

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

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

OSSE  
Office of Dispute Resolution  
October 16, 2023

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<b>Parent, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioner,</b>	)	
	)	<b>Hearing Dates: 9/27/23; 9/28/23; 10/6/23</b>
<b>v.</b>	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No. 2023-0145</b>
<b>District of Columbia Public Schools,</b>	)	
<b>Respondent.</b>	)	

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## **HEARING OFFICER DETERMINATION**

### **I. Introduction**

This is a case involving an X-year-old student (the “Student”) who is currently eligible for services as a student with Autism. A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on July 31, 2023. The Complaint was filed by the Student’s parent (“Petitioner”). On August 11, 2023, Respondent filed a response. A resolution meeting was held on August 9, 2023, without an agreement being reached. The resolution period expired on August 30, 2023.

### **II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R.

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

Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations (“DCMR”), Title 5-E, Chapter 30.

### **III. Procedural History**

On September 12, 2023, a prehearing conference was held. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. On September 15, 2023, a prehearing order was issued, summarizing the rules to be applied in the hearing and identifying the issues in the case. The order was revised on September 18, 2023.

The matter proceeded to trial on September 27, 2023, September 28, 2023, and October 6, 2023. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. After testimony and evidence, the parties presented oral closing statements on October 6, 2023. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-91. Respondent objected to exhibits P-4, P-7, P-10, P-11, P-35, and P-63. These objection were overruled. Exhibits P-1 through P-91 were admitted. Respondent moved into evidence exhibits R-1 through R-30 without objection. Petitioner presented as witnesses, in the following order: Witness A, an expert in occupational therapy and assistive technology for special education students); the Student’s father (“Father”); and Witness B, an educational advocate (expert in special education eligibility, Individualized Education Program (IEP) programming, and special education compliance). Respondent presented as witnesses, in the following order: Witness C, an occupational therapist (expert in school-based occupational therapy); Witness D, an assistive technology specialist (expert in assistive technology); Witness E, a special education teacher (expert in special education programming); Witness F, a

school psychologist (expert in school psychology); and Witness G, a social worker (expert in social work).

#### **IV. Issues**

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

**1. Did Respondent violate the IDEA when it failed to comprehensively evaluate/re-evaluate the Student at or about the start of the 2022-2023 school year? If so, did Respondent deny the Student a Free Appropriate Public Education (“FAPE”)?**

Petitioner contended that the Student should have been subject to an assistive technology evaluation.

**2. Did Respondent violate the IDEA by failing to provide the Student with an appropriate IEP on or about September 2021 and September 2022? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that the Student’s IEPs did not contain sufficient executive functioning support and/or services, behavioral support services for self-advocacy skills development, occupational therapy services and support, and assistive technology services and support.

As relief, Petitioner seeks: a finding that the Student was denied a FAPE; that DCPS shall conduct or fund an assistive technology evaluation for the Student; that DCPS shall reconvene to amend the Student’s IEP, including the results of the assistive technology evaluation, and provide support and services in that area; that the Student shall be entitled to compensatory education services for FAPE denials that occurred during the 2021-2022 school year and the first three quarters of the 2022-2023 school year; and that the Student shall have the right to request additional compensatory education, pending the completion of the aforementioned evaluation. Petitioner initially

requested compensatory education of thirty hours of behavioral support services and thirty hours of occupational therapy.

## **V. Findings of Fact**

1. The Student is an X-year-old who is currently eligible for services as a student with Autism. The Student has difficulty completing writing assignments. The Student is delayed in terms of cognitive functioning. The Student also has attention problems, focus problems, and executive functioning issues. The Student has difficulty shifting attention from one subject to another, trouble beginning assignments, forgets homework, misplaces things, and has issues with emotional regulation. Testimony of Witness B. The Student requires specialized instruction to check for understanding and misunderstanding, among other things. Testimony of Witness E.

2. The Student has major challenges with flexibility, a trait of the Student's autism. It is difficult to pivot him/her to different activities. The Student is also in the habit of completing assignments from one class while sitting in another class. Testimony of Witness F. Nevertheless, the Student is goal-oriented and highly invested in his/her education. Testimony of Witness G.

3. In the 2019-2020 school year, on the Student's beginning-of-year i-Ready math assessment, the Student scored 469, below grade level. The Student's beginning-of-year Reading Inventory ("RI") assessment was 962, at the basic level, below grade level expectation. P-4-13.

4. A psychological evaluation of the Student was conducted on November 8, 2019. The psychological evaluation report, dated November 15, 2019, measured the Student's cognitive assessment according to the Reynolds Intellectual Assessment Scale-

2 (“RIAS-2”). The Student had a Composite Intelligence Index of 67, indicating cognitive performance in the significantly below average range, exceeding the performance of only one percent of same-age individuals. Additionally, a significant discrepancy was found between the Student’s nonverbal intelligence and verbal intelligence. The Student’s verbal reasoning ability fell in the significantly below average range, suggesting weakness with analytical verbal reasoning, language development, and verbal information, which may have negatively impacted his/her academic learning, including reading, math, and writing. The Student’s Verbal Intelligence Index was 54, significantly below average. On a Woodcock Johnson-IV academic assessment, the Student scored in the low range in Broad Reading and Broad Written Language, and in the low average range in Broad Math, with grade equivalence ranging from 3rd grade to 5th grade, which falls well below grade-level performance. Major weaknesses were noted in the Student’s passage comprehension, which was at the 2.5 grade level. The Student’s writing samples also fell well below grade expectations. On the Gilliam Autism Rating Scale-Third Edition (“GARS-3”), the Student was found very likely to have autism spectrum disorder. The evaluation noted reports that the Student got frustrated with routines, engaged in behavioral overreactions, needed more time to complete assignments, needed more focus to complete assignments and take notes, did not always ask for help when needed, had to borrow notes from others, had difficulty organizing his/her thoughts, and needed “planners,” pre-writing activities, and teacher-led directives in writing as well as extra time. P-4; Testimony of Witness B.

5. DCPS conducted an occupational therapy evaluation of the Student on November 26, 2019. The corresponding report was issued on December 1, 2019. The

report found that the Student's teacher expressed concerns about the Student's writing, particularly in regard to generating ideas, letter formation, organization, struggling to initiate and complete assignments, and distractibility. The Student was determined to need additional time for writing. The Student's visual perceptual skills were found to be in the average range, with weaknesses in memory and "visual closure," which could impact speed and ease of reading and copying. The Student was considered to have sensory issues, and interventions were recommended. The report stated that the Student had difficulties in auditory processing and following verbally and visually presented directions, required supports for organization and execution of academic tasks, and required teacher direction supports to access writing conventions and grammar and to organize written responses. The report indicated that the Student would benefit from intense sensory experiences that are naturally integrated into school routines, such as preferential seating, colored papers, bold lettering, noise-cancelling headphones, touch cues, and related interventions. P-5.

6. The Student attended School A for the 2020-2021 school year. School A is a project-based, hands-on learning environment without much homework. Testimony of Witness E. The Student's IEP dated December 18, 2020, provided for five hours per week of specialized instruction outside general education, two hours per week of specialized instruction inside general education, two hours per month of behavioral support services, and thirty minutes per month of speech-language pathology. Other classroom aids and services include simplified assignments, word banks, manipulatives to complete assignments and classroom activities, multisensory learning, use of graphic organizers, pre-teaching/re-teaching, small-group instruction, math manipulatives,

project-based learning activities, a location with minimal distractions, repetition of directions, and extended time. P-11-10-12.

7. The Student moved to School B for the 2021-2022 school year. The Father told a School B social worker that School B is very different than School A, including in terms of workload. Testimony of Father. School B is a competitive academic school that students must apply to. School B is structured and can be rigid, as far as requirements are concerned. Testimony of Witness E.

8. The Student's IEP dated September 29, 2021, provided for two hours per week of specialized instruction outside general education, eight hours per week of specialized instruction inside general education, two hours per month of behavioral support services, and thirty minutes per month of speech-language pathology. Other classroom aids and services were the same as in the prior IEP, including simplified assignments, word banks, manipulatives to complete assignments and classroom activities, multisensory learning, use of graphic organizers, pre-teaching/re-teaching, small-group instruction, math manipulatives, project-based learning activities, a location with minimal distractions, repetition of directions, and extended time. The IEP contained a goal relating to coping and problem-solving, and a goal for focus and attentiveness. P-11-10-12.

9. The September 29, 2021, IEP stated that in the Student's algebra class, the teacher noted that s/he did not engage well in class and used his/her tablet to play games instead of viewing instructional material. It was also mentioned that, of the ten classroom math assignments that had been assigned to the Student, s/he had missed nine. The IEP also stated that, on the NWEA MAP assessment report, the Student scored in the 13th

percentile, well below his/her peers nationally. Still, the Student was able to access the 8th grade math curriculum with significant improvement and success. It was noted that the Student was falling behind due to attendance issues and lack of materials, was frequently tardy to his/her first period class, and sometimes showed up without his/her assigned device. P-11.

10. During the 2021-2022 school year, the Student fell asleep in class often. P-83-1. On October 5, 2021, the Student shared that s/he felt overwhelmed in math, was confused, and did not complete math assignments. When asked to compare his/her new school to his/her old school, the Student said that the new school was twice as much work. P-62-4. When the Student was asked to read independently, s/he tended to fall asleep. P-83-2. The Student did sufficient work when s/he was on time and prepared for class, but s/he was mostly tardy to class, significantly behind on assignments, unfocused in class, and did not complete any work outside the classroom. The Student was disconnected, could not finish work, struggled with organization, and would work on a completely different assignment than the assignment s/he was supposed to work on. A teacher expressed that “regular check-ins” were crucial to keep the student on task. The Student began to adapt to the class routines, took advantage of the online resources available on “Canvas,” and worked well with peers, but needed to work at his/her own pace and seldom self-advocated for additional support. Strategies employed to address the Student’s issues included scaffolding and chunking of assignments, built-in extended deadlines for all assignments to assist with time management, frequent check-ins each class period, small-group instruction, and preferential seating.



11. An English language arts (“ELA”) teacher report dated April 16, 2022, indicated that the challenge was that the Student did few to no assignments at home and was always playing catch-up, even with modified assignments. This teacher was afraid that the Student was “just completing assignments” rather than retaining the information, and the teacher expressed that, for the Student to do well in class, s/he must be held accountable for work done outside the classroom. P-8-5; P-83-1; P-66-5; Testimony of Witness B.

12. The Student’s IEP dated May 25, 2022, provided for two hours per week of specialized instruction outside general education, eight hours per week of specialized instruction inside general education, 120 minutes per month of behavioral support services, and 120 minutes per month of speech-language pathology. Other classroom aids and services were the same as in the prior IEP, including simplified assignments, word banks, manipulatives to complete assignments and classroom activities, multisensory learning, use of graphic organizers, pre-teaching/re-teaching, small-group instruction, math manipulatives, project-based learning activities, a location with minimal distractions, repetition of directions, and extended time. The IEP contained a goal relating to time-management strategies and using an effective organizational system. R-2.

13. The Student failed three classes during the 2021-2022 school year: world history and geography, Spanish, and multicultural literature. P-39. During the first reporting period, the Student progressed on his/her academic goals, with one goal mastered. One teacher reported that the Student was doing extremely well with a math goal. However, the Student was failing math at that time. The Student also mastered a speech goal and progressed in emotional, social and behavioral goals. R-5. For the

second reporting period, the Student again progressed in academic goals. The progress report included a comment from Witness G to the effect that the Student became internally distracted during a session. R-6. The third reporting period, likewise, reflected progress in academic areas. However, in this reporting period, the Student was reported to be regressing in his/her emotional, social and behavioral goals. The Student was by then receiving failing “F” grades in Spanish and multicultural literature. The Student also exhibited more behavior issues, per the findings of a Strengths and Difficulties Questionnaire (“SDQ”). The Student required verbal prompts to focus, and s/he was not paying attention, or sleeping, in class. Still, a progress report note by Witness G indicated that the Student made progress with coping and problem-solving skills. Witness G noted that the Student was using weekly behavior support check-ins to learn new skills for the classroom setting, though s/he sometimes had difficulties transferring those skills to the classroom. R-7. Progress reports during the fourth reporting period indicated that the Student did not manage his/her time wisely, completed an evidenced-based treatment program that focused on executive functioning skills, and was able to learn new techniques, but was unsuccessful in utilizing those techniques in the classroom. The Student also attended teacher office hours for additional assistance, which was “somewhat” effective. R-8.

14. DCPS conducted a comprehensive psychological evaluation of the Student in or about July 2022 and reported on that evaluation on July 22, 2022. The Student’s cognitive scores continued to be very low. The Student’s ability to learn fell in the very low range, though his/her adaptive skills were comparable to same-age peers across multiple settings. The testing reflected a relative strength in visual processing, with

weaknesses in sequential processing, attention, and processing speed. But the Student's academic testing revealed average-range scores in word identification, reading comprehension, reading fluency, solving word problems with illustrations, and writing complete sentences. The Student was below average in math calculation, math fluency, spelling, and writing fluency. The Student continued to struggle to put answers to paper and to produce assignments, even with extra time and a reduced workload. Teacher and parent reports indicated that the Student had consistent challenges with executive functioning skills, both at home and at school. The Student also had challenges with switching or alternating attention between tasks, changing focus from one task or topic to another, generating an age-appropriate plan to complete chores and assignments, and managing current and future task demands. The psychological evaluation included an observation of the Student during a morning ELA class, which had eighteen students and a general education teacher. The class was assigned to complete late assignments. The Student was observed rocking in his/her seat and was on-task 66% of the time, whereas a comparison student was on-task 98% of the time. BRIEF testing indicated, through a teacher scale, that the Student had clinically elevated issues with shifting subjects, initiating work, working memory, planning and organizing, monitoring tasks, and organizing materials. P-8; Testimony of Witness B.

15. An Analysis of Existing Data ("AED") meeting was held for the Student on September 2, 2022. At this meeting, the team asked for an occupational therapy assessment of the Student, who used to receive occupational therapy. P-34-10. An occupational therapy evaluation of the Student was conducted on September 26, 2022. The corresponding report by Witness C, dated October 3, 2022, reflected an interview

with the Student's English teacher who reported that the Student currently had a "B" grade in her class, sometimes got nervous when speaking, was able to ask for breaks and indicate when s/he was ready to reengage in conversations, and needed additional time when participating in speaking and listening activities. Witness C indicated that the Student demonstrated skills in fine motor, visual motor, and sensory processing, but benefitted from increased time to gather thoughts and complete some assignments, due to processing time. Based on observation of the Student, Witness C felt that s/he worked better in small groups, was quiet in class, followed directions, and was attentive to assignments. The Student showed improvement from previous years in sensory processing, but continued to require support for organization and execution of academic tasks, as well as 1:1 teacher direction for written responses. Witness C also found that the Student worked at a slower pace than his/her peers and benefitted a lot from extra time. Witness C recommended graphic organizers and rubrics, small-group instruction, increased time to complete written tasks and organize thoughts, pre-written notes, fidgets, adult-sized furniture, and breaking tasks into smaller tasks. Witness C also recommended the use of colored papers, colored or bold letters, or worksheets using colors and bold graphics instead of black-and-white. Witness C also recommended noise-cancelling headphones to support the Student's attention to computer-based instruction and independent work, movement breaks that incorporated large or diagonal movement patterns (such as squats, windmills, wall finger-walking, and stair-climbing), and deep or light touch cues prior to receiving verbally or visually presented directions. P-9; Testimony of Witness C.

16. Witness C's occupational therapy evaluation report also concluded that, behaviorally, the Student presented with differences compared to same-age peers, was "frequently" doing things in a harder way than needed, appeared tired, was inflexible, and perseverated to the point that it interfered with instruction. The Student also presented with reduced frustration tolerance and reduced registration of sensory inputs in the school setting, and was found to benefit from intense sensory experiences that were naturally integrated into school routines. P-9; Testimony of Witness C.

17. At a September 14, 2022, IEP meeting, the Student's parent raised concerns regarding his/her IEP goals and writing. The team discussed a spelling goal and increased the Student's specialized instruction mandate. Petitioner was also interested in providing the Student with additional specialized instruction, but was advised that such services were not available at School B. Petitioner then changed the request so as to keep the Student enrolled at School B. Testimony of Witness E.

18. In the Student's September 14, 2022, IEP, his/her disability category was changed to Autism. This IEP increased the Student's specialized instruction outside general education by one hour, to three hours per week. The IEP also provided for eight hours per week of specialized instruction inside general education, 120 minutes per month of behavioral support services, and forty-five minutes per month of speech-language pathology. Other classroom aids and services were the same as the prior IEP, including simplified assignments, word banks, manipulatives to complete assignments and classroom activities, multisensory learning, use of graphic organizers, pre-teaching/re-teaching, small-group instruction, math manipulatives, project-based learning activities, a location with minimal distractions, repetition of directions, and extended

time. This IEP indicated that the Student needed glasses and benefitted from a 1:1 laptop device. The team also used a worksheet as a guide to consider assistive technology. The IEP also indicated that the Student could benefit from the features of Microsoft 365. The IEP included goals in mathematics, reading, written expression, communications/speech and language, and emotional, social and behavioral development. The goals in the section devoted to emotional, social and behavioral development related to learning time-management strategies and demonstrating use of an organizational system for managing school materials. P-13; Testimony of Witness E. The IEP indicated that the Student put forth effort academically but often seemed overwhelmed with the workload. P-13. The Student's parents did not complain when the goals were copied from the May, 2022, IEP. Testimony of Witness D. The IEP also indicated that the Student could communicate orally with peers and teachers and did so voluntarily in social settings, though sometimes the Student needed more specific prompts to explain where s/he was having trouble if an assignment was difficult for him/her. P-13-3.

19. On a baseline autism treatment evaluation checklist, dated September 6, 2022, the Student scored "0" for speech/language/communication, "11" for sociability, "0" for sensory/cognitive awareness, and "2" for health/physical/behavior, with a final total score of 13. R-9-132. A self-reported SDQ of the Student was conducted on September 28, 2021. The Student scored close to the average range in all domains, including overall. P-17-7. An IEP and eligibility meeting was held for the Student on October 27, 2022. The purpose of the meeting was to review the results of the occupational therapy evaluation/reevaluation. The team found that the Student continued to require supports for organization and execution of academic tasks, benefitted from

teacher-directed supports to access tools to assist with organized written responses, and continued to benefit from strategies embedded throughout the school day to succeed in the school environment. Recommendations included graphic organizers and rubrics, small-group instruction, and increased time to complete written tasks and organize thoughts. P-26. The team felt that the environment at School B was relatively calm and that the Student did not need sensory interventions. The team discussed “low tech” assistive technology, such as a calculator, visuals, and graphic organizers, and “high tech” assistive technology through Microsoft 365. It was noted that the Student used Microsoft editing, spell-check, and related functions. P-26.

20. In or about September 2022, Petitioner requested an assistive technology evaluation for the Student. In November 2022, an assistive technology specialist met with staff and discussed tools that might help him/her. An ensuing report recommended “Tier 1” assistive technology, such as word prediction and dictation software to help the Student with writing. The report indicated that the Student already used tools such as spell-check. The report indicated that the team used the Student, Environment, Task, Tools (“SETT”) Assistive Technology Consideration Worksheet as a guide. Barriers to writing were discussed, and it was noted that the Student used editing and spell-check software functions. The team suggested the use of speech-to-text and word-prediction and dictation software, in addition to modified assignments, handouts for lectures and notes, and mnemonic strategies for organization. R-23; Testimony of Witness D.

21. During the 2022-2023 school year, the Student advocated for him/herself. Testimony of Father. The Student responded better to peers and responded well to the accommodations referenced in the IEP, especially those helping with organization. Staff

used specialized instruction with the Student to teach for understanding, go over assignments, re-teach, and offer “stems” to help the Student complete assignments that may have needed more of his/her attention. The arrangement with the Student was flexible in practice. The Student gave his/her opinion to Witness E about when it was best for him/her to leave the general education setting and when s/he did not want to leave the general education setting. Witness E took all this into consideration when providing the Student with services. Testimony of Witness E.

22. During the 2022-2023 school year, the Student continued to have some issues. S/he was still sleepy and unfocused and sometimes played video games in class. But with respect to executive functioning, the Student started to know where to go and to use all of his/her tools. The Student engaged in his/her own trial and error process, seeking niches at the school. There were some concerns about the Student completing assignments in the classroom, but the extended time accommodation worked for him/her. Witness E worked with the Student with electronic graphic organizers, personal anchor charts, little notes, and software issues with writing, which continued to be a slow process for the Student. The Student made progress in reading in regard to analysis, grammar, understanding more complex material. S/he also made progress in math theorems and in relationships with other children. Work was also done on focus, color-coded folders, book bag organization, “chunking” materials, modeling organization, a neat and organized workspace, fidgets, and identifying assignments that were completed or missing. Testimony of Witness G.

23. An IEP was written for the Student on March 30, 2023, keeping the Student’s specialized instruction mandate at the same level: three hours per week inside



general education and eight hours per week outside general education, with 120 minutes per month of behavioral support services and forty-five minutes per month of speech-language pathology. This IEP also included goals relating to focus and self-advocacy. P-14; Testimony of Witness B.

24. The Student's IEP progress reports for the 2022-2023 school year indicated that s/he was progressing academically during the first reporting period. The progress report stated that the Student used a 1:1 device in the classroom and received digital and graphic organizers. Behavioral goals were listed as "just introduced." R-9. For the second reporting period, the Student was reported to be progressing in academic areas. Progress was noted in emotional, social and behavioral development goals (relating to using age-appropriate time-management strategies and demonstrating use of an effective organizational system), though it was also reported that the Student was distracted by his/her phone. It was reported that the Student did well with organization because of the folders that Witness G had provided. The Student was also using the Canvas and Aspen databases for organizational purposes. The Student continued to work with the Unstuck program as well. R-10. Continued progress in academics was reported for the third reporting period. Witness E indicated that the Student continued to benefit from the introduction of vocabulary into text. Witness G called the Student an example of excellence in behavior and cooperation. R-11. More academic progress was reported for the final reporting period, and Witness G indicated that the Student had been a joy to work with. R-12.

25. The Student has continued at School B for the 2023-2024 school year, and currently has a 2.42 grade point average. Testimony of Father.

## VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed by the local 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.” D.C. Code Sect. 38-2571.03

(6)(A)(i). Accordingly, on Issue #1, the burden of persuasion is on Petitioner. On Issue #2, the burden of persuasion is on Respondent if Petitioners present a *prima facie* case.

**1. Did Respondent violate the IDEA when it failed to comprehensively evaluate/re-evaluate the Student at or about the start of the 2022-2023 school year? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that the Student should have been subject to an assistive technology evaluation in or about August-September 2023.

The IDEA requires school districts to ensure that students are “assessed in all areas of suspected disability” and to base a student’s IEP on the most recent evaluation. 20 U.S.C. Sects. 1414(b)(3)(B), (c)(1); 34 C.F.R. Sect. 300.304(c)(4). The child’s re-evaluation must consist of two steps. First, the child’s evaluators must “review existing evaluation data on the child,” including any evaluations and information provided by the child’s parents, current assessments and classroom based observations, and observations by teachers and other service providers. 34 C.F.R. Sect. 300.305(a)(1). Based on their

review of that existing data, the evaluators must “identify what additional data, if any, are needed” to assess whether the child has a qualifying disability and, if so, “administer such assessments and other evaluation measures as may be needed.” Sect. 300.305(a)(2), (c).

The Local Educational Agency (“LEA”) is required to “[u]se a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent.” Sect. 300.304(b). All the methods and materials used must be “valid and reliable” and “administered by trained and knowledgeable personnel.” Sect. 300.304(c)(1). These regulations have the effect of ensuring that an evaluation both confirms the student’s potential disabilities and examines whether he or she needs services. Davis v. District of Columbia, 244 F. Supp. 3d 27, 49 (D.D.C. 2017).

Primarily through Witness A, Petitioner argued that the Student’s issues with motor coordination, processing speed, and related issues affected his/her writing speed and output, as well as his/her copying and related functions. Petitioner argued that the Student needed at least an assistive technology evaluation to address his/her writing needs. Petitioner also argued that both of the Student’s psychological reports recommended assistive technology, and therefore argued that the Student’s program was not based on sufficient evaluations.

Witness A suggested that assistive technology is “the key” for the Student, looking to future school years and contending that the Student needs to work on generating high-level sentences, as well as completing assignments in a timely fashion. Witness A posited that the current interventions are not working and that, therefore, an assistive technology evaluation is warranted to determine which “high-tech” or “low-

tech” software might help the Student access the curriculum and master his/her IEP goals.

Witness A said that an assistive technology evaluation would help because it focuses on “access points,” feature matching, and identifying barriers, among other things. Witness A said that the assistive technology documentation in the record focuses only on “low-tech” interventions.

While Witness A and Witness B were convincing in their assertions that an assistive technology evaluation for the Student might have been a good way to help the Student write more quickly, the main issues for the Student during the 2021-2022 school year related to the Student’s persistent sleeping in class, lack of focus in class, and failure to turn in assignments. Petitioner did not make it especially clear how an assistive technology evaluation could have materially helped the Student’s issues in these areas.

Moreover, the record indicates that DCPS was responsive to the Student’s parent’s requests for assistive technology at the time. After the parent requested an assistive technology evaluation in or about September 2022, Witness D conducted an assistive technology assessment for the Student in November 2022. Witness D met with staff and discussed the tools that might help the Student. A report was issued on November 8, 2022, recommending “Tier 1” assistive technology, such as word-prediction and dictation software to help the Student with writing. The report, entitled Assistive Technology Consultation Summary, indicated that the team used the SETT and assistive technology consideration worksheet as a guide to discuss assistive technology during the IEP meeting. Barriers to writing were discussed, and it was noted that the Student was already using editing and spell-check software functions. Witness D suggested the use of

interventions such as speech-to-text or word-prediction software, handouts for lectures and notes, and mnemonic strategies for organization.

Moreover, the Student's IEP progress reports reflected consistent progress in writing leading up to the start of the 2022-2023 school year. The Student's main problem was that the school did not know how to deal with his/her inability to adjust to the new environment, which included a much bigger workload. The record does not make clear how any new assistive technology, including the "high tech" assistive technology suggested by Witness A, could have addressed these problems.

On this record, Petitioner has not shown that DCPS denied the Student a FAPE by failing to evaluate him/her in assistive technology in or about September 2022.

**2. Did Respondent violate the IDEA by failing to provide the Student with an appropriate IEP on or about September 2021 and September 2022? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that the IEPs did not contain sufficient executive functioning support and/or services, behavioral support services for self-advocacy skills development, occupational therapy services and support, and assistive technology services and support.

In Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), the Court held that an IEP must be reasonably calculated "in light of the child's circumstances." Id. at 999-1000. The Court also held that parents can fairly expect school authorities to offer a "cogent and responsive explanation" for their decisions, and that its ruling "should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid." Id. at 1001-1002.

The Endrew F. decision reaffirmed the Court's holding in Board of Education v. Rowley, 458 U.S. 176 (1982), in particular the statement that if a child is fully integrated into a regular classroom, passing marks and advancement from grade to grade through the general curriculum will ordinarily satisfy the IDEA standard. However, a footnote to the opinion warns that this "guidance should not be interpreted as an inflexible rule" and is not a holding that every child advancing from one grade to the next "is automatically receiving an appropriate education." Id. at 1001 n.2 (citation omitted).

### **September 2021 IEP**

Petitioner contended that this IEP did not contain sufficient executive functioning support and/or services, behavioral support services for self-advocacy skills development, occupational therapy services and support, and assistive technology services and support.

At the start of the 2021-2022 school year, it should have been easy to see that this autistic child, with a history of disorganization, delays, and executive functioning issues, would have trouble moving from a relatively relaxed, project-based setting to a far bigger, more structured, more academic environment. The Student said that School B was a radically different kind of school, with "double the work." The IEP team should therefore have deliberated on whether the Student might need extra support to manage the more intense and rigorous environment at School B. J.E. ex rel. J.E. v. Boyertown Area Sch. Dist., 452 F. App'x 172, 176 (3d Cir. 2011) (Hearing Officer was required to consider the impact of the proposed change in J.E.'s educational placement to Boyertown Area High School's Autism Support class).

That kind of support could have been provided in a number of ways, including through the occupational therapy services suggested by Petitioner, additional behavioral

support services, or the provision of additional specialized instruction. Indeed, the Student's September 2017 IEP provided for occupational therapy services, and an occupational therapy report from 2019 indicated that the Student continued to present with difficulties in following verbally and visually presented directions, needed supports for organization and execution of academic tasks, and required teacher-directed supports to access writing conventions, grammar, and organized written responses, among other things.

But the September 2021 IEP did not recommend occupational therapy services, nor any additional behavioral support services or specialized instruction services, and did not otherwise adequately take into account the Student's new school environment. As a result, the Student was disorganized and confused for a good portion of the school year. The Student was mostly tardy to class, significantly behind on assignments, unfocused in class, and did not complete any work outside of the classroom. As the Student's ELA teacher wrote, the Student was "consistently unfocused" and either "completely disconnected by falling asleep in class during class readings, discussions, or independent work time" or "doing a completely different assignment" or "makeup work." The ELA teacher also wrote that "(w)hen asked to read independently, [the Student] tends to fall asleep." This teacher stated flatly that the Student was "not getting the content and having a hard time completing the assignments."

In April 2022, the same ELA teacher expressed that the challenge was that the Student did few to no assignments at home and was always playing catch-up, even with the modified assignments. This teacher was afraid that the Student was "just completing assignments" rather than retaining the information, and the teacher expressed that for the

Student to do well in class, s/he must be held accountable for work done outside the classroom. The Student ended up failing three classes during the 2021-2022 school year. DPCS did not call any of the Student's teachers from the 2020-2021 or 2021-2022 school years, or any participants in the September 29, 2021, IEP meeting (including the ELA teacher cited above) to rebut Petitioner's contention that the September 2021 IEP was inappropriate. This Hearing Officer must find that DCPS denied the Student a FAPE during the 2021-2022 school year.<sup>2</sup>

### **September 2022 IEP**

This IEP increased the Student's specialized instruction outside general education by one hour, to three hours per week, with eight hours per week of specialized instruction inside general education, 120 minutes per month of behavioral support services, and forty-five minutes per month of speech-language pathology. Other classroom aids and services were the same as the prior IEP, including simplified assignments, word banks, manipulatives to complete assignments and classroom activities, multisensory learning, use of graphic organizers, pre-teaching/re-teaching, small-group instruction, math manipulatives, project-based learning activities, a location with minimal distractions, repetition of directions, and extended time. This IEP indicated that the Student needed glasses and benefitted from a 1:1 laptop device, and that the team considered assistive technology and used a worksheet as a guide to consider assistive technology. The IEP also indicated that the Student could benefit from the features of Microsoft 365. The IEP

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<sup>2</sup> There is a reference to self-advocacy in the Student's 2019 psychological evaluation by Witness F, but there is little else in the record about the Student having significant self-advocacy issues prior to the creation of the September 2021 IEP. No teacher reports in the record stress this issue, and no witnesses explained why self-advocacy was an area of concern for this Student, or how the Student's issues with self-advocacy affected his/her academics.



included goals in mathematics, reading, written expression, communications/speech and language, and emotional, social and behavioral development.

While this IEP was similar to the Student's September 2021 IEP, the goals in the section devoted to emotional, social and behavioral development were different than the goals in the September 2021 IEP. The goals in the September 2022 IEP's section on emotional, social and behavioral development focused on the executive functioning issues that hindered the Student's progress. In particular, the IEP included goals related to learning time-management strategies and using an organizational system for managing school materials. The Student's September 2021 IEP included no such emphasis and instead placed a generic focus on coping, problem-solving, focus, and attentiveness.

This IEP also made it clearer that the Student had executive functioning issues. It stated that the Student put forth effort academically but often seemed overwhelmed with the workload. This IEP also indicated that the Student needed more specific prompts to explain when s/he had trouble, and that s/he could benefit from Microsoft 365's features.

Moreover, and most importantly, the Student's circumstances at School B were far different in September 2022 than they were in September 2021. In September 2021, the Student was coming off a year of virtual instruction provided by a school that focused on project-based learning and was apparently a looser, much more unstructured setting than the setting at School B, a traditional high school. There was obviously an adjustment period for all concerned, and this Hearing Officer has found that the need for interventions during this adjustment period denied the Student a FAPE for the 2021-2022 school year.

However, this Hearing Officer also finds that by September 2022, the staff at School B, all of whom came across as impeccably professional, learned to develop their own ways of managing the Student so that the IEP that they created could have worked and was reasonably calculated. Witness E explained one such approach. Witness E testified that the Student wanted to say when it was best for him/her to leave the general education setting and when it was best for him/her not to leave the general education setting. Rather than resist the Student's demand, School B staff worked with his/her preferences and started to develop a more constructive relationship with the Student. Staff learned to develop effective prompts, visual aids, spelling interventions, graphic organizers, word banks, and simplified assignments for the Student that helped his/her written product.

In fact, the Student's IEP progress reports for the 2022-2023 school year showed progression during all reporting periods and passing grades in all subjects, and reported that the Student was reading at a ninth-grade level. Progress was noted in emotional, social, and behavioral development goals (relating to using age-appropriate time-management strategies and an effective organizational system), though it was also reported that the Student was distracted by his/her phone. It was reported that the Student did well with organization because of the folders that Witness G provided. The Student also used the Canvas and Aspen databases for organizational purposes. Continued progress in academics was reported for the third reporting period. Witness E indicated in a note that the Student continued to benefit from the introduction of vocabulary into text. Witness G called the Student an example of excellence in behavior and cooperation.

More academic progress was reported for the final reporting period, and Witness G indicated that the Student was a joy to work.

As a result, this Hearing Officer must conclude that DCPS offered the Student a FAPE through its September 2022 IEP.<sup>3</sup>

### **RELIEF**

As relief, Petitioner seeks thirty hours of behavioral support services to include self-advocacy, thirty hours of executive functioning coaching, thirty hours of occupational therapy, fifteen hours of tutoring, and the right to reserve compensatory education upon the completion of an assistive technology evaluation.

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to “grant such relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confers broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.”

Hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). The award must be reasonably calculated to provide the

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<sup>3</sup> While some evidence suggests that the Student had issues related to self-advocacy during this time, especially references by an art teacher in April 2022 and by a teacher in Witness F’s 2022 DCPS psychological report, the Student’s May 2022 IEP indicated that s/he could advocate for him/herself. Moreover, again, there is no clear evidence in the record to suggest why self-advocacy was a major issue, or how specialized instruction or additional services could have addressed this issue. Moreover, as this Hearing Officer has discussed, there is insufficient evidence that the Student’s assistive technology needs were so material that they impacted the Student’s right to a FAPE, especially since the Student was already getting assistive technology interventions.

educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a “qualitative, fact-intensive” inquiry used to craft an award “tailored to the unique needs of the disabled student”). A petitioner need not “have a perfect case” to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011).

Given that the Student was denied a FAPE for an entire school year, this Hearing Officer finds Petitioner’s request for compensatory education to be modest and reasonable, though there is no reason to reserve Petitioner’s rights to any compensatory services. This Hearing Officer will accordingly order Petitioner’s relief as requested, with certain reasonable conditions to ensure that professionals will provide the services.

## **VII. Order**

As a result of the foregoing:

1. Petitioner shall be reimbursed for thirty hours of behavioral support services for the Student, to be delivered by a licensed professional with at least ten years of experience, at a reasonable and customary rate in the community;
2. Petitioner shall be reimbursed for thirty hours of executive functioning counseling for the Student, to be delivered by a licensed professional with at least ten years of experience, at a reasonable and customary rate in the community;
3. Petitioner shall be reimbursed for thirty hours of occupational therapy for the Student, to be delivered by a licensed occupational therapist with at least ten years of experience, at a reasonable and customary rate in the community

4. Petitioner shall be reimbursed for fifteen hours of tutoring for the Student, to be delivered by a licensed special education teacher with at least ten years of experience, at a reasonable and customary rate in the community;

5. All other claims for relief are hereby denied.

Dated: October 14, 2023  
Corrected: October 16, 2023

Michael Lazan  
Impartial Hearing Officer

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

### **VIII. Notice of Appeal Rights**

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

Dated: October 14, 2023

Michael Lazan  
Impartial Hearing Officer