

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution
1050 First Street, N.E., Third Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
October 24, 2023

<i>Student</i> , ¹)	Case No.: 2023-0150
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 10/24/23
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates (using Microsoft Teams):
("DCPS"),)	10/3/23, 10/13/23 & 10/18/23
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student's Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") due to DCPS's failure to conduct needed assessments, provide appropriate Individualized Education Programs ("IEPs"), and/or suitable placements, among other things. DCPS responded that there were no IDEA violations or denials of FAPE.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

Following the filing of the due process complaint on 8/10/23, the case was assigned to the undersigned on 8/11/23. Respondent filed a response on 8/22/23 and did not challenge jurisdiction. A resolution meeting took place on 8/23/23, but the parties did not

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student's gender are omitted.

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settle the case or shorten the 30-day resolution period, which ended on 9/9/23. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 10/24/23.

A prehearing conference was held on 9/14/23 and a Prehearing Order was issued on 9/15/23, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 10/3/23, 10/13/23 and 10/18/23, and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in most of the hearing.

Documents and Witnesses

Petitioner’s Disclosure, submitted on 9/26/23 and corrected on 10/12/23, contained documents P1 through P47, all of which were admitted into evidence over certain objections. Respondent’s Disclosure, submitted on 9/26/23 and amended on 10/5/23, contained documents R1 through R92, of which only R3, R5, R6, R7, R8, R24, R25, R30, R31, R38, R39, R46, R47, R48, R50, R51, R52, R55, R56, R59, R66, R73, R74, R79, R82, R83, R84, R87, R88, R90, R91 and R92 were offered and admitted into evidence over various objection.²

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Special Education Advocate* (qualified over objection as an expert in Special Education Programming and Placement)
2. Parent
3. *Private Occupational Therapist* (qualified without objection as an expert in Occupational Therapy and Assistive Technology)
4. *Legal Assistant*

Respondent’s counsel presented 6 witnesses in Respondent’s case (*see* Appendix A):

1. *Assistant Principal*
2. *Social Worker* (qualified over objection as an expert in School Social Work)
3. *Prior LEA Representative*
4. *BCBA Coordinator*

² Citations herein to the parties’ documents are identical except that Petitioner’s documents begin with a “P,” while Respondent’s documents begin with an “R,” followed by the exhibit number and then a “p” (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

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5. *School Occupational Therapist* (qualified without objection as an expert in Occupational Therapy)
6. *Current LEA Representative* (qualified without objection as an expert in Special Education Programming and Placement)

Petitioner's counsel recalled Parent briefly as the only rebuttal.

Issues and Relief Requested

The issues to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to timely and comprehensively evaluate Student by not conducting within 2 years from the date of the complaint (a) an occupational therapy ("OT") evaluation, (b) a speech-language ("SL") evaluation, and/or (c) an assistive technology ("AT") assessment. *(Petitioner has the burden of persuasion on this issue.)*

Issue 2: Whether DCPS denied Student a FAPE by failing to provide appropriate IEPs and/or placements on 7/7/22 and/or 3/1/23, and/or failing to appropriately revise Student's IEP during 2022/23³ to present based on the lack of comprehensive evaluations or consideration of the need for OT, SL and AT, and/or by not providing for (a) appropriate baselines for academic goals, (b) increased behavioral support services ("BSS") and/or behavior goals, (c) a dedicated aide, (d) a more restrictive environment and/or increased specialized instruction in a program for students with autism, and/or (e) clear and consistent information about Student's need for AT; and whether the 3/1/23 IEP inappropriately removed behavior supports, including 1:1 support and push-in services. *(Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Issue 3: Whether DCPS denied Student a FAPE by failing to include Parent as a necessary participant in developing the 3/1/23 IEP. *(Petitioner has the burden of persuasion on this issue.)*

Issue 4: Whether DCPS denied Student a FAPE by failing to timely develop a behavioral intervention plan ("BIP") for Student during 2021/22 or 2022/23. *(Petitioner has the burden of persuasion on this issue.)*

Issue 5: Whether DCPS denied Student a FAPE by failing to allow Parent full access to education records. *(Petitioner has the burden of persuasion on this issue.)*

The relief requested by Petitioner is:

1. A finding that Student has been denied a FAPE.

³ All dates in the format "2022/23" refer to school years.

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2. DCPS shall conduct or fund (a) an OT evaluation, (b) an updated FBA, and (c) a SL evaluation, and timely reconvene Student's IEP team to review the results and update Student's IEP as appropriate.
3. DCPS shall immediately revise Student's IEP to (a) include baselines for academic goals, (b) increase specialized instruction outside general education, (c) increase BSS and include additional BSS goals, (d) add a dedicated aide, (e) add assistive technology, (f) place Student in a more restrictive environment, and/or (g) add a BIP or revised BIP.
4. DCPS shall place Student in a program for high functioning students with autism.
5. DCPS shall provide compensatory education and transportation for any denial of FAPE.⁴
6. Any other just and reasonable relief.

Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact⁵ are as follows:

⁴ So far as Petitioner's request for compensatory education depends on the findings of evaluations that may be carried out in the future, that portion of the compensatory education claim is reserved pending the completion of Student's evaluations and a determination of eligibility for additional special education and related services.

Petitioner's counsel was put on notice during the prehearing conference that at the due process hearing Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was put on notice to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE was found.

⁵ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

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1. Background. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁶ Student is *Age*, *Gender*, and was in *Grade* during 2022/23 at *Public School*, following *Prior Public School* in 2021/22.⁷ Student is very intelligent, creative, highly sensitive, socially aware and a perfectionist.⁸

2. IEPs. Student's 7/7/22 Amended IEP was based on the disability classification of Autism Spectrum Disorder and provided 2 hours/week of specialized instruction in written expression inside general education, 120 minutes/month of BSS inside general education and 120 minutes/month of BSS outside general education, with a range of accommodations but no dedicated aide.⁹ The 7/7/22 IEP included positive behavioral interventions and supports ("PBIS") considerations that were at least 3 years out old.¹⁰ The 7/7/22 IEP doubled BSS from 60 minutes/month both inside and outside general education to 120 minutes/month inside and outside.¹¹

3. Student's other relevant IEP, dated 3/1/23, provided the same services as the 7/7/22 IEP: 2 hours/week of specialized instruction in written expression inside general education, 120 minutes/month of BSS inside general education and 120 minutes/month of BSS outside general education, with a range of accommodations but no dedicated aide.¹² On both IEPs, the only academic area of concern was written expression.¹³ Student's writing goals contained no baselines in either IEP.¹⁴

4. Cognitive Abilities. Based on the Wechsler Intelligence Scale for Children – Fifth Edition ("WISC-V"), Student's cognitive scores ranged from Average to Extremely High, with a Full Scale IQ ("FSIQ") of 119, High Average.¹⁵

5. Academics. In the 2022/23 PARCC English Language Arts ("ELA") Assessment, Student scored better than 50% of DC students who took the test.¹⁶ In the 2022/23 PARCC Math Assessment, Student scored better than 76% of DC students who took the test.¹⁷ Student was reading a year above grade in 2022/23.¹⁸ Student finds academics "boring"; math in particular was a little boring.¹⁹ Adding more specialized instruction or a more restrictive environment would likely not be challenging for Student, and not lead to

⁶ Parent.

⁷ Parent; P4p41; P6p55.

⁸ P5p53; P6p57.

⁹ P4p41,47,49; Special Education Advocate; R3p7 (eligibility).

¹⁰ P4p42.

¹¹ R59p198.

¹² P6p61,63.

¹³ P4p43; P6p57.

¹⁴ P4p44; P5p57-58; Special Education Advocate.

¹⁵ P9p98,103.

¹⁶ P14p128.

¹⁷ P15p131.

¹⁸ P21p165.

¹⁹ P8p70; Social Worker.

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academic success.²⁰ Student often looked inattentive in class, but could answer questions when called on.²¹ Student's grades in 2021/22 improved from Basic and Proficient to mostly Advanced.²² Student's grades in 2022/23 (terms 1-3) generally dropped.²³

6. The 2/27/20 comprehensive psychological evaluation noted that Student ranged from below average to above average in writing, with subtest rankings from 3% to 96%.²⁴ Student was able to write at grade level when provided with supports; when focused, Student is successful.²⁵ Without intense 1:1 teacher redirection and support Student struggles with written assignments and is easily distracted by computer, drawing or fidgets.²⁶ Student needed 1:1 less in the higher grade at Public School than at Prior Public School.²⁷ When on task, Student has solid ideas and can produce quality work.²⁸

7. Behavior. Prior years' behavior data in the 7/7/22 IEP concluded that the steps taken "very significantly reduced" Student's problematic behaviors and increased engagement.²⁹ In 2021/22, Student progressed or mastered social-emotional goals.³⁰ As of 11/15/22, Student was "almost always" having trouble staying focused until tasks were completed.³¹ Student did not progress toward social-emotional goal in term 1 of 2022/23.³² In term 2 of 2022/23, Student regressed on both social-emotional goals.³³ In term 3 of 2022/23, Student improved (from regression) but made no progress on either social-emotional goal.³⁴ Student's Strengths and Difficulties Questionnaire ("SDQ") scores improved significantly during 2021/22; some data was repeated in 2022/23.³⁵ SDQ data from Student for 2022/23 included several Very High ratings.³⁶ Teachers began reporting more issues with Student in the Spring of 2023.³⁷

8. Student's computer has been a severe trigger and Student has more frustration turning it off than peers; DCPS planned for Student to do academic work without a computer; by late 2022/23, Student was getting some computer access and not showing as

²⁰ Current LEA Representative.

²¹ *Id.*

²² P16p133.

²³ P21p162-64.

²⁴ P4p43.

²⁵ *Id.*

²⁶ P6p57.

²⁷ Current LEA Representative.

²⁸ P6p57.

²⁹ P4p42.

³⁰ R8p50-51.

³¹ P18p148.

³² *Id.*

³³ P20p156-57.

³⁴ P20p159-60.

³⁵ P6p59; P4p45.

³⁶ P6p59.

³⁷ Current LEA Representative.

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much extreme behavior.³⁸ Student's computer was again confiscated on 9/25/23 due to misuse during class leading to distraction.³⁹

9. A self-harm statement by Student triggered a safety assessment on 8/29/22.⁴⁰ An Individual Student Crisis Plan and a 3/31/23 Individual Student Safety & Crisis Plan were prepared for Student; Student expressed thoughts of suicide and had the potential for self-harm.⁴¹ Student was hospitalized late in 2022/23.⁴² A BIP should have been developed prior to crisis plans.⁴³

10. Student reported liking school in 2022/23, made friends and engaged with them positively, but has anxiety in large groups.⁴⁴ Assistant Principal checked in with Student at least weekly during 2022/23, and sometimes 2-3 times/week.⁴⁵ Teachers called Assistant Principal if there was an issue with Student and Student could usually be redirected and return to class in 5-15 minutes, while other times required 40-45 minutes; behavior was more an issue than academics.⁴⁶

11. Evaluations. Student's 2/27/20 comprehensive psychological evaluation recommended an OT evaluation, an SL evaluation and an FBA to further assess Student.⁴⁷ Private Occupational Therapist credibly testified that Student continued to need OT and SL evaluations for the 7/7/22 and 3/1/23 IEPs.⁴⁸ The AED meeting on 6/12/23 sought an OT evaluation due to sensory processing and motor skills, a SL evaluation due to pragmatic language deficits, and an FBA so a BIP could be developed.⁴⁹ DCPS agreed that OT and SL evaluations were needed and that Parent would hear from the summer team.⁵⁰ Student was out of the region for the rest of the summer as of 7/13/23; DCPS canceled the referrals.⁵¹

12. Student's IEPs noted difficulties with pragmatic language, raising the need for a SL evaluation.⁵² A draft SL report was prepared on 6/10/23.⁵³ An Occupational Therapy Data Summary Report noted that Student may have some deficits with sensory regulation and/or

³⁸ P8p70; P6p60; Current LEA Representative; Assistant Principal (Student had difficulty focusing with device).

³⁹ P47p303.

⁴⁰ P29p203.

⁴¹ P17p138-43.

⁴² Parent.

⁴³ Special Education Advocate.

⁴⁴ P6p60; Parent.

⁴⁵ Assistant Principal.

⁴⁶ *Id.*

⁴⁷ P9p74,99.

⁴⁸ Private Occupational Therapist; P4p42; P6p57.

⁴⁹ P8p69; P30p206.

⁵⁰ Parent; P8p69.

⁵¹ R90p357; P38p248; Parent.

⁵² Special Education Advocate; P4p42; P6p56.

⁵³ P11p116.

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executive function, although other skills were age-appropriate.⁵⁴ Student expressed fatigue when handwriting or typing for long stretches.⁵⁵ The Parent Questionnaire Occupational Therapy Evaluation indicated Student's need for OT.⁵⁶ School Occupational Therapist informally observed Student late in 2022/23 and agreed that Student needed an OT evaluation.⁵⁷

13. As for AT, Student's 7/7/22 IEP and 3/1/23 IEP both stated (on p.2) that no AT was needed, although accommodations on the IEPs involved AT, including speech-to-text and external assistive technology.⁵⁸ Student has had a computer at school which has been a severe trigger and sometimes taken away to encourage Student to focus on schoolwork, leaving Student without certain accommodations.⁵⁹ An AT assessment could focus on what makes the computer a trigger and determine the need to remove all games and other distractions.⁶⁰ AT should have been considered prior to adding a human scribe to Student's accommodations.⁶¹ Speech-to-text is a last resort; it is complicated to make sure other noise in the classroom doesn't impact each child's device.⁶²

14. FBA/BIP. A 10/25/21 Prior Written Notice ("PWN") stated that Student's team at Prior Public School proposed an FBA and development of a BIP.⁶³ A detailed FBA-2 was conducted on 12/1/21 at Prior Public School to address throwing objects and other disruptive physical dysregulation, as well as negative self talk and ripping up objects or work.⁶⁴ Social Worker updated Student's FBA for Public School; Social Worker planned to update a BIP to include 1:1 support and other interventions.⁶⁵

15. Manifestation Determination Review ("MDR"). Parent and Student's team agreed on 5/12/23 that Student's behaviors related to a suspension were a manifestation of Student's disability when Student knocked down or broke a computer (which DCPS did not replace); Student does not do well with paper documents.⁶⁶ Parent's team sought a more restrictive environment, a dedicated aide and an updated FBA and BIP.⁶⁷ Student's team agreed to an FBA and BIP.⁶⁸

⁵⁴ R84p309,311; School Occupational Therapist.

⁵⁵ P4p43; Special Education Advocate.

⁵⁶ P13p122-25.

⁵⁷ P8p70.

⁵⁸ P4p42,49; P6p56,63; Private Occupational Therapist; Special Education Advocate.

⁵⁹ Current LEA Representative; P4p49; Parent.

⁶⁰ Private Occupational Therapist.

⁶¹ *Id.*

⁶² *Id.*

⁶³ R48p165.

⁶⁴ P10p107; R51p169; R74p230.

⁶⁵ P8p71; Social Worker.

⁶⁶ P7p66; P30p206; Parent; Special Education Advocate; Current LEA Representative.

⁶⁷ P7p66; P30p206.

⁶⁸ Parent.

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16. Dedicated Aide/Specialized Instruction/More Restrictive Environment. Student did not need a more restrictive environment or a dedicated aide because there were signs of success and the current level of support continued to be appropriate; Student was functioning at or above grade level.⁶⁹ Current LEA Representative considered a dedicated aide to be inconsistent with independent pick-up and drop-off of Student by the bus.⁷⁰ Current LEA Representative testified that 1:1 and push-in support was different and less restrictive than having a dedicated aide.⁷¹ Parent asked about a dedicated aide at the beginning of 2022/23; Parent was also “open” to more push-in or pull-out.⁷² A dedicated aide request was sent to DCPS’s central office on 6/22/23; the team was to follow up with the request when school reopening for 2023/24.⁷³

17. Student’s 7/7/22 IEP did not provide additional specialized instruction because being outside general education would hurt Student’s self-esteem.⁷⁴ Student was in a co-taught classroom for ELA.⁷⁵ Student’s team discussed at the 6/12/23 meeting a more restrictive environment for Student, such as *Proposed School* with its program for high functioning children with autism.⁷⁶ BCBA Coordinator said Parent could schedule a tour of the program at Proposed School.⁷⁷ BCBA Coordinator observed Student at Public School before school closed in 2022/23.⁷⁸ Parent was interested in moving Student to the autism program at Proposed School, but did not receive information from DCPS as school began in 2023/24.⁷⁹ Proposed School only had space for 1 general education student and needed to review Student’s IEP to ensure that Proposed School could meet Student’s educational needs.⁸⁰ On 9/6/23, Parent was not permitted to enroll Student in Proposed School without a finalized IEP and location of services letter.⁸¹

18. Parental Participation. Parent was diligent about attending all meetings concerning Student.⁸² Parent was invited to the 3/1/23 IEP team meeting, confirmed on 2/16/23 that she would attend, and then was a “no show”; DCPS could not reach Parent at the beginning of the meeting and then proceeded with the meeting instead of rescheduling.⁸³ DCPS had

⁶⁹ Current LEA Representative.

⁷⁰ *Id.*

⁷¹ P4p42; Current LEA Representative.

⁷² P29p203.

⁷³ P38p247; P8p69,70.

⁷⁴ Prior LEA Representative.

⁷⁵ Social Worker.

⁷⁶ P8p71; Special Education Advocate; Parent.

⁷⁷ P38p247.

⁷⁸ P39p252-53.

⁷⁹ P40p259-61.

⁸⁰ P43p277; Special Education Advocate; Parent.

⁸¹ P43p275.

⁸² Parent.

⁸³ Current LEA Representative; P5p52.

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promised to send a rough draft of the IEP to be reviewed and the link to attend virtually, but Parent did not receive them.⁸⁴

19. Records. Student's education records were formally requested by Petitioner's counsel on 5/16/23; Petitioner's team picked up available records and followed up on missing records.⁸⁵ Some documents in DCPS's 5-day disclosure in this case had not been provided to Parent previously.⁸⁶ Parent is still waiting for the March 2021 IEP, service trackers, iReady data, discipline records, and report cards.⁸⁷

20. Compensatory Education. Special Education Advocate developed a Compensatory Education Proposal that was intended to restore Student to the position Student would have been in but for the denials of FAPE.⁸⁸ The proposal included 180 hours of tutoring, 72 hours of mentoring, listed evaluations, an updated BIP following an FBA, reservation of compensatory education on evaluations to be conducted later, and IEP updates.⁸⁹

Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(14); *Endrew F.*, 137

⁸⁴ P28p196-97; Parent.

⁸⁵ P31p208; P32p213; P33p215; Legal Assistant.

⁸⁶ Special Education Advocate.

⁸⁷ Legal Assistant.

⁸⁸ Special Education Advocate; P44.

⁸⁹ P44p291.

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S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Endrew F.*, 137 S. Ct. at 1001.

In addition, the local education agency (“LEA”) must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at *3 (D.D.C. 2018).

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a 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. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights. *Brown v. Dist. 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).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z. B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

Issue 1: *Whether DCPS denied Student a FAPE by failing to timely and comprehensively evaluate Student by not conducting within 2 years from the date of the*

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complaint (a) an OT evaluation, (b) an SL evaluation, and/or (c) an AT assessment. (Petitioner has the burden of persuasion on this issue.)

Petitioner met her burden of persuasion on this issue. The importance of assessing students in all areas of suspected disability was emphasized in *Z.B. v. Dist. of Columbia*, 888 F.3d 516, 518 (D.C. Cir. 2018), *quoting* 20 U.S.C. § 1414(b)(3)(B). The D.C. Circuit Court explained in *Z.B.*, at 524, that failing to conduct adequate assessments is a procedural violation that could have substantive effects by preventing the IEP team from obtaining necessary information about the student. *See also Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60-61 (D.D.C. 2011) (“in the absence of necessary and appropriate evaluations the district cannot develop a program that is tailored to the student’s unique needs and reasonably calculated to enable [the student] to receive educational benefits” (citation omitted)); 34 C.F.R. § 300.304(c)(4).

However, “[t]he IDEA does not require LEAs to administer every test requested by a parent or educational advocate. Rather, to ensure that a child with a disability receives a FAPE, an LEA must use ‘a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information.’ *See* 20 U.S.C. § 1414(b)(2)(A).” *Long*, 780 F. Supp. 2d at 60. Decisions on the areas to be assessed are to be made based on the suspected needs of the child. *Z.B.*, 888 F.3d at 518; Office of Special Education and Rehabilitative Services, U.S. Department of Education, *Analysis of Comments and Changes*, 71 Fed. Reg. 46643 (2006).

Consideration of the need for OT, SL and AT assessments raised by Petitioner begins with the fact that Student’s 2/27/20 comprehensive psychological evaluation recommended OT and SL evaluations to further assess Student. The AED meeting on 6/12/23 sought an OT evaluation due to sensory processing and motor skills and an SL evaluation due to pragmatic language deficits. DCPS agreed that OT and SL evaluations were needed at that 6/12/23 AED meeting, indicating that Parent would hear from the DCPS summer team. However, nothing happened during the next month and as of 7/13/23 Student was out of the region for the summer, so DCPS canceled the referrals and has not arranged for evaluations since then.

Shifting to the requested AT assessment, AT is to be routinely considered each year for children with IEPs, but an AT assessment is not required for decision-making if sufficient data is otherwise available. Instead, the IEP team can request a consultation or collaboration on the need for AT. Here, however, Student’s IEPs stated that no AT was needed, even though accommodations on the IEPs plainly involved AT, including speech-to-text and external assistive technology. Further, Student’s school computer has been a great distraction, and an AT assessment could help determine what makes the computer such a trigger for Student and remove games and similar distractions as needed. An AT assessment could also help determine the need for a human scribe as an accommodation, and whether speech-to-text would work for Student with the challenge of preventing other talking in the classroom from impacting Student’s device.

In sum, the undersigned concludes that OT and SL evaluations and an AT assessment were needed, have not been adequately carried out, and should now be

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conducted as ordered below. As noted above, compensatory education is reserved until the evaluations are completed to see whether or to what degree the delayed evaluations impacted the ability of Parent and the rest of the IEP team to appropriately develop Student's IEP. A suitable award of compensatory education should be determined at that time if the lack of evaluations (i) impeded Student's right to a FAPE, (ii) significantly impeded parental participation in decision-making, and/or (iii) caused a deprivation of educational benefit. *See* 34 C.F.R. § 300.513(a).

Issue 2: *Whether DCPS denied Student a FAPE by failing to provide appropriate IEPs and/or placements on 7/7/22 and/or 3/1/23, and/or failing to appropriately revise Student's IEP during 2022/23 to present based on the lack of comprehensive evaluations or consideration of the need for OT, SL and AT, and/or by not providing for (a) appropriate baselines for academic goals, (b) increased BSS and/or behavior goals, (c) a dedicated aide, (d) a more restrictive environment and/or increased specialized instruction in a program for students with autism, and/or (e) clear and consistent information about Student's need for AT; and whether the 3/1/23 IEP inappropriately removed behavior supports, including 1:1 support and push-in services. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a *prima facie* case concerning Student's IEP and placement through testimony and documents, shifting the burden to DCPS, which met its burden of persuasion on most issues, as discussed below.

The applicable legal standard for analyzing the appropriateness of the IEPs at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether they were "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. As the U.S. Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* "raised the bar on what counts as an adequate education under the IDEA," requiring more than "merely some" educational benefit. *See also* *Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be "reasonably calculated to produce meaningful educational benefit"). The measure and adequacy of the IEPs are determined as of the time they were offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at *12 (D.D.C. 2021); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student's IEPs is analyzed by focusing on the specific concerns raised by Petitioner, which are considered in turn.⁹⁰ *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

Failure to Revise IEP with Comprehensive Evaluations, Including OT, SL and AT. Petitioner alleges that DCPS failed in various ways to update Student's IEP as required by 34 C.F.R. §§ 300.324(b)(1)(i),(ii), 300.324(b)(2), which mandate that DCPS must review

⁹⁰ A Hearing Officer must also determine whether "the State complied with the procedures" set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. Procedural concerns are discussed herein.

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Student's IEP not less than annually to address information about Student, anticipated needs, and other matters. Focusing on evaluations, as discussed in Issue 1, Petitioner met her burden as to the need for OT, SL and AT evaluations, so DCPS failed to meet its burden of showing those evaluations were used to revise Student's IEPs. As with Issue 1, determination of any harm must await the conclusion of those evaluations to see what impact, if any, resulted.

Baselines for Academic Goals. The IDEA does not expressly require "baselines" in IEPs, but does require a description of how progress toward meeting a student's IEP goals will be measured, in 34 C.F.R. § 300.320(a)(3). Here, Student's writing goals had boxes titled "Baseline:" that were empty in both IEPs, so DCPS failed to meet its burden on this sub-issue, which DCPS is ordered to correct below.

Increased BSS and/or Behavior Goals. As a related service, BSS must be provided if required to assist a student with a disability to benefit from special education. *See* 34 C.F.R. § 300.34(a); *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883, 890, 104 S. Ct. 3371, 82 L. Ed. 2d 664 (1984). The issue is whether as written the IEPs for Student were "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. Here, both IEPs provided for 120 minutes/month of BSS inside general education and 120 minutes/month of BSS outside general education, which was double the amount of BSS on Student's IEP prior to the 7/7/22 amendment when BSS was increased. There was also testimony that behavior concerns by teachers were not raised until the Spring of 2023, after the 3/1/23 IEP was finalized. While there were only 2 goals for the social-emotional section of each IEP, that is a common number of goals and does not violate the regulations. Further, there was a great deal of other information provided in this section of the IEPs to highlight Student's needs. In sum, 4 hours of BSS/month is a significant amount and additional BSS would unduly remove Student from the classroom. Nor is this Hearing Officer going to second guess the school's reliance on 2 goals for each IEP in this area of concern. DCPS met its burden on this sub-issue.

Dedicated Aide. Parent sought a dedicated aide for Student throughout 2022/23, in hopes that a dedicated aide would resolve Student's lack of attention to academics and distraction by the computer. While a nontrivial portion of caring parents seek to resolve their children's academic and behavioral problems by adding a dedicated aide, it is by no means a panacea. *See, e.g., Rowley*, 458 U.S. at 203 (dedicated aide required if necessary "to permit the child to benefit educationally from [the IEP personalized] instruction"). Here, Current LEA Representative credibly testified that Student did not need a dedicated aide because there were signs of success and the current level of support continued to be appropriate. As she further explained, a dedicated aide seemed inconsistent with independent pick-up and drop-off of Student by the bus, which Parent also sought at the beginning of 2022/23. More importantly, Student was receiving other support at Public School. Assistant Principal checked in with Student at least weekly during 2022/23, and sometimes multiple times each week. Teachers called Assistant Principal if there was an issue with Student. Student could usually be redirected and return to class in 5-15 minutes, while other times it took 40-45 minutes. DCPS met its burden on this sub-issue.

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More Restrictive Environment and/or Increased Specialized Instruction. Next, Petitioner seeks a more restrictive environment or increased specialized instruction in a program for high functioning students with autism. But the evidence was that Student was able to face challenges with regular support from Assistant Principal. DCPS was persuasive that with Student's high intelligence Student was likely to be frustrated by self-contained classes or even with specialized instruction outside general education. Adding more specialized instruction or a more restrictive environment would likely be boring rather than challenging for Student, and not lead to academic success. Student often looked inattentive, but could answer questions in class when called on. Student needed 1:1 support less in the higher grade at Public School than in Prior Public School. When on task, Student has solid ideas and can produce high quality work.

The question is whether Student can make appropriate progress with only 2 hours/week of specialized instruction inside general education, albeit in a co-taught class. Upon consideration, the undersigned supports a stepped increase in specialized instruction from 2 to 4 hours, even though Petitioner sought a shift from 2 hours to 20 or more hours, which the undersigned concludes is not justified by the record. While there was attention given to a program for high functioning autism students at Proposed School, it ultimately appeared that there was only 1 spot available at Proposed School at the beginning of 2023/24 which was for a general education student and thus would not have been appropriate for Student by Petitioner's logic. Current LEA Representative concluded that a more restrictive environment was not appropriate, as Student was functioning at or above grade level. Accordingly, the undersigned concludes that Petitioner prevailed in part on this sub-issue, and the increase in specialized instruction is ordered below.

Information about Student's Need for AT. An AT assessment is required based on the ruling in Issue 1 above, which should lead to clear and consistent information about Student's need for AT which should be set forth in Student's IEP. It would be duplicative and inappropriate to raise AT challenges again here.

Removal of Behavior Supports. Finally, Petitioner questions whether the 3/1/23 IEP inappropriately removed behavior supports, including 1:1 support and push-in services. This sub-issue apparently arises from the reference in the PBIS section of the 7/7/22 IEP that Student was receiving 1:1 and push-in support, which was omitted from the PBIS section of the 3/1/23 IEP. Close analysis makes clear that the references in the 7/7/22 IEP were from 2019/20, at least 3 years prior to the IEPs at issue here. Further, the steps taken to address the earlier behavior data in the 7/7/22 IEP "very significantly reduced" Student's problematic behaviors and increased Student's engagement. DCPS clearly met its burden here.

Placement. The IDEA requires "school districts to offer placement in a school and programming that can fulfill the requirements set forth in the student's IEP." *Middleton*, 312 F. Supp. 3d at 143, *citing O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008). *See also Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013) (DCPS "must place the student in a setting that is capable of fulfilling the student's IEP"). Here, there is no doubt that DCPS did offer placement at Prior Public School and then at Public School which readily fulfilled the requirement in Student's IEPs of 2

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hours/week of specialized instruction and Public School could handle the increase to 4 hours/week. As discussed above, Parent was interested in the possibility of Student attending a separate program for children with high functioning autism at Proposed School. But there was a great deal of back and forth as 2023/24 got under way, during which DCPS seemed unsure how to proceed and guide Parent. Eventually, it was clear that Proposed School had only 1 general education spot available and not a seat for a child with high function autism, such as Student. There was no indication that the general education spot would be any more suitable than Student's existing placement at Public School. Moreover, for Student to be considered for a seat in a program for high functioning autistic children it appeared that Student would need a very different IEP, likely with full-time specialized instruction outside general education, while Student's IEP had only 2 hours/week inside general education. Further, Student reported liking school in 2022/23, had made friends and engaged with them positively.

Accordingly, this Hearing Officer finds no placement violation, but would encourage DCPS to again consider whether a program for children with high functioning autism might be appropriate for Student in the near future.

FAPE. In considering the concerns raised above individually and as a group, the undersigned is cognizant of the fact that the analysis is not about achieving perfection. Instead, IEPs simply need to be reasonably calculated to enable Student to make appropriate progress in the circumstances. *See Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA "stops short of requiring public schools to provide the best possible education"). *See also Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015); *S.M. v. Dist. of Columbia*, CV 19-2096 (RC), 2020 WL 7230266, at *5 (D.D.C. 2020). On balance, this Hearing Officer concludes that DCPS met its burden of persuasion by a preponderance of the evidence on Issue 2, apart from increasing specialized instruction modestly and the need to include baselines on the 2 academic goals which contribute slightly to the award of compensatory education below.

Issue 3: *Whether DCPS denied Student a FAPE by failing to include Parent as a necessary participant in developing the 3/1/23 IEP. (Petitioner has the burden of persuasion on this issue.)*

Petitioner prevails on the issue of parental participation, for the law clearly requires parental involvement in IEP development and Parent sought to participate here. *See Endrew F.*, 137 S. Ct. at 999 (crafting an appropriate program of education contemplates the input of the child's parents or guardians); *Lofton v. Dist. of Columbia*, 7 F. Supp. 3d 117, 124 (D.D.C. 2013) (the IDEA mandates that parent be allowed to meaningfully participate in the development of child's IEP); *Lague v. Dist. of Columbia*, 130 F. Supp. 3d 305 (D.D.C. 2015). Here, Parent was diligent about attending meetings concerning Student. When Parent was invited to the 3/1/23 IEP team meeting she confirmed on 2/16/23 that she would attend. DCPS promised to send a rough draft of the IEP to be reviewed and the link to participate virtually, but Parent did not receive them. When Parent did not show up for the meeting, DCPS did try to reach her, but then proceeded with the meeting instead of rescheduling. Accordingly, this is a denial of FAPE based on 34 C.F.R. § 300.513(a)(ii), as

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it significantly impeded Parent's participation in decision-making and contributes to the compensatory education awarded below.

Issue 4: *Whether DCPS denied Student a FAPE by failing to timely develop a BIP for Student during 2021/22 or 2022/23. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden on the need for a BIP. The IDEA requires in the case of a student whose behavior impedes the student's own learning or that of others, that the IEP team consider the use of positive behavioral interventions and supports (PBIS) and other strategies to address that behavior. 34 C.F.R. § 300.324(a)(2)(i); *see also* Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46540, 46643 (8/14/06) (if a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted); *Middleton*, 312 F. Supp. 3d at 146.

Here, DCPS did consider Student to be a child whose behavior impeded Student's own learning or that of others, given Student's behavioral challenges discussed herein. Student's team at Prior Public School did propose an FBA and development of a BIP in a 10/25/21 PWN. A detailed FBA-Level 2 ("FBA-2") was conducted on 12/1/21 at Prior Public School to address Student's disruptive physical dysregulation and negative self-talk. Student's FBA was updated for Public School, but DCPS never got beyond planning to update a BIP to include 1:1 support and other interventions. Further, Student's team agreed at an MDR meeting on 5/12/23 that Student's behaviors related to a suspension were a manifestation of Student's disability when Student damaged a computer. In an MDR, if the behavior is found to be a manifestation of the child's disability, as here, a BIP must be implemented or the child's BIP (if already developed) must be reviewed and modified as necessary to address the behavior, pursuant to 34 C.F.R. § 300.530(f)(1).

Accordingly, the failure to develop a BIP after the FBA-2 on 12/1/21 at Prior Public School, the failure to complete a BIP at Public School, and then the requirement for a BIP as a result of the MDR are denials of FAPE based on 34 C.F.R. § 300.513(a)(i), impeding the child's right to a FAPE, and/or (iii) causing a deprivation of educational benefit. *See Long*, 780 F. Supp. 2d at 61 (FBA/BIP essential because "the quality of a child's education is inextricably linked to that child's behavior"). Consequently, not only does this require a BIP to be developed, but requires an FBA to first be conducted as a foundation for the BIP as ordered below, and contributes to the award of compensatory education below.

Issue 5: *Whether DCPS denied Student a FAPE by failing to allow Parent full access to education records. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden of persuasion on the issue of access to Student's education records. As a general matter, parents of a child with a disability have the right to examine all education records that pertain to the identification, evaluation, and educational placement of the child, and provision of a FAPE. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a), 34 C.F.R. § 300.613(a) (parents must be permitted to inspect and review any education records relating to their child that are collected, maintained, or used by an agency). *See also Jalloh ex rel. R.H. v. Dist. of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) ("parents have the

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right to examine records and [educational agency] must give parents the opportunity to inspect, review, and copy records”).

An “education record” under IDEA is defined by the regulations implementing the Family Educational Rights and Privacy Act (“FERPA”). 34 C.F.R. § 300.611(b). Under FERPA, an education record includes records, files, documents, and other materials which “(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. Part 99.

Here, Petitioner formally requested Student’s education records on 5/16/23 and Petitioner’s team picked up available records and followed up on missing records. Some documents in DCPS’s 5-day disclosure in this case had not been provided to Parent previously. Legal Assistant persuasively testified that Parent had not received the March 2021 IEP, service trackers, iReady data, discipline records, and report cards, which are ordered to be provided to Petitioner below. However, Petitioner did not demonstrate a denial of FAPE, so there is no impact on compensatory education (and none was requested).

Remedies

Having analyzed and resolved the issues in this case and the resulting actions that need to be taken, what remains is to consider the compensatory education necessary to make up for the denials of FAPE found above. In determining the amount of compensatory education for denials of FAPE, there is often “difficulty inherent in figuring out both what position a student would be in absent a FAPE denial and how to get the student to that position,” *B.D. v. Dist. of Columbia*, 817 F.3d 792, 799 (D.C. Cir. 2016), but that does not permit the effort to be avoided. *See Henry v. Dist. of Columbia*, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse). Moreover, a student is not required “to have a perfect case to be entitled to compensatory education.” *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (citations omitted).

Here, Special Education Advocate testified that the compensatory education sought in her proposal would put Student in the position Student should have been but for the denials of FAPE. But that plan must be adjusted in accordance with the testimony and documents in the case, along with the specific denials of FAPE actually found herein. Based on experience and careful analysis, the undersigned awards 100 hours of 1:1 academic tutoring, along with 50 hours of mentoring in the Order below. These hours are awarded with the goal of restoring Student to the position in which Student would have been but for these denials of FAPE, which largely turn on the lack of parental participation in IEP development and delay in development of an appropriate BIP, along with other impacts as set forth above.

These determinations by the undersigned have been carefully considered and specifically tailored to address Student’s unique needs as a matter of equity, which along with tutoring include an award of mentoring hours even though the undersigned did not find

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it appropriate to increase BSS hours (decreasing classroom hours), as “hearing officers are reminded that ‘[t]he essence of equity jurisdiction’ is ‘to do equity and to mould each decree to the necessities of the particular case.’” *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), *quoting Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005). All compensatory education hours are to be used within 18 months, although the undersigned encourages Parent to get Student engaged as quickly as possible to ensure that the remedial services that Student needs are obtained without delay.

ORDER

Petitioner has prevailed on Issue 1, part of Issue 2, Issue 3, Issue 4 and Issue 5, as set forth above. Accordingly, **it is hereby ordered that:**

- (1) Within 10 business days, DCPS shall convene Student’s IEP team to modify Student’s IEP to (a) increase specialized instruction inside general education from 2 to 4 hours/week in written expression, adding goals as needed, and (b) ensure that the IEP contains appropriate academic baselines.
- (2) Within 45 calendar days, DCPS shall conduct and complete the following evaluations, or authorize independent educational evaluations (“IEEs”) at DCPS’s option: (a) speech-language; (b) occupational therapy; (c) assistive technology; and (d) updated Functional Behavioral Assessment.
- (3) Within 10 business days after the reports are completed in the evaluations ordered in the prior paragraph, DCPS shall convene Student’s IEP team to review the reports and modify Student’s IEP as appropriate.
- (4) Within 30 calendar days after completion of the Functional Behavioral Assessment above, DCPS shall develop a Behavioral Intervention Plan, which among other things shall address Student’s behavior in the 5/12/23 MDR pursuant to 34 C.F.R. § 300.530(f)(1).
- (5) Within 10 business days, DCPS shall provide to Petitioner PDF copies of the March 2021 IEP and all service trackers, iReady data, discipline records, and report cards.
- (6) As compensatory education for the denials of FAPE found herein, within 10 business days after request by Petitioner, DCPS shall provide a letter(s) of authorization for (a) 100 hours of 1:1 academic tutoring, and (b) 50 hours of mentoring, from independent providers chosen by Petitioner; all hours are to be used within 18 months and any unused hours shall be forfeited.
- (7) Claims for compensatory education based on the future completion of the evaluations required in paragraph 2 above are reserved for subsequent resolution.

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Any and all other claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ *Keith Seat*

Keith L. Seat, Esq.
Hearing Officer

NOTICE OF RIGHT TO APPEAL

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

Copies to:

Counsel of Record (Appendix A, by email)
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