

District of Columbia
Office of the State Superintendent of Education

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

OSSE
Office of Dispute Resolution
November 28, 2025

Confidential

Parent on behalf of Student,¹)	Case Nos. 2025-0153
)	
Petitioner)	Hearing Date: November 18, 2025
)	
v.)	
)	Date Issued: November 28, 2025
District of Columbia Public Schools,)	
)	Terry Michael Banks,
Respondent)	Hearing Officer

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioner is the parent of an X-year-old student (“Student”) attending School B. On August 29, 2025, Petitioner filed a due process complaint notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) denied Student a free appropriate public education (“FAPE”) by failing to comply with its child find² obligation to Student. On September 8, 2025, DCPS filed *District of Columbia Public Schools’ Response to Parent’s Due Process Complaint and Hearing Request* (“*Response*”), denying that it had denied Student a FAPE in any way.

SUBJECT MATTER JURISDICTION

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

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

² 20 U.S.C. §1412(a)(3)(A).

PROCEDURAL HISTORY

On August 29, 2025, Petitioner filed her *Complaint* alleging that DCPS failed to comply with its child find obligation to Student. Specifically, Petitioner asserted that despite being put on notice by Child and Family Services (“CFSA”) as early as August 7, 2024 that Student required consideration for special education services, DCPS did not allow Student to attend until October 2024, and then only allowed him/her to attend half-days thereafter. DCPS did complete initial evaluations timely, did not conduct an assistive technology (“A/T”) evaluation, and did not conduct an Individualized Education Program (“IEP”) meeting until March 19, 2025. For relief, Petitioner requested, *inter alia*, (1) an order requiring DCPS to conduct or fund and review a functional behavior assessment (“FBA”), (2) an order requiring DCPS to fund an independent S/L evaluation, (3) an order requiring DCPS to reconvene the IEP team to review, revise and/or amend the IEP as appropriate based upon the updated data from the aforementioned evaluations and develop a BIP Student, to review, revise and/or amend the IEP to reflect appropriate goals and PLOPs in the area of Adaptive/Daily living Skills, to provide a dedicated aide, and to provide behavior support services (“BSS”), (4) compensatory education services, (5) the right to request additional compensatory education upon completion of the aforementioned evaluations, (6) that all meetings shall be convened through counsel for the parent, and (7) attorneys’ fees and costs.

On September 8, 2025, DCPS filed its *Response* to the *Complaint* denying that it had denied Student a FAPE. DCPS asserted, *inter alia*, that in November 2024, the IEP team conducted an Analysis of Existing Data (“AED”) meeting. At that meeting, the multidisciplinary team (“MDT”) ordered evaluations for Student. During the 2024-25 school year, DCPS conducted evaluations in the areas of Psychology, Speech Language Pathology (“SLP”), Occupational Therapy (“OT”), and Physical Therapy (“PT”), as well as a Functional Behavioral Assessment (“FBA”). On or about January 22, 2025, the IEP team met and found Student eligible for special education services under the disability classification of Autism. (“ASD”). On or about February 7, 2025 and March 19, 2025, the IEP team developed an IEP for Student.

The parties conducted a resolution meeting on September 18, 2025 that did not result in a settlement. A prehearing conference was not conducted as the issues were virtually identical to those in Case No. 2025-0091 in which a *Prehearing Order* was issued before the complaint was withdrawn. A Prehearing Order was issued on October 24, 2025.

The due process hearing was conducted on November 18, 2025 by video conference facilities. The hearing was open to the public at Petitioner’s request. Petitioner filed Five-day Disclosures on November 10, 2025, containing a witness list of five witnesses and 29 documents. DCPS filed objections to Petitioner’s disclosures on November 14, 2025. DCPS objected to P16, P21, P23, and P26. Petitioner’s Exhibits P1-P15, P17-P20, P22, and P24-P29 were admitted into evidence.

Respondent also filed Disclosures dated November 10, 2025, containing a witness list of four witnesses and 25 documents. Petitioner filed objections to DCPS’ disclosures. On November 14th, Petitioner filed objections to DCPS disclosures. Petitioner objected to R22, R23, and R25. Respondent’s Exhibits R1-R21 and R24 were admitted into evidence.

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

ISSUES

As identified in the *Complaint* and the *Prehearing Order*, the issue to be determined in this case is as follows:

Whether DCPS denied Student a FAPE by failing to comply with its child find obligation to Student. Specifically, Petitioner asserts that despite being put on notice by Child and Family Services ("CFSA") as early as August 7, 2024 that Student required consideration for special education services, DCPS would only allow Student to attend from his/her enrollment on August 27, 2024 until October 2024, and then only allowed him/her to attend half-days thereafter. DCPS did not hold an Analysis of Existing Data ("AED") meeting until November 12, 2024 and did not conduct an assistive technology ("A/T") evaluation. The evaluations were due to be completed by December 27, 2024. DCPS did not conduct an Individualized Education Program ("IEP") meeting until March 19, 2025.

FINDINGS OF FACT³

1. Student is an X-year-old student who was in grade F at School A during the 2024-25 school year.⁴

2. On or about August 7, 2024, DCPS was contacted by the Child and Family Services Agency ("CFSA"). CFSA notified DCPS that the "family noticed developmental delays when [Student] was very young, and was sent to live with her/his grandmother full-time. [His/her] grandmother never enrolled [her/him] in school, nor did [s/he] ever receive any medical care from a physician. [His/her] grandmother recently passed, and [Student] has been in the care of [her/his] biological mother, [Petitioner], for the past 6 months. CFSA is now involved and is seeking placement assistance as [Student] will need to be evaluated for grade placement and special education services."⁵

3. On August 23, 2024, Witness A, DCPS' Director of Placement, Office of School Improvement & Supports, informed CFSA that School A was prepared to welcome Petitioner on August 26, 2024, but Student was not expected to attend.⁶

³ The Findings of Fact includes all of the oral and written evidence that I considered material in rendering the decision in this matter. The quotations of oral testimony are from my notes during the hearing, not the transcript.

⁴ Petitioner's Exhibit ("P.") 8 at page 1. The exhibit number is followed by the exhibit page number and the digital page number in parentheses, i.e., P8:1 (101).

⁵ P17:9 (210).

⁶ *Id.* at 4 (205).

4. On October 2, 2024, DCPS issued a Part B Referral indicating that Witness D, the Assistant Principal at School A, referred Student for an initial evaluation on October 2, 2024.⁷

5. Petitioner provided consent for evaluations of Student on November 12, 2024.⁸

6. On November 20, 2024, DCPS completed an Occupational Therapy Evaluation of Student.⁹ It was reported to Examiner A that Student had never attended school before because “[s/he] couldn’t leave the house. [S/he] refused to get dressed and would throw temper tantrums.”¹⁰ Teacher B, Student’s English Language Arts (“ELA”) teacher, reported that initially, Student appeared nervous and anxious, often unaware of her/his volume and speaking loudly. Over time, however, s/he became more comfortable and confident around his/her classmates and teachers, adjusting well to her/his environment. Student needed help holding age appropriate writing tools; s/he struggles with pens and pencils. S/he was able to deliver a monologue and respond to questions, and had strong phonetic skills. His/her attention span varied. At first, Student needed a break every 10-15 minutes., but s/he progressed to listening more attentively.¹¹ The School Function Assessment (“SFA”) measures a student’s performance on functional tasks which support their participation in the academic setting. The SFA is a questionnaire completed by one or more school professionals who are familiar with the child, and consists of three parts: Participation, Task Supports, and Activity Performance. In Classroom Participation, Student’s was “extremely limited,” requiring one-on-one support to engage in tasks. On Playground/Recess, s/he participated passively. In Transportation, Student required adult support for safety. In Bathroom/Toileting, s/he required supervision to complete hygiene activities thoroughly. S/he always required adult supervision during transitions.¹² On the Sensory Processing Measure (“SPM-2”), Student’s overall Sensory Total was in the Typical range, including Typical T-scores in Touch (53), Body Awareness (42), and Balance and Motion (53), Some Problems in Vision (62) and Hearing (69), and Definite Dysfunction in Planning and Ideas (72) and Social Participation (40). Student’s overall score indicates that “[s/he] does not have difficulty with taking in various stimuli from the environment, interpreting the stimuli properly, and responding to the stimuli appropriately.”¹³ On the Schoodles: School Fine Motor Assessment, Student was Below Expectations in Muscle Tone, Postural Control, Muscle Strength, and Motor Planning, and Within Normal Limits in Range of Motion.

In terms of Visual Perceptual Skills, Student was able to identify upper case letters and numbers and was able to point when a given letter or number was dictated to him/her. However, s/he demonstrated challenges with visual perceptual skills evidenced by clinical observations during testing. Student did not demonstrate a hand dominance and grasped writing tools with inconsistent grasping patterns. When presented with a writing utensil, s/he primarily scribbled in a linear or circular motion. Student was unable to produce letters by tracing, copying or imitating. In Activities of Daily Living, Student was Functional in Self-Feeding, Poor in putting on her/his

⁷ Respondent’s Exhibit (“R.”) 2 at page 1. The exhibit number is followed by the exhibit page number and the digital page number in parentheses, i.e., R2:1 (12).

⁸ R4:1 (14).

⁹ P4:1 (36).

¹⁰ *Id.* at 2 (37).

¹¹ *Id.* at 3 (38).

¹² *Id.* at 4-5 (39-40).

¹³ *Id.* at 5-8 (40-43).

coat/backpack, dressing/undressing during toileting, handwashing, and toileting, and was unable to manipulate fasteners.¹⁴ Examiner A reached the following conclusions:

Based on this comprehensive occupational therapy evaluation, [Student] may experience challenges with visual motor/visual perceptual skills, fine motor/grasping skills. Deficits in fine motor and visual motor integration can impact [his/her] learning and participation when using age-appropriate skills to color within the lines, imitate, trace, or draw shapes, cut on a line, and write letters or numbers. Also challenges with sensory processing and self-care skills.¹⁵

Examiner A deferred the decision as to whether Student qualified for OT services to the multidisciplinary team (“MDT”).¹⁶

7. On November 22, 2024, DCPS conducted an Analysis of Existing Data (“AED”) meeting. The AED report included the following Additional Description: “[Student] is a student that has never been to school previously before the 2024-2025 school year. [Student] has an attendance waiver that allows [him/her] to participate during the school day for a specific period of time as [s/he] is acclimated and accustomed to the school setting.”¹⁷ The team determined that Student should be evaluated to determine eligibility for special education and related services.”¹⁸

8. On December 3, 2024, DCPS conducted another AED meeting to facilitate participation of Petitioner’s newly retained legal counsel.¹⁹ The AED report indicates that the following assessments were ordered on November 12, 2024 and would be completed by December 27, 2024: Physical Therapy, Adaptive Daily Living Skills, Cognitive, Speech & Language, Occupational Therapy, and Emotional, Social and Behavioral Development.²⁰

9. On December 27, 2024, DCPS completed a Psychological Evaluation of Student. It was reported to Examiner B that following the death of Student’s grandmother, his/her primary care-giver, in March 2024, Petitioner’s sister filed a report out of concern that Student had not been attending school or receiving medical treatment; School A was his/her first school experience. S/he started at School A in mid-October and was attending on a part-time basis from 9 a.m. to 12 p.m.²¹ During the three days of testing, Student’s capacity to perform testing tasks was no more than 20 minutes before disengaging and not responding to questions. Her/his attention was inconsistent and s/he had to be redirected often. Nevertheless, Examiner B determined that the evaluation results provided a valid representation of her/his abilities at the time.²² On the Reynolds Intellectual Assessment Scale (“RIAS-II”), Student was Significantly Below Average in Composite Intelligence (40), Verbal Intelligence (40), Non-Verbal Intelligence (40), and

¹⁴ *Id.* at 13-15 (48-50).

¹⁵ *Id.* at 15 (50).

¹⁶ *Id.* at 16 (51).

¹⁷ R7:1 (36).

¹⁸ *Id.* at 17 (52)

¹⁹ Testimony of Witness D; R8:1 (53).

²⁰ *Id.* at 15 (67). November 12, 2024 is the date Petitioner provided consent to evaluate Student.

²¹ P5:1-2 (56-7).

²² *Id.* at 8 (63).

Composite Memory, with all four standard scores in the <0.1 percentile.²³ On the Woodcock Johnson Test of Achievement (“WJ-IV”). Due to Student’s challenges with writing and verbal skills, only his/her reading and math skills were assessed. S/he scored in the Below Average range in Letter-Word Identification (81) and in the Extremely Low range in Reading (<40, <0.1%), Passage Comprehension (<40, <0.1%). Mathematics (<40, <0.1%), and Applied Problems (<40, <0.1%).²⁴ On the Vineland Adaptive Behavior Scales, Student’s teacher’s ratings across all domains, Communication, Daily Living, Socialization, and Adaptive were all in the <1 percentile, indicating that s/he required considerable support in daily functioning, communication, and social interaction.²⁵ Student’s Social/Emotional Function was assessed on the Gilliam Autism Rating Scale (“GARS-3”). Rating scales were completed by Petitioner and Social Worker A. The scores from both raters placed Student in the Very Likely to have autism category.²⁶ “Given these results, [Student’s] performance across multiple domains—including intellectual abilities, academic skills, adaptive behavior, and autism-specific traits—supports the likelihood of a diagnosis of Autism Spectrum Disorder (ASD). [His/her] educational performance is clearly affected by these challenges, and [s/he] would likely benefit from targeted interventions to address [her/his] cognitive, social, communication, and academic needs.”²⁷

10. On December 27, 2024, DCPS completed an Initial Speech and Language Evaluation. Teacher C reported that Student does not readily communicate his/her wants and needs in the classroom. S/he is able to answer simple questions, but mostly repeats after others. Student can follow the classroom routine with minimal to moderate prompts. S/he can follow one step directions with repetition and gestures, but does not follow two-step directions.²⁸ Student’s hearing was not formally assessed, but no difficulties were noted. His/her articulation could not be assessed due to his/her inability to label a variety of pictures and a lack of understanding of the directions. Student’s fluency could not be determined due to limited verbalization. On the Peabody Picture Vocabulary Test (“PPVT-5) of Receptive Vocabulary, a standard score was unable to be achieved due to her/his difficulty understanding some of the questions. “Given [Student’s] below average receptive vocabulary skills, [s/he] may experience difficulty comprehending the meaning of words heard in oral stories or discussions in [her/his] general education setting.” On the Expressive Vocabulary Test (“EVT-3”), Student scored in the Below Expected range (60, 0.4th percentile).²⁹ Examiner C concluded that “Student’s daily communication needs could be met using natural speech or low-tech augmentative communication systems at this time, Currently, the student benefits from the use of picture symbols with hand over hand assistance within the classroom setting.”³⁰

Receptively, [Student] understands words, phrases, and direct requests. [S/he] can participate in simple conversations for one exchange. [S/he] understands literal language and not figurative... [Student] can respond to attention commands (no, stop, look) on request. [S/he] can respond to [her/his] name but may tune out

²³ *Id.* at 8-11 (63-66).

²⁴ *Id.* at 12 (67).

²⁵ *Id.* at 15 (70).

²⁶ *Id.* at 15-17 (70-72).

²⁷ *Id.* at 19 (74).

²⁸ P6:1 (81).

²⁹ *Id.* at 4 (84).

³⁰ *Id.* at 6 (86).

others... Expressively, [Student] is a limited communicator who can express [her/himself] using single words and phrases. [His/her] method of communication consists of speech, actions, and vocalizations. The quality of [his/her] self-expression must be inferred due to phrases or echolalia. [S/he] benefits from verbal and gestural prompts. [S/he] engaged with objects via touch, personal gaze, and random for self-stimulation... [His/her] basic communication expression consists of expressing [his/her] name, labeling objects, and expressing displeasure using speech. [Student's] grammar is poor with [her/his] vocabulary limited to objects, yes/no, and social forms when prompted. [Her/his] average phrase lengths is mostly one word ranging up to three words spoken. [Student] does not ask questions in order to gain additional information.³¹

Examiner C deferred the decision as to qualification for speech and language services to the MDT.³²

11. On January 7, 2025, Attorney A sent an email to Witness D, the Assistant Principal at School A, introducing herself as Petitioner's attorney. Attorney A also (1) complained that Student's assessments were not ordered until November 11 2024 despite Petitioner having given consent in October, (2) inquired as to when Petitioner would receive the assessments since they were due to be completed on December 27, 2024, and (3) complained that the AED team did not request a psychoeducational evaluation to be conducted.³³

12. On January 21, 2025, Attorney A notified Witness D that she had not received Student's evaluations and would not attend the eligibility meeting scheduled for the following day without having received them.³⁴

13. On January 29 2025, DCPS issued a Final Eligibility Determination Report for Student. DCPS determined that Student was eligible for special education services with a disability classification of ASD. The Report indicated that Student's disability affected her/his ability to participate in the general education curriculum in Mathematics, Reading, Adaptive Daily Living Skills ("ADLs"), Cognitive, Communication/Speech and Language, Emotional, Social, and Behavioral Development, and Motor Skills/Physical Development.³⁵

14. On February 7, 2025, DCPS issued a Prior Written Notice ("PWN") indicating its intention to develop an initial IEP for Student.³⁶

15. On February 7, 2025, Attorney A sent Witness D an email at 8:55 a.m. informing him that she had just learned from Petitioner that an IEP meeting was scheduled for that day. Attorney A reiterated that her requests for an invitation for Petitioner's team to an eligibility meeting, for the results of the assessments, and for a meeting link had been ignored. Thus,

³¹ *Id.* at 7 (87).

³² *Id.*

³³ P18:16 (227).

³⁴ *Id.* at 13 (224).

³⁵ P11:1-2 (172-3).

³⁶ P12:1 (178).

Petitioner's team would not participate in a meeting that day.³⁷ On February 10, 2025, Attorney A proposed dates of February 18, 19, or 21 for the meeting and again requested the assessments.³⁸ On February 13 and 19, 2025, Attorney A sent emails to Witness D having received no response to her February 10, 2025 email.³⁹ At 7:25 p.m. that evening, Witness D replied, stating "We have a meeting schedule (sic) for Wednesday February 26 2025 at 12:00."⁴⁰ Attorney A replied the following day, agreeing to the meeting time provided that DCPS provided the evaluations and eligibility documents were provided no later than the following day, February 21, 2025.⁴¹ Witness D replied, documenting the meeting time, but he did not enclose any documents.⁴² Attorney A replied on February 24, 2025, again noting the absence of the materials requested, and indicated that Petitioner's team would not meet with DCPS without them.⁴³ Witness D replied by asking if Attorney A received a letter of invitation.⁴⁴ Attorney A replied immediately, reiterating that she had not received the evaluations.⁴⁵ On February 25, 2025, Attorney A sent an email indicating that she had received the evaluations the previous afternoon, too late to prepare for the meeting scheduled for the following day.⁴⁶ On March 18, 2025, the parties agreed to meet the following day.⁴⁷

16. On March 19, 2025 DCPS conducted an Initial IEP meeting. Student's disability classification was ASD.⁴⁸ In Special Considerations, the IEP team determined that Student's behavior did not impede her/his learning or that of others in the classroom. In the Assistive Technology subsection, the team determined that Student required a human scribe and speech-to-text technology.⁴⁹ The IEP included goals in Reading, Mathematics, ADLs, Communication/Speech and Language, Emotional, Social, and Behavioral Development, Motor Skills/Physical Development, and Health/Physical. The IEP team prescribed twenty-five hours of specialized instruction per week outside general education, three hours of OT services per month, four hours of behavior support services ("BSS") per month, and three hours of SLP services per month, all outside general education, 30 minutes per month of physical therapy consultation services, and a communication device that supports Student's ability to express her/his needs to adults and peers.⁵⁰

17. Petitioner testified that Student began living with her on March 3, 2024 when her mother died. Student lived with his/her grandmother up until her death. When asked why Student

³⁷ P18:13 (224). Witness D, School A's Assistant Principal, testified that School A conducted an IEP meeting on February 7, 2025. The IEPs disclosed by both parties were dated February 7, 2025. P:8 (101) and R14:1 (121). Neither document contains participants' signatures confirming their presence. Neither party disclosed meeting notes from February 7, 2025. Petitioner did not address the February 7th meeting in her very brief testimony. Neither party disputes that the IEP was finalized at a meeting on March 19, 2025.

³⁸ *Id.* at 10 (221).

³⁹ *Id.* at 9 (220).

⁴⁰ *Id.* at 8 (219).

⁴¹ *Id.*

⁴² *Id.* at 7 (218).

⁴³ *Id.* at 6-7 (217-8).

⁴⁴ *Id.* at 6 (217).

⁴⁵ *Id.* at 5-6 (216-7).

⁴⁶ *Id.* at 4 (215).

⁴⁷ *Id.* at 1 (212).

⁴⁸ P19:1 (229); P8:1 (101).

⁴⁹ *Id.* at 2 (102).

⁵⁰ *Id.* at 37 (137).

only went to school half days, Petitioner said it was because s/he became overwhelmed at school. Petitioner did not recall who's idea it was for Student to attend only half-days.⁵¹

18. Witness B was Petitioner's educational advocate. Witness B developed the Compensatory Education Proposal in Petitioner's Exhibit 26. The alleged denials of FAPE were for the failure timely to initiate child find procedures and the "denied access to an education curriculum and education environment without lawful justification or appropriate accommodations."⁵² The periods of harm were from August 23, 2024 through March 2025 for the failure to conduct Comprehensive Psychological, OT, and SLP evaluations, and from August 23, 2024 through June 18, 2025 for the failure to conduct an assistive technology evaluation.⁵³ In her Proposal and in her testimony, Witness B opined that but for the denials of FAPE, Student would likely have made meaningful progress toward age-appropriate academic, communication, and functional goals. Witness B proposed as compensatory services: 200 hours of "extended instructional time (focused on reading readiness skills, increased social emotional competence, and adjust successfully to the school setting," 40 hours of speech and language therapy, 40 hours of OT services, 20 hours of physical therapy services, and 10 hours of counseling.⁵⁴

19. Witness D was the Assistant Principal at School A. He testified that Student began attending School A in October 2024. Student had never been enrolled in any school before that time. When asked why Student was not enrolled until October, he said it was due to mental health concerns. Facility A was to complete and provide an evaluation of Student, but it was never done. Because Student had never attended school before, CFSA recommended that s/he begin coming half-days only during an acclimation period to ease her/his transition into the school environment. Over time, Student's receptive communication skills improved as well as his/her comprehension. At an AED meeting in November, the team discussed her/his progress and determined what s/he needed in terms of evaluations. A second AED meeting was held in December to facilitate the participation of new legal counsel. The MDT discussed assistive technology, but because this was Student's first school experience, the MDT wanted to see what kind of progress s/he could make without it. Petitioner agreed with the decision on assistive technology. The evaluations ordered by the AED team were completed at the end of December 2024. The IEP was finalized in mid-March. Petitioner was pleased with the services prescribed in the IEP. On cross-examination, Witness D testified that an IEP meeting was held on February 7, 2025, but Petitioner's attorney did not attend; thus, the IEP was not finalized until March 19, 2025 in which Attorney A participated.⁵⁵

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, and this hearing officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows: The burden of proof in District of Columbia special education cases was changed by the local

⁵¹ Testimony of Petitioner.

⁵² P26:5 (255).

⁵³ The *Prehearing Order* did not include a separate claim of the failure to evaluate Student in all areas of suspected disability other than in the context of the child find claim.

⁵⁴ *Id.* at 5-6 (255-6); Testimony of Witness B.

⁵⁵ Testimony of Witness D.

legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.⁵⁶

The issue in this case does not include the alleged failure of DCPS to provide an appropriate IEP or placement. Therefore, under District of Columbia law, Petitioner bears the burden as to all issues.⁵⁷

Whether DCPS denied Student a FAPE by failing to comply with its child find obligation to Student. Specifically, Petitioner asserts that despite being put on notice by Child and Family Services (“CFSA”) as early as August 7, 2024 that Student required consideration for special education services, DCPS would only allow Student to attend from his/her enrollment on August 27, 2024 until October 2024, and then only allowed her/him to attend half-days thereafter. DCPS did not hold an Analysis of Existing Data (“AED”) meeting until November 12, 2024 and did not conduct an assistive technology (“A/T”) evaluation. The evaluations were due to be completed by December 27, 2024. DCPS did not conduct an Individualized Education Program (“IEP”) meeting until March 19, 2025.

Child Find

IDEA requires states to identify and evaluate all children suspected of needing special education services:

A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions...All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and

⁵⁶ D.C. Code § 38-2571.03(6)(A)(i).

⁵⁷ *Schaffer v. Weast*, 546 U.S. 49 (2005).

implemented to determine which children with disabilities are currently receiving needed special education and related services.⁵⁸

The District has a similar regulation.⁵⁹ IDEA regulations define a child with a disability as follows:

Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.⁶⁰

The District’s regulations require an LEA to consider any oral or written referral from a parent, an employee of an LEA, or an employee of a public agency who has knowledge of the child, as a request for an initial evaluation of the child.⁶¹ The LEA must issue a PWN informing the parent of its decision to evaluate or not evaluate the child.⁶² If the LEA decides to evaluate the child, it must (1) initiate efforts to secure parental consent for the evaluation within ten days of the referral, (2) make and document its reasonable efforts, to obtain parental consent within thirty days from the date on which the child is referred, and (3) evaluate and make an eligibility determination within sixty days from the date that the student's parent or guardian provides consent for the evaluation.⁶³

Student was not enrolled in DCPS when CFSA referred her/him for “grade placement and special education services.” Petitioner did not testify when she ultimately enrolled Student, but it is undisputed that Student did not begin attending School A until sometime in October 2024. Thus, I have no reason to question the referral date of October 2, 2024 on DCPS’ Part B Referral. The regulations require DCPS to document its reasonable efforts to obtain parental consent to evaluate within thirty days of a referral. DCPS disclosed no such documentation, but Petitioner provided consent on November 12, 2024, forty-one days after the referral. The evaluations were completed by December 27, 2024, and DCPS found Student eligible for services on January 29, 2025. Under the District’s regulations, DCPS should have completed its eligibility determination by January 11, 2025, sixty days after obtaining consent to evaluate. Thus, DCPS was twenty-nine days late in completing its eligibility determination in light of its unexplained eleven-day delay in securing Petitioner’s consent within thirty days.

The failure to complete a timely initial determination of eligibility is a procedural violation. A hearing officer’s determination of whether a child was denied a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a

⁵⁸ 20 U.S.C. §1412(a)(3)(A); 34 C.F.R. §300.111(a)(1)(i).

⁵⁹ 5-A DCMR § 3003.1(a).

⁶⁰ 34 C.F.R. § 300.8(a)(1).

⁶¹ 5-A DCMR § 3004.1 and § 3004.5.

⁶² 5-A DCMR § 3005.2.

⁶³ 5-A DCMR § 3005.4.

child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit.⁶⁴ In other words, an IDEA claim is viable only if procedural violations affected the child's substantive rights.⁶⁵

Petitioner offered no explanation for failing to enroll Student in school for at least the last three years. She testified that Student was under the care of his/her grandmother until she died in March of 2024. Petitioner testified that she did not live with Student until March 2024, and she could not recall how long her mother was Student's primary care giver. However, the histories provided in the evaluations conducted by DCPS reveal that Petitioner lived in the same home with her mother and Student. Moreover, it was not Petitioner that reported the truancy to CFSA after the grandmother's death, it was Petitioner's sister.

As for DCPS, its persistent failure to provide Petitioner the evaluations it completed in December 2024 deprived Petitioner the meaningful opportunity to participate in the eligibility determination and unnecessarily delayed the finalization of the IEP. Had DCPS complied with the District's deadlines for completing the eligibility determination, it would have been completed a month earlier, and conceivably, Student would have begun receiving services a month earlier.

Therefore, I conclude that Petitioner has met her burden of proving that DCPS denied Student a FAPE by failing timely to comply with its child find obligation to Student under District law.

Assistive Technology Evaluation

IDEA regulations require that LEAs evaluate children with disabilities in all areas of suspected disabilities:

Each public agency must ensure that... the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities...⁶⁶

Petitioner asserts that DCPS should have included an assistive technology evaluation as one of Student's initial evaluations. First, assistive technology is not listed in Section 300.304(c)(4) as one of the areas of suspected disability. Second, Petitioner adduced no testimony, expert or lay, as to the need for an assistive technology evaluation as one of Student's initial evaluations despite never having attended school before and never having a reading assessment before. Third, Witness D, School A's Assistant Principal, testified that because Student had never attended school before, the team wanted to assess his/her progress with ordinary interventions before considering the use of assistive technology. Fourth, the initial IEP that was developed in February 2025 prescribed the

⁶⁴ 34 C.F.R. § 300.513(a).

⁶⁵ *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015); *Brown v. District of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), quoting *N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

⁶⁶ 34 C.F.R. § 300.304 (c)(4).

use of a speech-to-text device for Student. This is consistent with Examiner C’s recommendation in her Speech and Language Evaluation: “Student’s daily communication needs could be met using natural speech or low-tech augmentative communication systems at this time, Currently, the student benefits from the use of picture symbols with hand over hand assistance within the classroom setting.” For all of these reasons, I conclude that Petitioner has failed to meet her burden of proving that DCPS failed to assess student in all areas of suspected disability when they conducted five initial assessments of Student in November and December of 2024 including a Comprehensive Psychological (including cognitive, achievement, ADLs, and autism/behavioral assessments), Speech and Language, Occupational Therapy, Physical Therapy,⁶⁷ and a Functional Behavior Assessment.⁶⁸

RELIEF

For relief, Petitioner requests, *inter alia*, (1) an order requiring DCPS to conduct, fund and review an Assistive Technology (A/T) evaluation and timely reconvene an IEP meeting to review the evaluation results; (2) an order requiring DCPS to provide Student with an appropriate Specific Learning Support (“SLS”) placement and/or location of services with parent participation and/or fund placement in a non-public school; (3) compensatory education for denials of FAPE that have occurred, and the parent shall reserve the right to request additional compensatory education upon completion of the above referenced evaluations, and (4) attorney fees and costs in this matter.⁶⁹

Petitioner has the burden of establishing entitlement to compensatory education services.⁷⁰ Absent such a showing, any award by the hearing officer would be arbitrary. In this jurisdiction, petitioners have the burden of persuasion on all issues other than the appropriateness of IEPs and placements. From a practical standpoint, it would be both counterintuitive and unreasonable to require the educational agency to propose a compensatory education plan when its position is that it did not deny a FAPE in the first place. The requirements for an appropriate compensatory education plan are set forth in the D.C. Circuit’s decision in *Reid v. District of Columbia*.⁷¹

⁶⁷ R11:1 (86).

⁶⁸ R9:1 (68).

⁶⁹ In the *Prehearing Order*, it was noted that hearing officers have no role in the awarding of attorneys’ fees in this jurisdiction.

⁷⁰ *J.T. v. District of Columbia*, Civil Action No. 21-3002, 2023 WL 8369938 at 15 (D.D.C. Dec. 4, 2023)(plaintiff failed to demonstrate what compensatory education should be provided to the student to remedy what the plaintiff contends the student has been denied); (*Phillips ex rel. T.P. v. District of Columbia*, 736 F. Supp. 2d 240, 248 (D.D.C. 2010)(plaintiff has the burden of “propos[ing] a well-articulated plan that reflects [the student's] current education abilities and needs and is supported by the record.”) citing *Friendship Edison Public Charter School. Collegiate Campus v. Nesbitt*, 583 F.Supp.2d 169, 172 (D.D.C.2008)(to comply with the *Reid* standard, the petitioner must propose a well-articulated plan that reflects the student’s current educational abilities and needs and is supported by the record); *Smith v. District of Columbia, Report and Recommendation*, Case No. 1:22-cv-027555 at 8 (July 31, 2023) *Report and Recommendation*, *Wade v. District of Columbia, Magistrate Judge’s Report and Recommendation*, Case No. 20-cv-1433 at 26 (D.D.C. Feb. 19, 2021) (the plaintiff has the burden of proposing a well-articulated plan that reflects the student's current education abilities and needs and is supported by the record) citing *Phillips*; *Jones v. District of Columbia*, Case No. 15-cv-1505, 2017 WL 10651264 at 9 (D.D.C. Jan. 31, 2017)(Plaintiff presented no evidence concerning a plan of compensatory education as was her burden), citing *Phillips* and *Friendship*.

⁷¹ 401 F.3d 516 (D.C. Cir. 2005).

Accordingly, just as IEPs focus on disabled students' individual needs, so must awards compensating past violations rely on individualized assessments... In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate 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.⁷²

Thus, Petitioner must show (1) what educational harm Student suffered as a result of the alleged denial of FAPE, (2) what type and amount of compensatory services Student requires to put him/her in the position s/he would be had there been no denial of FAPE, and (3) the assessments or educational, psychological, or scientific studies that support the type and amount of services requested.⁷³

DCPS found Student eligible for services on January 29, 2025. It could not have made this determination without a consideration of the evaluations conducted in December 2024. However, DCPS did not provide Petitioner those evaluations until February 24, 2025. IDEA requires LEAs to provide parents students' educational records necessary to participate meaningfully in meetings related to their children's education:

Any... local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that... parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies. The procedures required by this section shall include the following: An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.⁷⁴

Thus, if DCPS was prepared to make an eligibility determination for Student on January 29, 2025, it should have provided Petitioner Student's evaluations on or before that date. Without having done so, Petitioner was deprived of a meaningful opportunity to participate in the eligibility determination. In addition, had DCPS provided Petitioner the evaluations on or before January 29, 2025, Student's initial IEP could have been completed on February 7, 2025, the earlier date DCPS proposed for the initial IEP meeting that was rejected by Petitioner's counsel due to DCPS' failure to provide Petitioner the evaluations. Therefore, I conclude that DCPS delayed Student's initial services six weeks, from February 7 to March 19, 2025.

In her Compensatory Education Proposal for Student, Witness B proposed that Student receive 200 hours of "extended instructional time (focused on reading readiness skills, increased

⁷² *Id.* at 524. See also, *B.D. v. District of Columbia*, 817 F.3d 792, 799-800 (D.C. Cir. 2016)

⁷³ See *Gill v. District of Columbia*, 751 F.Supp.2d 104, 111-12 (D.D.C. 2010) (petitioners offered neither reasoning nor factual findings to support the appropriateness of their proposed compensatory education plan), *further proceedings*, 770 F.Supp.2d 112, 116-18 (D.D.C. 2011).

⁷⁴ 20 U.S.C. § 1415(b)(1).

social emotional competence, and adjust successfully to the school setting,” 40 hours of speech and language therapy, 40 hours of OT services, 20 hours of physical therapy services, and 10 hours of counseling. In the six weeks that Student was deprived of her/his initial services, s/he would have received approximately 150 hours of specialized instruction, 4.5 hours of OT services, 4.5 hours of SLP services, and six hours of BSS.

Witness B’s proposal for 200 hours of tutoring services does not meet the requirement of *Reid* because *Reid* requires a determination of the educational harm suffered by the child as a result of the denial of FAPE: the academic achievement the student lost or failed to gain. Once the academic harm has been quantified, *Reid* requires a fact-based analysis of the type and amount of services that would compensate the student for the harm suffered. Witness B simply proposed an arbitrary, flat amount of services. Witness B opined that but for the denial of FAPE, Student would likely have made meaningful progress toward age-appropriate academic, communication, and functional goals. However, there is no factual or empirical basis for this opinion as Student has no academic record. The *Reid* court rejected the parent’s request for tutoring on an hour-for-hour lost basis as arbitrary.⁷⁵ Similarly, the court rejected DCPS’ proposed award, “although 810 hours certainly seems like a significant award,” because it, too, was not based on a fact-specific assessment.⁷⁶ Instead, the court stated that an award must be based on an individualized assessment: “... just as IEPs focus on disabled students' individual needs, so must awards compensating past violations rely on individualized assessments.”⁷⁷

Reid requires an analysis of the type and amount of services required to bring a student to the point s/he would have been but for the denial of FAPE. Unfortunately, while they are well-intentioned, *Reid* and its progeny are unworkable for a number of reasons. I was a Hearing Officer when *Reid* was issued in 2005. In fact, I believe I was the first Hearing Officer to order DCPS to fund an independent evaluation to address *Reid*’s requirements. However, in the two intervening decades, I have never seen a compensatory education plan that met its requirements. First, *Reid* requires an individualized assessment of what the child lost or failed to gain during the period of harm and an analysis of the type and amount of services that would compensate for that loss. Obviously, such an analysis must be presented at the hearing by the petitioner,⁷⁸ because the school district’s position is that it offered a FAPE. I have never conducted a hearing in which a petitioner submitted a qualifying analysis as part of its direct case. I have never seen an analysis quantifying what a student lost, or failed to gain, in terms of grade equivalence or percentile rankings as a result of a denial of FAPE during a period of harm. Here, Witness B’s Plan cites no data establishing Student’s expected growth, or lack thereof, during the period of harm. Thus, a fundamental requirement of *Reid* was not documented: the loss (or likely lack of growth) to be compensated. Second, I have never seen a credible, individualized analysis presented during a hearing, based on the student’s cognitive level and history of academic achievement, of how much one-on-one tutoring would be necessary to produce a finite amount of academic growth. Here, there was no explanation why 200 hours of tutoring services was appropriate for the FAPE that was denied. Consequently, Witness B’s proposal was as equally arbitrary as the *Reid* petitioner’s

⁷⁵ 401 F.3d. at 523.

⁷⁶ *Id.* at 524.

⁷⁷ *Id.*

⁷⁸ *Phillips and Gill, supra.*

hour- for-hour request or DCPS' 810-hour proposal that the *Reid* court deemed "significant" yet arbitrary.

There are several reasons why *Reid* is unworkable in due process hearings. First, as is the case here, there may be no reliable data as to a student's academic growth rate during the period of harm. If the complaint is filed during or shortly after the period of harm, there is likely to be no data as to the student's expected growth rate with the necessary support. Without such data, it would be difficult to determine the amount of services needed to compensate a student for the loss sustained. Here, no data was presented or available as to Student's expected academic growth rate from mid-May 2023 to the end of the school year, the period of time Student was denied services. Without such data, the academic harm cannot be accurately determined.

Second, as was the case here, petitioners routinely do not offer evaluations conducted by psychological experts during due process hearings addressing *Reid*'s requirements. Because hearing officers have a statutory deadline to issue their decisions, they cannot simply retain jurisdiction after finding liability on the part of the educational agency to order and await the completion of such evaluations to award compensatory education services.

In Case No. 2020-0138-B, the petitioner offered no evidence consistent with *Reid*'s requirements. Nevertheless, because the student was clearly entitled to a considerable amount of tutoring as compensatory education services, I awarded 100 hours of tutoring and ordered the LEA to fund an evaluation to determine how much additional services were warranted under *Reid*. Because I could not retain jurisdiction once the HOD was issued, I further ordered that the IEP team reconvene upon completion of the evaluation to determine an appropriate amount of compensatory education services. Either the LEA would agree with the proposal in the petitioner's plan or the petitioner would have an evaluation in-hand to support a due process claim for services. However, the LEA justifiably appealed on the grounds that the petitioner had not established an entitlement for compensatory education services under *Reid*. The court agreed that my award of even 100 hours was "not supported by any individualized assessments or facts..." and disallowed consideration of the evaluation that I authorized and a determination of a compensatory education award by the IEP team, as a delegation of my authority "to a group that includes an individual specifically barred from performing the hearing officer's functions."⁷⁹ Despite my finding, upheld by the court, that the student made no objective academic progress for three years while enrolled at the LEA's school, and the LEA developed three inappropriate IEPs, that student received no compensatory education services. On remand, the petitioner again failed to present a plan that met *Reid*'s requirements, but the LEA proposed an amount of services that it was willing to fund, which I ordered in an HOD on remand, seven school years after the issuance of the first inappropriate IEP.⁸⁰ Thus, if a petitioner fails to submit a plan at the hearing that is supported by an evaluation that complies with *Reid*, the hearing officer is limited to ordering the LEA to fund such an evaluation, but the hearing officer no longer has jurisdiction of the case.

Third, and most important, there appear to be no academic studies available to provide the support for *Reid*'s requirements. *In the twenty years since Reid was issued, I have never seen a study cited that addressed the likely quantifiable benefits of one-on-one tutoring of students with*

⁷⁹ Case No. 21-cv-0223 (RCL) at 39 (D.D.C. April 20, 2023).

⁸⁰ *Hearing Officer Determination on Remand*, ODR Case No. 2020-0138-B (Sep. 19, 2024).

various disabilities. While tutoring obviously would help any student performing below expectation, the efficacy of tutoring would likely vary depending upon the child's disability. For example, a student with a Specific Learning Disability ("SLD") and a low IQ who has been deprived of FAPE for two years would likely need significantly more intensive tutoring, i.e., a higher percentage of hour-for-hour compensation, than a student classified Other Health Impairment due to ADHD with an average IQ who has been deprived of FAPE for one or two reporting periods. As expert witnesses have testified in previous hearings I have conducted, there is no evidence-based equation to determine the appropriate amount of tutoring to compensate for lost specialized instruction.

In *Stanton v. District of Columbia*,⁸¹ Judge Ellen Segal Huvelle remanded a hearing officer's ruling rejecting a compensatory education plan. In *dictum*, Judge Huvelle stated, "A hearing officer may 'provide the parties additional time to supplement the record' if she believes there is insufficient evidence to support a specific award."⁸² This is untrue. IDEA compels hearing officers to issue their final decisions within 75 days of the filing of the *Compliant*, a requirement that is monitored by closely by the Department of Education ("DOE"). The Office of the State Superintendent of Education's Office of Dispute Resolution ("ODR"), which governs due process hearings in the District, must submit regular reports to DOE as to hearings not completed within 75 days.⁸³ Non-compliance could affect federal funding of a state agency. Unlike federal judges, once a hearing officer completes a hearing and makes a determination as to a denial of FAPE, there is no authority to retain jurisdiction indefinitely to commission additional evaluations and await their completion to undergird a request for compensatory education.⁸⁴ Of course, if a case is remanded to a hearing officer, he or she is not bound by the timeline applicable to initial complaints.

The *Reid* court described its test as flexible:

Unlike the Reids' one-for-one standard, this flexible approach will produce different results in different cases depending on the child's needs. Some students

⁸¹ 680 F.Supp.2d 201 (D.D.C. 2010).

⁸² *Id.* at 207, citing *Friendship Edison Public Charter School Collegiate Campus v. Nesbit*, 532 F.Supp.2d 121, 125-26 (D.D.C. 2008), where Judge John M. Facciola remanded a hearing officer's award because her "mechanical hour-per-hour" calculation violated *Reid*'s requirement for a fact-based analysis. The judge cited the hearing officer's statement during the hearing that she had but 10 days to write her decision and the record supporting a compensatory education award as "nebulous" as proof that the hearing officer knew that her award did not meet *Reid*'s requirements. Precisely. The hearing officer knew she was required to issue a decision within 10 days and was powerless to order and await the completion of evaluations to supplement the record to even attempt to develop an appropriate plan.

⁸³ 34 C.F.R. § 300.515(a); ODR Standard Operating Procedures Manual, § 804(A). Ideally, hearings are conducted between the 40th and 63rd day after the complaint is filed. This allows for the thirty-day resolution period to be completed and at least about seven business days for the hearing officer to complete the HOD. However, brief continuances of the deadline are routinely granted for "good cause" due to schedule conflicts of attorneys, witnesses, and hearing officers.

⁸⁴ Petitioners' attorneys previously have cited 34 C.F.R. § 300.515(c) to suggest that hearing officers have unfettered authority to extend HOD deadlines. This is untrue. ODR insists that extensions of the deadline must be for "good cause," and the only good cause it recognizes is attorneys or witnesses' conflicts with other legal proceedings. ODR is particularly critical of extensions beyond one month. In my experience, finding an appropriate evaluator and completing an evaluation can take several months. The petitioner's counsel in Case No. 2020-0138B took four *years* to submit the compensatory education evaluation that I authorized in my 2020 HOD, and that evaluation was not remotely compliant with *Reid*.

may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE. In addition, courts have recognized that in setting the award, equity may sometimes require consideration of the parties' conduct, such as when the school system reasonably “require[s] some time to respond to a complex problem,” *M.C.*, 81 F.3d at 397, or when parents' refusal to accept special education delays the child's receipt of appropriate services, *Parents of Student W.*, 31 F.3d at 1497. In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate 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.⁸⁵

While the *Reid* test is creative, it is neither flexible nor workable in the real world of special education. In the twenty years since *Reid* was issued, in the numerous cases in which I have adjudicated compensatory education requests, I cannot recall a proposal that complied fully with *Reid*. In the early years, shortly after *Reid* was issued, I approved awards when petitioners selected commercial tutoring firms to make compensatory education proposals. Those firms were at least able to adduce documentation of their history of increasing the academic performance of their clients.

Over the past six years, *all* of the compensatory education proposals that I have seen have been hour-for-hour calculations or some fraction thereof, with no empirical evidence to explain how the ratio (tutoring hours-to-hours of lost/denied services) was determined. Witness B's proposal makes hour-for-hour proposals seem exquisite. Her proposed award is completely arbitrary. As in this case, the data normally does not exist that would support a quantification of the educational loss during a period of harm. This is even true in appeals, as well, where petitioners have been afforded the opportunity to supplement the record with additional evaluations.⁸⁶ Proposals for tutoring services invariably devolve into tortured, unsuccessful efforts to avoid resembling hour-for-hour calculations.

In ODR Case No. 2022-0171,⁸⁷ Expert A, the petitioner's expert in compensatory education, proposed 45 hours of individual tutoring for the loss of 120 hours specialized instruction, or one hour of tutoring for every 2.67 hours of services missed, because one-on-one tutoring is more “potent” than classroom instruction. He testified that his compensatory education plan was based solely on his experience as a special educator and special education consultant, including the development of approximately twenty-five compensatory education plans. I granted relief when the respondent did not cross-examine the Expert A or offer testimony to refute the validity of his plan.

⁸⁵ *Id.*

⁸⁶ See, e.g., *Gill, supra*, 751 F.Supp.2d 104, 112 (D.D.C 2010); *Hearing Officer Determination on Remand*, ODR Case No. 2021-0173 (Sep. 5, 2024); *Hearing Officer Determination on Remand*, ODR Case No. 2020-0093 (Dec. 31, 2023).

⁸⁷ Issued November 30, 2022

The day after the hearing in ODR Case No. 2022-0171,⁸⁸ Expert A testified in Case No. 2022-0161. In that case, Expert A testified that one-half hour of tutoring would be appropriate for every hour of classroom time missed. I found the proposal flawed because the witness did not submit a written proposal, many of the factual underpinnings of his proposal were incorrect, and he was unable to explain the discrepancy from the ratio he used the day before. Nevertheless, I awarded the student 75 hours of tutoring for the 150 hours of instruction that the respondent caused him/her to miss, using the 1:2 ratio recommended by the petitioner's expert.

ODR Case No. 2020-0093⁸⁹ was a remand in which the magistrate ordered a determination as to whether the student was entitled to compensatory education services. The petitioner's counsel submitted a written compensatory education plan developed by the same Expert A. Expert A's plan proposed 1100 hours of tutoring services for 1408 hours of allegedly deprived services. On remand, I again found Expert A's plan to be factually and legally flawed. The student was deprived of only 1213 hours of services, the various ratios of tutoring hours to deprived services in the three cases were arbitrary, and the petitioner also failed to provide the data Expert A used to calculate the student's anticipated academic growth rate:⁹⁰

Even assuming the accuracy of Witness A's [Expert A here] unexplained projection of Student's growth rate supported with specialized instruction, Witness A offered no correlation between the amount of tutoring he proposed and the expected growth in each subject. Thus, the conclusion is inescapable that the "formula" he used to determine the ratio of proposed tutoring hours to total specialized instruction hours lost is both unexplained and arbitrary: 37.5% in case No. 2022-0171, 50.0% a day later in Case No. 2022-0161, and 78.1% here. Witness A's determination of Student's annual growth rates was a projection made without explanation, and he offered no explanation as to how he determined that Student required one-on-one tutoring for 78.1% of the specialized instruction hours missed from April 2018 to August 2020 to advance at roughly the same rate s/he advanced from August 2020 to February 2023, *which included nearly a full school year without specialized instruction*. Finally, Witness A offered no persuasive explanation for the various levels of tutoring recommended for Reading (475 hours), Writing (350 hours), and Math (275 hours), when Student's grade equivalent scores were relatively consistent on the February 2023 evaluation: 5.0, 5.3, and 5.0, respectively.⁹¹

I denied the request for compensatory education services due to the petitioner's failure to submit a proposal that was consistent with the requirements of *Reid*. I recommended that hearing officers have the option of awarding tutoring services at a rate of one hour for every three hours of specialized instruction lost due to a denial of FAPE. The 1:3 ratio is a rough approximation of the most individual attention a student would be likely to receive in a small class environment (maximum of 12 students, one teacher, one teacher's aide):

⁸⁸ Issued December 27, 2022.

⁸⁹ Issued December 31, 2023.

⁹⁰ I had also rejected Expert A's plan at the first hearing, a finding with which the magistrate concurred: "Here, this Court cannot rely on [Witness A's] conclusions because the foundation of his opinion was flawed... Indeed, the hearing officer correctly relied on "pertinent findings" when he dismissed [Witness A's] recommendations for failing to satisfy the *B.D.* standard." Civil Action No. 22-cv-2755-TSC-ZMF at 13, citation omitted. (D.D.C. 2023).

⁹¹ ODR Case No. 2020-0093 at 16.

Because of these intractable problems complying with *Reid*, awards could be made much easier, and without the unnecessary, time-consuming litigation that has occurred here, and many other cases, that has deprived Student of services since the remand in March 2022. Hearing Officers could be authorized to award a fixed percentage of one-on-one tutoring for the denial of specialized instruction. For example, Hearing Officers could award one hour of tutoring for every three hours of lost instruction time. Here, Student would have been immediately eligible for 404 hours of tutoring (16 hours/wk. x 75.8 weeks/3). This is a significant amount of services considering that they are likely to be provided in one or two-hour sessions after school or on the weekend -- anywhere from 200 up to 400 tutoring sessions.⁹²

I made the same recommendation in ODR Case No. 2020-0138-B (Sep. 19, 2024) and in Case No. 2023-0229⁹³ where I found that the petitioner's proposal violated *Reid* in a several respects, particularly an unexplained ratio of .774:1 of tutoring hours to deprived services, and a proposal for mentoring services, which cannot be justified as compensation for deprived specialized instruction. I awarded the student 288 hours of tutoring for the 863.6 hours of specialized instruction that was not provided, a ratio of one hour of tutoring for every three hours of deprived services.⁹⁴ In ODR Case No. 2023-0210,⁹⁵ I found the proposed plan violated *Reid* where the unexplained ratio was .281:1. The author of the compensatory education plan conceded that she was unaware of *Reid* or its requirements. I awarded the student 170 hours of tutoring on the basis of the 1:3 ratio that I have proposed, and 14 hours of counseling for the 14 hours of counseling of which the student was deprived.⁹⁶ In Case No. 2021-0173,⁹⁷ I dismissed the complaint because DCPS had offered what I considered to be full relief prior to the hearing, including slightly more compensatory education services than the petitioner had requested. The case was remanded to consider Petitioner's professed right, that was "reserved" at the hearing, to request additional compensatory education services based on evaluations that were ordered as relief at the hearing. On remand, I denied further relief on grounds that there is no authority to postpone proving entitlement to relief at a due process hearing under IDEA, and because petitioner's proposal was a strictly mechanical hour-for-hour calculation.⁹⁸ In the consolidated cases of Case Nos. 2025-0002 and 2025-0020,⁹⁹ I found that the proposed plan violated *Reid* because the expert proposed a tutoring hours-to-hours ratio of 50% with no explanation other than "my knowledge and experience."¹⁰⁰ Finally, in Case No. 2025-0024, I found that the proposal for 1920 hours of tutoring was completely untethered to the established denial of FAPE.¹⁰¹

In cases where hearing officers find a denial of FAPE due to a failure to provide appropriate IEPs or a failure to implement IEPs, there is obviously educational harm or the services would not

⁹² *Id.* at 18-19.

⁹³ Issued January 29, 2024.

⁹⁴ ODR Case No. 2023-0229 at 21-24.

⁹⁵ Issued January 10, 2024.

⁹⁶ ODR Case No. 2023-210 at 25-30.

⁹⁷ Issued September 5, 2024.

⁹⁸ ODR Case No. 2021-0173 at 19-23.

⁹⁹ Issued March 16, 2025.

¹⁰⁰ Case Nos. 2025-0002 and 2025-0020 at 42.

¹⁰¹ ODR Case No. 2025-0024 at 33-34, issued May 31, 2025.

have been prescribed, even if the harms cannot be measured. The hours of lost services are usually disputed, but also always easily quantified. In this case, for example, Student was denied 630 hours of specialized instruction, ten hours per week for 63 school weeks. The affected struggling students would be much better served if hearing officers had the option of awarding a flat percentage of hours lost due to a denial of FAPE, perhaps one hour of tutoring for every three hours of deprived specialized instruction and hour-for-hour compensation for denied related services. The 1:3 ratio is a rough approximation of the most individual attention a student would be likely to receive in a small class environment. In *Hill v. District of Columbia*,¹⁰² Magistrate Judge G. Michael Harvey revealed that the District Judges in this jurisdiction use ratios to determine tutoring awards in cases in which they elect not to remand that determination to hearing officers.¹⁰³ In *Hill*, Magistrate Harvey used a ratio of 1:5.

The Court will apply a one-to-five ratio because the Court believes that an hour of one-on-one tutoring fairly approximates five hours of the type of specialized education that R.H. was denied. In his January 2013 and December 2013 IEPs, R.H.'s specialized instruction was to occur "outside the general education setting," or, in other words, in a small-class setting with few other students and a greater emphasis on individualized attention from the teacher.¹⁰⁴

Hearing Officers should be afforded the same latitude. This would get services to needy students immediately rather than having them endure years of litigating legal niceties, time lost forever during which they are not given the additional support they deserve and need to achieve higher levels of academic performance.¹⁰⁵ Therefore, I will order DCPS to fund 50 hours of tutoring services, a ratio of 1:3 of tutoring service hours to hours of specialized instruction denied along with six hours of psychological counseling services, 4.5 hours of SLP services, and 4.5 hours of OT services on an hour-for-hour basis.

ORDER

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

ORDERED that within fifteen business days of the issuance of this order, DCPS shall provide Petitioner authorization for 50 hours of independent tutoring services, 4.5 hours of independent OT services, 4.5 hours of independent SLP services, 6 hours of psychological counseling services, and reimbursement for Uber/Lyft transportation services to attend compensatory services sessions. Petitioner is not bound by OSSE limitations on hourly

¹⁰² Case No. 14-cv-1893, *Memorandum Opinion*, 2016 U.S. Dist. LEXIS 114924 (D.D.C. Aug. 26, 2016).

¹⁰³ *Id.* at 55.

¹⁰⁴ *Id.* at 55.

¹⁰⁵ I proposed the same option in my *Hearing Officer Determination on Remand* in Case No. 2020-0093, in Case No. 2023-0029, and in a *Hearing Officer Determination on Remand*, ODR Case No. 2021-0173, all discussed above, as well as Case No. 2020-0138B, the *Hearing Officer Determination on Remand* issued in response to the remand order, and in *Hearing Officer Determination*, Case No. 2025-0122 (ODR Oct. 13, 2025).

compensation for service providers, but the authorizations may require services to be completed within one year from the receipt of the authorizations.

APPEAL RIGHTS

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

Terry Michael Banks

Terry Michael Banks
Hearing Officer

Date: November 28, 2025

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