

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

PARENT, on behalf of STUDENT, ¹)	Date Issued: November 18, 2025
)	
Petitioner,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2025-0154
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Dates:
Respondent.)	November 4 and 5, 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 relief from Respondent District of Columbia Public Schools (DCPS) on the grounds that beginning in the 2023-2024 school year, DCPS allegedly denied STUDENT a free appropriate public education (FAPE) by not comprehensively evaluating the child, not offering appropriate related services on the child’s Individualized Education Programs (IEP’s) and not fully implementing the child’s IEP related services.

¹ Personal identification information is provided in Appendix A.

Petitioner's Due Process Complaint, filed on August 29, 2025, named DCPS as Respondent. The undersigned hearing officer was appointed on August 29, 2025. The parties met for a Resolution Session Meeting on September 19, 2025 and did not resolve the issues in dispute. On September 22, 2025, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, set the hearing date and address other prehearing matters. On November 5, 2025, I granted Petitioner's continuance motion to extend the final decision due date to December 4, 2025 to allow sufficient time after the due process hearing for the hearing officer to issue a final decision.

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 November 4 and 5, 2025. MOTHER appeared online for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL. Petitioner's Counsel made an opening statement.

Mother testified and called PRIVATE OCCUPATIONAL THERAPIST (Private OT) and BEHAVIOR ANALYST as additional witnesses. DCPS called as witnesses CES TEACHER 1, DCPS OCCUPATIONAL THERAPIST (DCPS OT), SPEECH PATHOLOGIST, CES TEACHER 2 and LEA Representative. Petitioner's Exhibits P-1 through P-6, P-8 through P-23, P-25 through P-28 and P-31 through P-40 were

admitted into evidence, including Exhibits P-5, P-6, P-9 and P-10 admitted over DCPS' objections. I sustained DCPS' objection to Exhibit P-41. Exhibits P-7, P-24, P-29 and P-30 were not offered or were withdrawn. DCPS' Exhibits R-1 through R-23 and R-26 through R-32 were admitted into evidence, including Exhibits R-20, R-23 and R-32 admitted over Petitioner's objections. Exhibits R-24 and R-25 were not offered or were withdrawn.

At the conclusion of Petitioner's case-in-chief on November 5, 2025, DCPS' Counsel made an oral motion for a directed finding against the Petitioner, which I denied in-part and took under advisement in-part. On November 5, 2025, after the close of all of the evidence, Petitioner's Counsel 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

In her due process complaint, Petitioner raised the following issue against DCPS:

- A. Whether DCPS denied the child a FAPE when it failed to timely and comprehensively evaluate the child in all areas of suspected disability beginning in the 2023–2024 school year through the 2024-2025 school year, including failure to timely conduct an occupational therapy evaluation, despite documented fine motor, sensory regulation, and adaptive functioning needs, and failure to conduct a Functional Behavioral Assessment (“FBA”) and develop a Behavior Intervention Plan (“BIP”) despite persistent maladaptive behaviors;
- B. Whether DCPS denied the child a FAPE when it failed to develop and implement an appropriate IEP, beginning in the 2023–2024 school year through

the 2024-2025 school year, that was reasonably calculated to enable the child to make progress appropriate in light of his/her circumstances, including failure to incorporate occupational therapy services despite longstanding evaluative data, failure to address sensory regulation and adaptive functioning needs, failure to address persistent communication deficits and failure to provide adequate behavioral supports and

C. Whether DCPS denied the child a FAPE when it failed to fully implement the child's IEP during the 2023-2024 and 2024-2025 school years by failing to deliver required related services, including occupational therapy and speech-language services.

For relief, the Petitioner requests that the hearing officer award the child compensatory education for the alleged denials of FAPE

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 Autism as his/her primary IDEA disability. Exhibit P-23.

3. In May 2021, Student received an initial evaluation by a speech language pathologist and a physical therapist at the Office of the State Superintendent of Education's (OSSE's) Strong Start DC Early Intervention Program. In their May 10, 2021 evaluation report, the Strong Start evaluators reported that Student met eligibility criteria for Early Intervention Services under Part C of the IDEA based upon a Developmental Delay, with at least a 25% delay in these areas: Cognitive Development -

at least 25% delay; Communication Development - at least 50% Delay; Social Emotional Development - at Least 25% delay. Exhibit P-5.

4. In a November 23, 2021 Diagnostic Evaluation report, a psychologist at LOCAL HOSPITAL 's Developmental and Behavioral Clinic reported that Student presented with delayed play skills, inconsistent social motivation, stereotyped body movements and poor social communication. Based on his/her observed behaviors and social skills, Student obtained a score that indicated a diagnosis of autism spectrum disorder (ASD) with a moderate level of concern. Symptoms were present for Student across both social affect and repetitive behavior domains. Results of the Behavior Assessment System for Children, Third Edition (BASC-3) indicated At-Risk functioning for Student overall, with specific concerns related to attention problems, atypicality and withdrawal. Regarding autism spectrum concerns, Student presented with deficits in social communication and social interaction across multiple contexts. Additionally, Student engaged in restricted, repetitive patterns of behavior including stereotyped or repetitive motor movements and repetitive play. The psychologist reported that Student met criteria for a DSM-5 diagnosis of Autism Spectrum Disorder. Within the context of autism, Student met severity level 2, indicating that he/she required substantial support. Level 2 of ASD indicated that Student had marked deficits in verbal and nonverbal social communication skills and limited or abnormal social interaction skills. A severity of Level 2 also indicated that repetitive behaviors appeared frequently enough

to interfere with functioning across contexts. The Local Hospital psychologist diagnosed Student with Autism spectrum disorder, Severity level 2. Exhibit P-6.

5. In December 2021, Student was referred again to Strong Start for concerns with his/her communication skills. Student was assessed in the Cognitive, Communication, Personal-Social, Fine Motor, Gross Motor and Adaptive areas. The Strong Start evaluators, an Occupational Therapist and a Speech-Language Pathologist, reported, *inter alia*, that Student did not have a vision impairment or a hearing impairment, and that Student had at least a 25% delay in the following areas: Adaptive Development - at least 25% delay; Cognitive Development - at least 25% delay; Communication Development - at least 50% delay; Fine Motor Development - at least 50% delay and Social Emotional Development at least 25% delay. The evaluators reported that Student met eligibility criteria for Developmental Delay. Exhibit P-8.

6. On January 18, 2022, Student was determined by DCPS Early Stages Diagnostic Center to be eligible for special education, under Part B of the IDEA, based on an Autism Spectrum Disorder disability. Student's initial DCPS IEP, developed January 18, 2022, reported that Student presented with significant delays in expressive and receptive language. The IEP stated that the IEP team should consider the use of low-tech assistive technology to support both receptive and expressive language and increase Student's attention to task. The IEP team identified Adaptive/Daily Living Skills, Cognitive, and Communication/ Speech and Language as areas of concern for Student. The IEP provided for Student to receive 26.5 hours per week of Specialized

Instruction and 4 hours per month of Speech-Language Pathology outside general education. For the Specialized Instruction services, the team agreed that Student would benefit from learning through Applied Behavior Analysis (ABA) strategies and techniques in a small group setting to help reduce his/her maladaptive behaviors and encourage communication. Exhibit P-16.

7. For the 2022-2023 and 2023-2024 school years, Student attended CITY SCHOOL 1, a DCPS public school. For the 2024-2025 school year, Mother enrolled Student in GRADE X at CITY SCHOOL 2, another DCPS public school. For the 2025-2026 school year, Mother enrolled Student in PUBLIC CHARTER SCHOOL, a separate local education agency (LEA). Testimony of Mother.

8. The City School 1 IEP team conducted Student's annual IEP review on January 10, 2023. Mother attended the IEP meeting. The City School 1 IEP team did not update Student's present levels of performance from the prior January 18, 2022 IEP. The January 10, 2023 IEP continued to provide for Student to receive 26.5 hours per week of Specialized Instruction and 4 hours per month of Speech-Language Pathology outside general education. The IEP team reported that Student's behavior did not impede his/her learning or that of other children. For Specialized Instruction services, the team agreed that Student would benefit from learning through Applied Behavior Analysis (ABA) strategies and techniques in a small group setting to help reduce maladaptive behaviors and encourage communication. Exhibit P-17.

9. At City School 1, Student had a staff member who supported Student daily for behaviors. Exhibit P-11.

10. In October 2023 CES Teacher 1 administered the VB-MAPP (Verbal Behavior Milestones Assessment and Placement Program) assessment to Student. Student achieved a score of 12, which was a 5 point decrease from his/her June 2023 assessment score.

11. On January 9, 2024, the City School 1 IEP team conducted Student's annual IEP review. Mother attended the IEP meeting. For present levels of performance, CES Teacher 1 wrote that Student had demonstrated strengths in areas of visual perception/ match-to-sample, play, and social skills. Student was able to spontaneously engage in parallel play near other children for at least 1 minute and could spontaneously follow peers or their motor movements at least 2 times. Student was able to spontaneously emit 3 different speech sounds, averaging at least 10 different speech sounds per hour. Student had demonstrated limitations in areas of manding (requesting), tacting (labeling), listener responding, and motor and vocal imitations. The IEP team reported that Student had severe delays in expressive and receptive language. For Communication/ Speech and Language, the Speech-Language Pathologist reported that Student had exhibited increased behaviors in the 2023-2024 school year that impacted most sessions. She reported that Student showed consistent refusal, eloping, escape-maintain behaviors, screaming, throwing items, etc. Notwithstanding the Speech-Language Pathologist's report, the January 9, 2024 IEP

states that Student's behavior did not impede his/her learning or that of other children. The IEP team identified Communication/ Speech and Language, Adaptive Daily Living Skills and Cognitive as goal areas for Student. The January 9, 2024 IEP continued to provide for Student to receive 26.5 hours per week of Specialized Instruction and 4 hours per month of Speech-Language Pathology outside general education. For the Specialized Instruction services, the team agreed that Student would benefit from learning through ABA strategies and techniques in a small group setting to help reduce maladaptive behaviors and encourage communication. Exhibits R-5, P-21.

12. On May 24, 2024, the City School 1 Board Certified Behavior Analyst (CITY SCHOOL 1 BCBA) sent Student's teacher an email highlighting strategies used with Student to address his/her challenging behaviors, including biting other people. This plan included, *inter alia*, low-tech functional communication supports, proactive (antecedent) strategies, de-escalation strategies, safety training, offering choices to Student, if appropriate, de-escalation strategies and data collection of challenging behaviors and activities to implement at home. Exhibit R-20, Testimony of CES Teacher 1.

13. As of June 17, 2024, Student had not made progress on his/her January 9, 2024 IEP Communication/Speech and Language goals. Student had Mastered or was Progressing on two of three Adaptive Daily Living Skills goals. On Cognitive Goals, Student was Progressing on four goals. Student had made no progress on one Adaptive Daily Living Skills goal and one Cognitive goal. Exhibit R-11.

14. At an October 30, 2024 Analysis of Existing Data (AED) meeting at City School 2, it was reported that Student was very energetic and enjoyed being in class; that Student had made great progress with learning the routine of the classroom; that Student showed some level of independent knowledge for the classroom routine; that Student liked coloring and matching items and was able to use a 3-pronged grip to hold writing utensils; that Student was very independent, knew how to feed him/herself, utilized the proper grip for holding utensils and could eat with minimal spills. Student was also potty trained and could use the restroom independently. The AED reported that Student was in the process of learning how to maintain attention to participate in classwork. Sometimes Student could sit on the carpet for circle time and other times, he/she would wander and have to be redirected back to the group. Student would participate in a task that he/she liked, but for non-favored activities, he/she would not complete. Student also had difficulty transitioning from a desired activity to a non-desired activity. This also caused Student to have tantrums, consisting of throwing objects, falling on the floor, crying/screaming, biting and hitting. Mother reported to the AED team that she had seen improvement since Student started at City School 2 in the 2024-2025 school year. Exhibit P-11.

15. As of October 30, 2024, Student was Progressing on the three Adaptive Daily Living Skills goals in his/her January 9, 2024 IEP. At that time, Student could use the bathroom independently without any assistance. Exhibit R-12.

16. In a September 19, 2024 assessment, in the areas of color ID, picture match and number match, Student was not able to answer verbally, attend to task or touch the pictures. Student did not complete the testing. It was reported at the October 30, 2024 AED meeting that Student would require more one-to-one direct instruction and he/she would also benefit from more visual supports within the class to keep him/her on task. As of the AED meeting date, Student required redirection to stay on task, transition, and participate in an undesired activity. For speech and language, the Speech-Language Pathologist reported that Student showed emerging ability to engage in pretend play, to sustain attention, to engage with peers, to share objects and to wait his/her turn. Areas of growth for expressive language included expressing wants and needs, use of sign or gestures to express wants and needs, following directions, attention to task and focus. For physical therapy, it was reported that Student was having significant difficulty with self-regulation in the classroom setting. Strengths for Student were fine motor skills and gross motor skills. The AED team decided that Student should have an Occupational Therapy (OT) assessment. Exhibit P-11.

17. In October and December 2024, a DCPS occupational therapist conducted an OT reevaluation of Student because at the AED meeting, Student was reported to have significant difficulties with self-regulation. The DCPS occupational therapist reported in her December 8, 2024 report that Student was found to have no concerns for gross motor skills, fine motor skills, Activities of Daily Living (ADLs), neuromuscular skills, ocular motor skills, visual perception, or visual motor skills; that Student was

currently receiving ABA therapy three days a week and had been receiving speech therapy since age 2 years. The occupational therapist found that Student was having significant difficulty attending to unwanted and/or classroom-based activities; that Student was attempting to use sensory strategies when needed to self-regulate; that Student was in constant motion, was not interested in handwriting and was having significant difficulty with attending to school-based activities and/or activities that were not preferred, and that he/she seemed most regulated when the environment was quiet and/or when he/she was engaged in a preferred activity. Exhibit P-12.

18. On a December 11, 2024 Triennial Review form, a DCPS school psychologist reported that Student continued to qualify for special education services under the Autism category. The psychologist made a classroom observation in Student's music class and found that Student did not participate in the class, was not consistently engaged in instruction overall and did not respond to redirection from staff. Aside from the classroom observation, it does not appear that the school psychologist conducted any other assessments of Student. Exhibit P-14.

19. On December 13, 2024, the City School 2 eligibility team determined that Student continued to be eligible for special education with Autism as his/her primary disability. The team reported that Student's Autism disability impacted his/her participation in the general education setting in Mathematics, Reading, Adaptive Living Skills, Communication/Speech and Language and Motor Skills/Physical Development.

Mother attended the meeting and agreed with the eligibility determination report.

Exhibit R-4.

20. On December 13, 2024, Student's IEP team, including Mother, met to develop Student's annual IEP. The December 13, 2024 IEP identified Mathematics, Reading, Written Expression and Motor Skills/Physical Development as goal areas for Student. The IEP team determined that Student would receive specialized instruction for 24 hours per week, outside general education in the Communication and Education Support (CES) program, and speech therapy for 80 minutes per month and OT for 80 minutes per month, both outside general education. Mother opted out of Student's receiving special education transportation. At the IEP meeting, Mother requested a dedicated aide for Student and the school team informed the parent that it did not have data to support her aide request. It was reported in the December 13, 2024 IEP that Student had significant difficulty with attending to school-based and non-preferred activities and that Student had weaknesses in the areas of attention, focus and impulsivity, which all negatively impacted his/her ability to attend to task, contribute and engage with others in the classroom and participate in group activities. Notwithstanding, the December 13, 2024 IEP states that Student's behavior did not impede his/her learning or that of other children and that Student did not need assistive technology devices or services. As Classroom Aids and Service, among other services, the December 13, 2024 IEP provided for utilization of natural environment training, discrete trial training and direct instruction as possible teaching strategies and

implementation of simple behavioral interventions and strategies as needed, including possible replacement behaviors, to address the function of Student's problem behaviors. Exhibits R-6, R-7.

21. As of June 11, 2025, Student was reported to be Progressing on all December 13, 2024 IEP goals, except for purposeful use of a self-regulation strategy to help him/her get back on task, which had not been introduced. Exhibit R-15.

22. City School 2 did not have an OT provider available to serve Student from approximately January 22, 2025 through February 7, 2025 and from March 18, 2025 through the end of the school year. On June 16, 2025, DCPS offered the parent 380 minutes of make-up OT services for Student, but Student was not able to benefit from the make-up services offer because he/she transferred from DCPS to a public charter school local education agency (LEA) after the 2024-2025 school year. Testimony of LEA Representative, Exhibit R-32.

23. Speech Pathologist provided Student's Speech-Language Pathology services in the 2024-2025 school year. Speech Pathologist testified, without rebuttal, that she provided all of the speech and language services prescribed in Student's IEP's for the school year. She explained that to the extent that Student's speech and language service tracker logs indicated that the provider was unavailable, she made up the service time at another time within the month. Over the school year, Student made a lot of growth in speech. For the right rewards, Student would speak. Testimony of Speech Pathologist.

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 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

Student has been diagnosed with Autism Spectrum Disorder (ASD). Prior to enrolling in a public charter school LEA in the 2025-2026 school year, Student was enrolled in DCPS schools. In this proceeding, the parent alleges that in the 2023-2024 and 2024-2025 school years, DCPS denied Student a FAPE by failing to conduct adequate evaluations of Student for his/her OT and behavioral needs; failing to provide appropriate supports for OT, behavior and communication in the child's IEPs and not

fully implementing the provisions in Student's IEPs for OT and Speech-Language pathology services. DCPS denies the parent's claims and maintains that it did not deny Student a FAPE.

Statute of Limitations

The Petitioner's due process complaint in this case was filed on August 29, 2025. DCPS asserts, as an affirmative defense, that Petitioner's claims as to alleged violations of the IDEA, that occurred more than two years before her due process complaint was filed, are barred by the Act's two-year statute of limitations. *See* 34 CFR § 300.511(e).² The U.S. District Court for the District of Columbia observed in *Damarcus S. v. District of Columbia*, 190 F.Supp.3d 35 (D.D.C. 2016), that the IDEA establishes a filing deadline, requiring that a due process hearing be requested within 2 years of the date the parent "knew or should have known about the alleged action that forms the basis of the complaint." *Id.* at 43. As the Court pronounced in *Damarcus S.*, so long as the complaint is filed within two years of the known or should have known (KOSHK) date, the petitioner is entitled to full relief for the alleged injury. The statute of limitations inquiry requires a "fine-grained analysis" to determine the KOSHK dates for the respective IDEA violations alleged. *See id.*, quoting *K.H. v. New York City Dep't of Educ.*, 2014 WL 3866430 (E.D.N.Y. Aug. 6, 2014). *See, also, Collette v. D.C., No. CV 18-*

² *Timeline for requesting a hearing.* A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

34 CFR § 300.511(e).

1104 (RC), 2019 WL 3502927 at 9 (D.D.C. Aug. 1, 2019). The statute of limitations inquiry should focus upon the particular deficiency asserted, and the parents' ability to recognize it. *See Damarcus S.*, 190 F.Supp.3d at 45.

Student's initial DCPS special education evaluation was completed on January 18, 2022. Mother participated in that eligibility determination and she has proffered no reason to conclude that if DCPS' evaluations of Student had not been sufficiently comprehensive, she did not know, or should not have known of that concern at the time. Likewise, Student's IEP teams developed IEPs for Student on January 18, 2022 and on January 10, 2023. Mother participated in both IEP meetings and she has not proffered any reason why she should not have known about any alleged inappropriateness in these IEPs as of the time the IEPs were developed. *See Z. B. v. District of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018) (Standard calls for evaluating an IEP as of the time IEP was created rather than with the benefit of hindsight.) Therefore, to the extent that the Petitioner claims that DCPS' January 18, 2022 initial evaluation of Student was not sufficiently comprehensive, or that the January 18, 2022 IEP or the January 10, 2023 IEP was inappropriate, I find that those claims are barred by the IDEA's two-year statute of limitations.

1. Did DCPS deny Student a FAPE by failing to timely conduct an OT evaluation or a Functional Behavioral Assessment (FBA) of the child beginning in the 2023-2024 school year through the end of the 2024-2025 school year?

The parent's first claim is that DCPS failed to comprehensively evaluate Student for special education, beginning in the 2023-2024 school year, because DCPS did not

conduct an FBA or an OT evaluation of the child. DCPS responds that Student did not need an FBA because he/she was placed in the Communication and Education Support (CES) classrooms at City School 1 and City School 2 and Student did not need a formal OT evaluation before October 2024 when a DCPS occupational therapist made an informal classroom observation of the child.

In *Cundiff-Enoch v. District of Columbia*, No. 22-CV-3713-RBW-ZMF, 2024 WL 396451, at *10 (D.D.C. Feb. 2, 2024), *report and recommendation adopted sub nom. Cundiff-Enoch as next friend of Enoch v. District of Columbia*, No. CV 22-3713 (RBW), 2024 WL 2279459 (D.D.C. Mar. 28, 2024), the court explained,

The IDEA requires that student reevaluations “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information” to determine disability and, if so, what supports the student’s IEP should contain. 20 U.S.C. § 1414(b)(2); *see id.* § 1414(a)(2). A student must be “assessed in all areas of suspected disability.” *Id.* § 1414(b)(3)(B).

Cundiff-Enoch, 2024 WL 396451 at *10. Decisions regarding the areas to be assessed are determined by the suspected needs of the child. U.S. Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46540, 46643 (August 14, 2006). The question here is whether during the 2023-2024 or 2024-2025 school years, OT or behavior support was an area of suspected need for Student. The parties’ experts disagree.

For occupational therapy, Student was determined to need OT services by his/her December 13, 2024 IEP team at City School 2, following a December 8, 2024 OT evaluation. Petitioner’s expert, Private OT, opined in her hearing testimony that OT was

an area of suspected need for Student well before December 2024. She testified that from her review of Student's records, the child presented, as far back as 2021, with fine motor, perceptual processing and sensory processing delays. DCPS' expert, DCPS OT, testified that Student did not require an OT assessment before the 2024-2025 school year because, in the CES classroom at City School 1, Student was able to access his/her education alongside his/her special education peers and because Mother did not request an OT assessment.

I found DCPS OT's opinion unpersuasive because the need for evaluation is based in the first instance upon whether the child has an area of suspected disability – not whether the child ultimately will require the related service to benefit from special education. *See* 34 C.F.R. § 300.33(a) (Related services means supportive services, including OT services, as are required to assist a child with a disability to benefit from special education.) Private OT was persuasive that Student's Strong Start evaluations in 2021 pointed to suspected OT concerns for the child. Until Student was evaluated, the IEP team would not know whether he/she needed OT services to benefit from special education. Nor was it the parent's burden to initiate a request for an OT evaluation for her child. *See Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005) ("School districts may not ignore disabled students' needs, nor may they await parental demands before providing special instruction." *Id.* at 518.)

The parent also alleges that DCPS denied Student a FAPE by not conducting a functional behavior assessment (FBA) beginning in the 2023-2024 school year. "FBA"

refers to a systematic set of strategies that are used to determine the underlying function or purpose of a [concerning] 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). The IDEA “recognizes that the quality of a child’s education is inextricably linked to that child’s behavior, and hence an effective educational evaluation must identify behavioral problems: ‘the IEP team must, in the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.’ 34 C.F.R. § 300.324(a)(2)(i).” *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 68 (D.D.C. 2008). “If a child’s behavior . . . is of concern, evaluations addressing these areas must be conducted.” *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. at 46643.

DCPS’ January 9, 2024 IEP stated that Student’s behavior does not impede his/her learning or that of other children. This was erroneous. At the time the IEP was developed, there was abundant data showing that Student’s behavior must have impeded his/her learning and that of his/her classmates. As the speech-language pathologist wrote in the Communication/Speech & Language section of the January 9, 2024 IEP, Student had exhibited increased behaviors in the 2023-2024 school year that impacted most sessions, including consistent refusal, eloping, escape-maintain behaviors, screaming, throwing items, etc. This concern was echoed in the October 30, 2024 Analysis of Existing Data (AED) report that Student would not complete non-

avored activities and that transitioning from a desired activity to a non desired activity caused tantrums, consisting of throwing objects, falling on the floor, crying/screaming, biting, and hitting.

DCPS' expert, CES Teacher 1, opined that Student did not need an FBA in the 2023-2024 school year because the Student's educators in the CES classroom understood the function of Student's behaviors. However, as the Court pronounced in *Harris, supra*, "The FBA is essential to addressing a child's behavioral difficulties, and, as such, it plays an integral role in the development of an IEP." *Id.* at 68. Petitioner's expert, Behavior Analyst, opined that a FBA was needed for Student, because without it, there were no behavioral support services provided in Student's January 9, 2024 IEP. I find Behavior Analyst's reasoning persuasive and, given Student's well-documented behavior challenges, DCPS's failure to conduct an FBA in the 2023-2024 and 2024-2025 school years violated the IDEA's comprehensive evaluation mandate.

The failure to conduct a comprehensive reevaluation of a child with a disability is a procedural violation of the IDEA. Procedural violations of the Act may only be deemed a denial of FAPE if the procedural inadequacies—

- (i) Impeded the student's right to a FAPE;
- (ii) Significantly impeded the parent's (or adult student's) opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or
- (iii) Caused a deprivation of educational benefit.

See 34 C.F.R. § 300.513(a)(2). In this case, I find that DCPS failure to conduct an FBA of Student and its failure to conduct an OT evaluation before December 2024, significantly impeded Mother’ opportunity to participate in the decision-making process for the January 9, 2024 and December 13, 2024 IEPs. See, e.g., *Z.B., supra* at 524. This was a denial of FAPE.

2. Did DCPS deny the child a FAPE when it failed to develop and implement an appropriate IEP, beginning in the 2023-2024 school year through the 2024-2025 school year, that was reasonably calculated to enable the child to make progress appropriate in light of his/her circumstances, including failure to incorporate occupational therapy services despite longstanding evaluative data, failure to address sensory regulation and adaptive functioning needs, failure to address persistent communication deficits, and failure to provide adequate behavioral supports?

Petitioner alleges that DCPS’ IEPs for Student beginning in the 2023-2024 school year were inappropriate because the IEPs did not incorporate OT services, did not address the child’s sensory regulation and adaptive functioning needs, did not address persistent communication deficits and failed to provide adequate behavioral supports. The IEPs for Student at issue are the January 9, 2024 IEP and the December 13, 2024 IEP, which were developed within the IDEA’s 2-year statute of limitations period.

In *N.T. v. District of Columbia*, No. 23-CV-370-CRC-MJS, 2025 WL 1895485 (D.D.C. July 9, 2025), *report and recommendation adopted*, No. 23-CV-370 (CRC)(MJS), 2025 WL 2635655 (D.D.C. Sept. 12, 2025), U.S. Magistrate Judge Matthew Sharbaugh explained the IDEA’s IEP requirement:

Congress enacted the IDEA to help ensure all children with disabilities receive a “free appropriate public education” or “FAPE.” See 20 U.S.C. §

1400(d)(1)(A). This mandate “requires an educational program reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Andrew F. v. Douglas Cnty. Sch. Dist.*, 580 U.S. 386, 403 (2017).

. . .

An IEP must also identify the “special education and related services . . . that will be provided” to help the child “advance appropriately toward attaining the annual goals.” 20 U.S.C. § 1414(d)(1)(a)(i). At least annually, the IEP Team must review and revise a child’s IEP “as appropriate.” *See id.* § 1414(d)(4).

. . .

A court reviewing “an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Andrew F.*, 580 U.S. at 399 (emphasis in original). After all, “Congress has not committed to educational perfection.” *Z.B.*, 888 F.3d at 528; *Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015) (“[A] public school district need not guarantee the best possible education or even a potential-maximizing one.”) (citation and quotations marks omitted). Equally important, a judicial assessment of an IEP’s “substantive adequacy” must be based on information “as of the time each IEP was created rather than with the benefit of hindsight.” *Edward M.R. v. Dist. of Columbia*, 128 F.4th 290, 294 (D.C. Cir. 2025) (quoting *Z.B.*, 888 F.3d at 524). Putting these principles together, then, “[t]he key inquiry regarding an IEP’s substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student’s needs at the time, the IEP it offered was reasonably calculated to ensure the specific student’s progress.” *Z.B.*, 888 F.3d at 524.

N.T., 2025 WL 1895485, at *1–2. “[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. v. Dist. of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570 at *7 (D.D.C. Mar. 8, 2022), quoting *Andrew F.*, *supra*, 137 S. Ct. at 1001-02.

As regards Student's need for OT services, there were no OT services provided in Student's January 9, 2024 IEP. DCPS' expert, DCPS OT, testified that in the 2023-2024 school year, she observed Student weekly in the City School 1 CES classroom. According to this witness, in the CES classroom, Student got multi-sensory supports and the teachers took time to structure his/her instruction so that he/she could access his/her education in small groups. She testified that Student was very well-rounded when it came to fine motor activities. DCPS OT opined that for the 2023-2024 school year, Student did not require direct OT services because he/she was in the supportive CES classroom and in that setting was able to access his/her education alongside his/her special education peers. For her part, Petitioner's expert, Private OT, testified to her "hunch" that if Student had been evaluated by an occupational therapist for the January 9, 2024 IEP, Student probably could have qualified for OT services.

On this issue, I found DCPS OT more credible than Private OT, because DCPS' expert had frequently observed Student in the CES classroom. Private OT never evaluated Student or had 1:1 contact with the child. Moreover, Private OT's opinion that Student would have qualified for OT services for the January 9, 2024 IEP was not a definitive opinion but was, as she described it, a hunch. On this evidence, I find that DCPS met its burden of persuasion that the omission of OT services for Student in the January 9, 2024 IEP was not inappropriate. At City School 2, the December 13, 2024 IEP provided Student to receive 80 minutes per month of OT services and Petitioner did not contend that this level of OT services was not appropriate for Student.

With regard to sensory regulation and adaptive functioning needs and behavioral supports, Petitioner's expert, Behavior Analyst, testified to her concern that neither the January 9, 2024 IEP nor the December 13, 2024 IEP provided direct support for Student with adaptive goals and daily living skills such as for toileting and eating, and neither IEP provided for Behavior Support Services or a Behavior Intervention Plan. She opined that these alleged omissions in Student's IEPs were a denial of FAPE.

Adaptive and daily living skills are "functional" skills – meaning skills or activities that are not considered academic or related to a child's academic achievement and refer to routine activities of everyday living. *See Assistance to States for the Education of Children with Disabilities, supra*, 71 Fed. Reg. at 46661. Student's January 9, 2024 IEP included three annual goals for Adaptive Daily Living Skills. However, the December 13, 2024 IEP team omitted Adaptive Daily Living goals. As of October 30, 2024, Student was reported to have progressed on – but not mastered – the three daily living goals from the January 9, 2024 IEP. At the due process hearing, DCPS failed to provide a cogent explanation for the IEP team's decision to drop goals for Adaptive Daily Living Skills from Student's December 13, 2024 IEP. I find that DCPS did not establish the appropriateness of that decision.

Neither the January 9, 2024 IEP nor the December 13, 2024 IEP included goals or services to address Student's Emotional, Social and Behavioral Development needs. Behavior support services are a "related service" that must be provided in a child's IEP,

if required to assist the child to benefit from special education. *See* 34 C.F.R. § 300.34(a).

In her testimony, CES Teacher 1, who was the child's special education teacher for the 2023-2024 school year, testified that Student had behavior issues, such as slight aggression, resistance to non-preferred activities and challenges with transitions. Both CES Teacher 1 and CES Teacher 2 testified that Student's behaviors were able to be managed within their CES classrooms. Perhaps, but in a December 9, 2024 Evaluation Summary Report, City School 2 staff reported that Student would not complete activities that he/she did not favor and would wander the classroom. The child's transitioning from a desired activity to a non-desired activity would cause him/her to tantrum, including throwing objects, falling on the floor, crying/screaming, biting, and hitting. I conclude that DCPS has not met its burden of persuasion that Student did not need IEP behavior support to benefit from special education or that the January 9, 2024 and December 13, 2024 IEPs, without behavior goals or services, were reasonably calculated to enable the child to make appropriate progress.

Petitioner also alleged in her due process complaint that Student's IEPs failed to address Student's persistent communication deficits. Both the January 9, 2024 and December 13, 2024 included Communication/Speech and Language goals and provided for Student to receive Speech-Language Pathology services. The parent presented no competent evidence that the speech and language provisions in Student's IEPs were not appropriate and I deny this aspect of the parent's claim.

C. Did DCPS deny Student a FAPE when it failed to fully implement the child's IEP during the 2023-2024 and 2024-2025 school years by failing

to deliver required related services, including occupational therapy and speech-language services?

Lastly, the Petitioner claims that DCPS denied Student a FAPE by not fully implementing the child's IEP OT and Speech-Language Pathology services in the 2023-2024 and 2024-2025 school years. The Petitioner holds the burden of proof for this claim. In my Findings of Fact in this decision, I found that the parent did not establish that DCPS failed to provide Student's Speech-Language Pathology services pursuant to his/her IEPs during the 2023-2024 and 2024-2025 school years.

Student's December 13, 2024 IEP provided for Student to receive 1 hour and 20 minutes per month of OT services. It is undisputed that Student did not receive OT services for much of second half of the 2024-2025 school year, because City School 2 did not have an OT provider. It appears from LEA Representative's testimony that City School 2 did not have an OT provider from approximately January 22, 2025 through February 7, 2025 and from March 18, 2025 through the end of the school year. This amounted to a total of approximately 15 weeks of missed OT services for Student. I find that at 1 hour and 20 minutes of prescribed services per month, Student missed some 300 minutes of OT services due to provider unavailability.

A school district "must ensure that . . . special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2). A material failure to implement a student's IEP constitutes a denial of a FAPE. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268–69 (D.D.C. 2013). To meet its burden, the moving party "must demonstrate that the school board or other

authorities failed to implement substantial or significant provisions of the IEP.”

Beckwith v. District of Columbia, 208 F.Supp.3d 34, 49 (D.D.C. 2016) (quoting *Hous. Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). I find that DCPS’ failure to provide Student’s OT services over some 15 weeks between January and June 2025 was a failure to implement a substantial provision of the child’s IEP.

On June 16, 2025, DCPS offered the parent 380 minutes of make-up OT services for Student, but Student was not able to use the make-up services because he/she transferred from DCPS to a public charter school LEA after the 2024-2025 school year. Student is, therefore, still owed compensatory education OT services.

Relief

In this decision, I have determined that the parent established that DCPS denied her child a FAPE by failing to conduct an OT evaluation and a Functional Behavioral Assessment of the child in time for consideration by the January 9, 2024 IEP team and by failure to implement OT related services for part of the 2024-2025 school year. I also have found that DCPS did not meet its burden of persuasion as to the appropriateness of discontinuing Adaptive Daily Living Skills goals and services in Student’s December 13, 2024 IEP or to the appropriateness of not providing emotional/social/behavior goals and services in Student’s January 9, 2024 and December 13, 2024 IEPs. For relief, the parent seeks an award of compensatory education for Student.

Even though DCPS is no longer Student’s LEA, the district may still be required to provide compensatory education services for its denials of FAPE that occurred when

Student was enrolled in DCPS schools. *See, e.g., A.G. v. District of Columbia*, No. CV 19-2148 (RC), 2020 WL 6799139, at *2 (D.D.C. Nov. 19, 2020) (Remanded to hearing officer for compensatory education determination, even though child no longer resided in the District.)

Compensatory Education

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

With regard to DCPS’ failure to evaluate Student for occupational therapy before December 2024, I found persuasive DCPS OT’s opinion that for the 2023-2024 school year, Student did not require direct OT services because he/she was in the supportive CES classroom and in that setting was able to access his/her education alongside his/her special education peers. However, DCPS OT did not observe Student in the 2024-2025 school year. I assume that if Student needed 1 hour and 20 minutes per month of OT services in December 2024, he/she most likely needed the same OT services from the start of the 2024-2025 school year. Based on that assumption, from

the start of the school year until December 2024, Student needed approximately 4 hours total of OT services, which he/she was not offered.

In second half of the 2024-2025 school year, DCPS failed to implement some 300 minutes of OT services required by the December 13, 2024 IDP. DCPS proposed to provide 380 minutes of make-up OT services for those missed services. Since Student has not been able to benefit from the make-up services because he/she transferred to a different LEA, I will add those unused make-up services to the compensatory education OT award. I find that, in total, Student is entitled to 11 hours of compensatory education OT services for OT services not offered, or omitted, during the 2024-2025 school year.

For the omission of emotional/social/behavior goals and services in Student's January 9, 2024 and December 13, 2024 IEPs and for discontinuing Adaptive Daily Living Skills goals and services in Student's December 13, 2024 IEP, Petitioner's expert, Behavior Analyst, recommended that Student be awarded 40 hours of compensatory education behavior support services and 400 hours of Applied Behavior Analysis (ABA) services. However, DCPS established that the CES programs at City School 1 and CES 2 used ABA strategies and techniques in the small group setting to help reduce the child's behaviors and it also appears that Student received ABA services, privately, outside of school hours. I do not find that Petitioner has established Student lost educational benefit from not receiving formal ABA therapy at City School 1 or City School 2 and I decline to award ABA services as compensatory education. I will adopt Behavior Analyst's recommendation that Student be awarded 40 hours of compensatory behavior

support services for DCPS' failure to conduct an FBA or provide Emotional, Social, and Behavioral Development goals and services on Student's January 9, 2024 and December 13, 2024 IEPs, despite the evidence that Student's behaviors impeded his/her learning in the CES classrooms at City School 1 and City School 2.

ORDER

1. As compensatory education for the denial of FAPE found in this decision, DCPS shall promptly issue funding authorization to the parent for Student to receive 11 hours of 1:1 independent OT services and 40 hours of 1:1 behavior support services by qualified providers experienced with working with young children with ASD disabilities. If transportation is needed for the child to meet with the providers, DCPS shall fund the parent's transportation costs in accordance with OSSE regulations.
2. All other relief requested by the Petitioner herein is denied.

November 18, 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