the Student's adaptive living skills goals were just introduced (on transitions and one-step directions), and the Student was deemed to be progressing on the other adaptive living skills goal (relating to acknowledging his/her name). Of the four cognitive goals, one was not introduced (relating to peer engagement), one was just introduced (relating to attending), and the Student was deemed to be progressing on the two other cognitive goals (both relating to appropriate play). The Student was deemed to be progressing on three of four communication/speech and language goals (relating to producing at least twenty-five different sound effects, exclamatory phrases, or nouns over a nine-week period; identifying objects; and using a preferred form of communication). One communication/speech and language goal, relating to the use of action verbs, was just introduced. P-11.

11. Another IEP progress report on the Student's June 2023 IEP, reflecting the period of January 29, 2024, to April 10, 2024, was written on April 10, 2024. The Student was deemed to have mastered two of the three adaptive living goals (relating to acknowledging his/her name and following one-step directions) and was progressing on a third adaptive goal (relating to transitions). The Student had also mastered two cognitive goals (both relating to appropriate play) and was progressing on a third cognitive goal (relating to peer engagement). The Student had also mastered one communication/speech and language goal (relating to producing at least twenty-five different sound effects, exclamatory phrases, or nouns over a nine-week period) and was progressing on three other communication/speech and language goals (relating to identifying objects, using action verbs, and using a preferred form of communication). P-13.

12. An IEP meeting was held for the Student on March 26, 2024. The parties discussed the Student's present levels of performance, goals, and hours of service. Goals were written to address the Student's understanding of vocabulary, ability to expand utterances to more than three words in a sentence, and ability to use one-step to two-step directions and spatial directions. DCPS suggested changing the Student's speech-language mandate from 240 minutes per month to 180 minutes per month. P-9.

Petitioner did not say anything at the meeting to object to the service proposals.

Testimony of Witness G.

13. The ensuing IEP said that the Student required assistive technology, presented with an expressive/receptive language disorder that impacted his/her ability to communicate with and be understood by others, and benefitted from visuals and a class schedule when needed. The IEP said that the Student was working on responding and

transitioning more independently and would turn when his/her name was called, but had attempted to elope. The IEP indicated that when a break in the schedule or a change in the daily routine occurred, the Student had to be monitored more closely. The IEP also reported that the Student could sit at a tabletop activity for a longer period; that s/he showed improvements in listening and answering some simple “wh” questions with prompts; that his/her vocabulary had improved; and that s/he was observed to use one-word to two-word utterances. The IEP recommended that the Student receive twenty-four hours of specialized instruction per week outside general education, with 180 minutes per month of speech-language pathology. P-8.

14. An IEP progress report on the Student’s March 2024 IEP, reflecting the period of April 8, 2024, to June 17, 2024, was written on June 25, 2024. The Student was deemed to have progressed on all goals, including three adaptive living skills goals (relating to transitioning, rule compliance, and self-help) and four cognitive goals (relating to positive interactions with peers, attentional issues, answering simple questions, and identifying and labeling objects). P-14.

15. The Student continued at School A for the 2024-2025 school year. An IEP progress report was issued for the Student on November 13, 2024, reflecting the period of August 28, 2025, to November 4, 2024. The Student was reported to have mastered a goal relating to self-help and was progressing on the rest of the adaptive daily living skills goals and cognitive goals. The Student’s communication/speech and language goals were not introduced. The progress report said that DCPS’s Division of Specialized Instruction had experienced an interruption in the speech-language pathologist staffing at School A that marking period and that, after the staffing gap had

been filled, all IEP goals would be implemented and all missed services would be addressed by the end of the 2024-2025 school year. P-16.

16. An IEP progress report was issued for the Student on January 20, 2025, reflecting the period of November 5, 2024, to January 27, 2025. As in the prior IEP progress report, the Student was reported to have mastered a goal relating to self-help and was deemed to be progressing on the rest of the adaptive daily living skills goals and cognitive goals, except that the Student had mastered the goal on verbally answering at least two simple, verbal questions using a sentence starter. The Student was considered to be progressing on all three communication/speech and language goals (relating to demonstrating an understanding of age-appropriate vocabulary by identifying and labeling objects; following one-step to two-step spatial directions; and expanding the use of simple utterances in three-word-plus sentences). P-17.

## **VI. Conclusions of Law**

The burden of proof in special education litigation in the District of Columbia is defined as follows: “Where there is a dispute about the appropriateness of the child’s individual educational program or placement, 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 establishes a *prima facie* case. D.C. Code Sect. 38-2571.03(6)(A)(i). Issue #1 and Issue #2 do not directly relate to the appropriateness of the Student’s program or placement. As a result, for those issues, the burden of persuasion is on Petitioner. Schaffer v. Weast, 546 U.S. 49 (2005). On Issue #3, relating to the appropriateness of the proposed program, the burden of persuasion is on DCPS if Petitioner presents a *prima facie* case.

**1. Did DCPS fail to implement the Student’s IEP(s) during the 2023-2024 school year?**

Petitioner claimed that DCPS failed to provide the Student with the full mandate of speech-language pathology. “Failure to implement” claims may be brought if a school district cannot materially implement an IEP. Turner v. District of Columbia, 952 F. Supp. 2d 31, 40–41 (D.D.C. 2013). A parent “must show more than a *de minimis* failure to implement elements of the IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP.” Beckwith v. District of Columbia, 208 F. Supp. 3d 34, 39 (D.D.C. 2016), citing to Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000); Savoy v. District of Columbia, 844 F. Supp. 2d 23 (D.D.C. 2012) (holding no failure to implement where the district’s school setting provided ten minutes less of specialized instruction per day than was required by the IEP). This approach affords school districts with some flexibility in implementing IEPs, but it still holds those agencies accountable for material failures. Houston Independent Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000); Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007) (“A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and [those] required by the child’s IEP.”); see also S.S. ex rel. Shank v. Howard Rd. Acad., 585 F. Supp. 2d 56, 67–68 (D.D.C. 2008); Wilson v. District of Columbia, 770 F. Supp. 2d 270, 274 (D.D.C. 2011).

Petitioner contended that the Student missed 750 minutes of speech-language pathology during the 2023-2024 school year. However, Petitioner did not completely account for the Student’s March 2024 IEP, which reduced the required hours from 240 minutes to 180 minutes per month. Petitioner also did not credit the school district for

services that were offered but missed because the Student was absent. The school district cannot be faulted for making good-faith efforts to provide the required services. Robles v. District of Columbia, No. 1:21-CV-02568 (CJN), 2022 WL 3700947, at \*12 (D.D.C. Aug. 26, 2022).

According to this Hearing Officer's calculations, the Student, who has severe language issues and cannot functionally use language to communicate, missed 480 minutes of services due (about twenty-one percent of the promised services): 60 minutes in September 2023; 120 minutes in November 2023; 60 minutes in December 2023; 150 minutes in January 2024; and 90 minutes in February 2024.

Courts in this jurisdiction have found that service shortfalls of twenty percent are material deprivations that can amount to FAPE denial. In Middleton v. District of Columbia, 312 F. Supp. 3d 113, 145 (D.D.C. 2018), the parent argued that either forty percent or twenty percent of the student's instruction was not performed in conformity with the student's IEP. The court ruled that such a deviation was not *de minimis* and determined that the student was denied a FAPE. See also Wade v. District of Columbia, 322 F. Supp. 3d 123, 133 (D.D.C. 2018) (hearing officer was reversed after ruling that "a little more than one-fourth" of the student's specialized instruction was not a material deprivation). This Hearing Officer agrees with Petitioner that the Student was denied a FAPE by DCPS's failure to provide him/her with speech-language pathology services during the 2023-2024 school year.

**2. Did DCPS fail to timely and comprehensively evaluate/reevaluate the Student during the 2023-2024 school year? If so, did DCPS deny the Student a FAPE?**

Petitioner contended that DCPS failed to comprehensively evaluate the Student by failing to timely conduct an occupational therapy evaluation, a speech and language evaluation, an assistive technology evaluation, and an FBA.

The evaluation and information-gathering procedures of the IDEA are designed to position the 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 parents, the school district 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 school district must "[u]se 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). Also, a student must be "assessed in all areas related to the suspected disability." 34 CFR 300.304(c)(4).

Additionally, school districts can be required to assess a student through an FBA or a BIP. 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 data about the student's behaviors, leading to their being addressed in the IEP inadequately or not at all. Z. B. v. District of Columbia, 888 F.3d 515, 524 (D.C. Cir. 2018).

The record indicates that the Student's overall skill levels were tested in February 2023, through the BDI-2 NU. The testing measured attention and memory (where the Student scored in the second percentile); reasoning and academic skills (twelfth percentile); skills relating to perception and concepts (ninth percentile); cognitive ability (eighth percentile); adaptive skills (seventh percentile); and personal-social skills (fourth percentile). The Student earned an overall developmental quotient of 76, in the fifth percentile, reflecting a delay.

Petitioner alleged that DCPS failed to also timely and comprehensively evaluate the Student for occupational therapy. Petitioner's expert, Witness B, said that the Student may have needed such an assessment because s/he had received occupational therapy earlier, and that if DCPS had conducted an occupational therapy evaluation of the Student, DCPS would have known that s/he needed such services. But the BDI-2 NU did test the Student on fine motor skills, and some of the testing was done by an occupational therapist. Petitioner suggested that the BDI-2 NU assessment was inadequate because it determined that the Student's fine motor skills were below the range for typically developing children. But the occupational therapist who administered this portion of the test found that the Student was at the seventy-fifth percentile in fine motor skills, *above* average, and that the Student's developmental quotient in motor skills was at the sixty-

first percentile, indicating no delay. Moreover, testing by Witness C on the ASRS, per the rating completed by Petitioner, indicated that the Student responded appropriately to sensory stimuli. Also, an observation of the Student on May 16, 2023, suggested that s/he had the functional sensory processing necessary for classroom performance.

This Hearing Officer is also not convinced that the Student required an FBA before or during the 2023-2024 school year. Witness C indicated that the Student had behavioral issues, including not consistently attending to sounds, not showing interest in listening when a story was read, not showing affection to children his/her age, and demonstrating stereotypical behaviors such as flapping his/her hands and shaking his/her head. But the record suggests that these behaviors were typical of young students with autism and not necessarily a function of triggers in the Student's environment, which was a small, supportive, special-education program with two aides in the classroom. There is nothing in the record to suggest that the Student's behavioral issues were different from other students in this kind of special education classroom. Petitioner, who did not expand on this claim during her testimony, did not meet her burden of persuasion on this issue.

The BDI-2 NU did also assess the Student's speech in February 2023. In both expressive and receptive communication, the Student scored below the first percentile, and it was observed that the Student generally got his/her needs met by using various gestures, such as pulling a person to what or where s/he wanted. The Student did not respond consistently when his/her name was called, did not follow any novel, one-step directions, and did not answer yes/no questions. In response to this information, DCPS provided the Student with substantial services. DCPS assigned the Student to a full-time, special-education classroom, with 240 minutes of speech-language pathology per month.

But then, in the March 2024 IEP meeting, DCPS decided to reduce the Student's speech services to 180 minutes per month, or less than one hour per week, even though DCPS had not fully implemented the Student's earlier speech mandate, which had been provided in a group format rather than individually, and even though the Student had mastered only one of his/her communication/speech and language IEP goals. At the time of the IEP, the Student was only using one-word to two-word utterances, which was more or less the same amount of speech that the Student had been using more than a year earlier. Under these circumstances, this Hearing Officer agrees with Witness A that, before DCPS could reasonably consider a reduction in speech services for the Student, DCPS should have conducted a speech-language pathology evaluation to determine what the Student's current levels were, why s/he had not mastered his/her goals, and whether it was proper to suddenly reduce his/her services in the middle of the school year.

Finally, in regard to an assistive technology evaluation, while the record does suggest that assistive technology might have helped a Student who has such limited communication skills, both of his/her IEPs did indicate that teachers should use assistive technology to address his/her communication issues. Witness A argued that a formal assessment was required beforehand, but she did not persuasively or clearly explain why an evaluation was needed for the Student to benefit from assistive technology.

In sum, this Hearing Officer agrees with Petitioner that DCPS denied the Student a FAPE by failing to conduct a speech-language evaluation prior to the IEP meeting in March 2024.

**3. Did DCPS fail to provide the Student with appropriate IEPs during the 2022-2023 and 2023-2024 school years? If so, did DCPS deny the Student a FAPE?**

Petitioner contended that DCPS failed to develop appropriate IEPs for the Student on or about June 30, 2023, and March 26, 2024, because the IEPs issued on those dates:

1) were not based on evaluation data; 2) did not contain appropriate behavior interventions, such as a BIP or behavioral support services; 3) contained inappropriate present levels of performance; 4) did not recommend occupational therapy services; and 5) in the March 2024 IEP only, contained inadequate speech and language pathology hours.

### **June 30, 2023, IEP**

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).

As per the analysis relating to Issue #2, this Hearing Officer does not agree with Petitioner that DCPS denied the Student a FAPE by failing to evaluate the Student prior to the formation of the June 30, 2023, IEP. At this IEP meeting, based on the previous evaluation of the Student, DCPS offered the Student a robust program: 26.5 hours of specialized instruction per week outside general education, with 240 minutes per month of speech-language pathology. The IEP also recommended exploring various forms of communication for the Student, such as visual and tactile cues to assist with comprehension. The IEP also suggested social stories to assist the Student with novel experiences and peer interactions and said that the Student needed assistive technology devices and services because his/her expressive language delays impacted his/her ability to communicate in the classroom.

As suggested in the analysis of Issue #2, the record indicates that additional behavioral interventions in the June 2023 IEP, including behavioral support services or a BIP, were not necessary at that point. It was reasonable for DCPS to wait to see how the Student would function under the June 2023 IEP before requiring anything like a BIP. Also as suggested in the analysis of Issue #2, this Hearing Officer does not agree with Petitioner that this IEP required occupational therapy services. Earlier testing indicated that the Student was above average in fine motor skills and responded appropriately to sensory stimuli.

Nor does this Hearing Officer agree with Petitioner that the present levels of performance sections of this IEP were deficient. The IDEA requires that each IEP include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects his or her involvement and

progress in the general education curriculum. 34 CFR 300.320 (a)(1). A review of the June 2023 IEP indicates that the Student's present levels were adequately described in sections relating to adaptive daily living skills, cognition, and communication/speech and language. The IEP described, among other things: parental concerns; the Student's recent and current evaluations; his/her recent progress in areas like safety awareness commands; his/her instructional needs, such as "hand over hand" support; his/her feeding skills; his/her academic performance, including in attentiveness and the ability to use books and label colors and shapes; and his/her ability to engage in functional play. The IEP also indicated that the Student communicated by pulling people or handing them desired items; did not consistently attend to sounds or respond when his/her name was called; did not show affection to other children his/her age; did not consistently follow directions; and demonstrated stereotypical behaviors such as flapping hands. Underscoring all this, Petitioner's closing argument did not elaborate on this claim. Accordingly, this Hearing Officer finds that the June 2023 IEP did offer the Student a FAPE.

**March 26, 2024, IEP**

Some of the analysis relating to the June 2023 IEP also applies to the analysis of the March 2024 IEP. There is no convincing evidence that the Student's March 2024 IEP needed to include occupational therapy, and there is nothing in the IEP or related progress reports to indicate that the lack of occupational therapy hindered the Student during the 2023-2024 school year. Also, Petitioner did not call any occupational therapy expert as a witness to explain why occupational therapy was important for the Student, to dispute the results of the BDI-2 NU, which indicated that the Student had above average

fine motor skills, or to refute the May 2023 Student observation, which indicated that the Student did not have significant sensory needs.

Nor was it convincing that the present levels of performance in the March 2024 IEP were inadequate. This IEP again contained sections on adaptive daily living skills, cognition, and communication/speech and language, and the language in these sections was updated from the June 2023 IEP. The March 2024 IEP described the Student's performance in his/her then-current academic setting, mentioning, among other things, the Student's relationships with adults and peers, play skills, progress in following one-step directions, toileting skills, use of visuals, work on responding and transitioning more independently, issues with elopement, and the ability to engage in a tabletop activity. The IEP also noted the results of the Preschool GOLD Assessment tool, which was collected and reviewed on March 1, 2024; the Student's ability to identify the letters in his/her name; his/her progress in counting to ten and consistently identifying numbers; his/her ability to identify and name basic shapes and colors; his/her improvements with listening to a story and answering simple "wh" questions; and his/her improvements in vocabulary. Again, Petitioner did not expand on this claim during closing argument.

With respect to the claim that the IEP lacked behavioral interventions such as behavioral support services or a BIP, I again refer to the Student's teacher, Witness G, who came across credibly. She explained that the Student's behavioral issues were not a problem in the classroom. Witness G said that, though the Student was "energetic," s/he was eager to learn and was provided supports in the special education classroom to address any behavioral issues, such as aides, visuals, "wobble breaks," and positive reinforcement. Moreover, there is no evidence in the record that this Student, who has

limited receptive and expressive language skills, could practically benefit from behavioral support services, which are ordinarily delivered as counseling.

However, as indicated in the analysis of Issue #2, this Hearing Officer does not agree that the March 2024 IEP's reduction of the Student's speech services was appropriate. DCPS argued that the Student had improved so much in speech that a reduction was warranted, but the record does not support this claim. Instead, the record suggests that, if more data were available, the data would support keeping the Student's speech-language pathology mandate the same, or even increasing it. Though the Student improved in listening to a story and answering simple "wh" questions, s/he was only observed to use one-word to two-word utterances, more or less the same amount of speech that the Student had used more than a year earlier, when, according to the BDI-2 UR, the Student was communicating using only a few words, such as "dad, mom, and stop." Additionally, the Student had not mastered most of his/her communication/speech and language goals from the June 2023 IEP. None of DCPS's witnesses offered any cogent or reasoned explanation of the decision to reduce the Student's speech and language pathology mandate in the middle of the school year, even though the Student, who had no functional communication skills, had not mastered goals that were supposed to be in effect through late June 2024. There was also no testimony that the previous goals for the Student were pointless or outdated, and no evaluation was conducted to determine if the Student had progressed so much that a reduction in services was warranted. This Hearing Officer agrees with Witness A that DCPS was not justified in reducing the Student's speech and language pathology services in the March 2024 IEP, in the middle of the school year, and that such reduction denied the Student a FAPE.

## RELIEF

During closing argument, Petitioner sought only the requested evaluations and that the Student be awarded with compensatory education.

As the Supreme Court has stated, the IDEA statute directs a hearing officer to “grant such relief as [he or she] 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, 521-523 (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 parent 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 compensatory education proposal suggested 360 hours of tutoring (ten hours per week), thirty-six hours of play therapy (one hour per week), and thirty-six hours of speech-language pathology. However, Witness G’s plan is based on some considerations that are inconsistent with this HOD, including a presumption that the Student’s IEP from June 2023 was inadequate and a suggestion that, because of DCPS’s

failure to provide the Student with speech services, the Student's experience at School A has been meaningless. On the contrary, the record shows that the Student did make some progress over this period. Moreover, the Complaint did not include any claims related to play therapy. Accordingly, while Petitioner will be awarded thirty-six hours of speech services for the Student, as requested, the academic tutoring mandate will be reduced from 360 hours to fifty hours. This Hearing Officer will also order that the Student be evaluated by a speech-language pathologist, which is the sole basis for the finding that the school district failed to evaluate the Student.

### **VII. Order**

As a result of the foregoing:

1. DCPS shall arrange for a speech-language evaluation of the Student as soon as possible;
2. The Student is hereby awarded thirty-six hours of compensatory speech-language pathology and fifty hours of compensatory tutoring, to be delivered by a certified provider at a reasonable and customary rate in the community;
3. All other requests for relief are hereby denied.

Dated: June 30, 2025

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Attorney A, Esq.  
Attorney B, 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 30, 2025

Michael Lazan  
Impartial Hearing Officer