

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

**Office of Dispute Resolution**  
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OSSE  
Office of Dispute Resolution  
October 06, 2025

**Confidential**

<b>Parent on behalf of Student,<sup>1</sup></b>	)	Case Nos. 2025-0113
	)	
<b>Petitioner</b>	)	Hearing Dates: September 24-25, 2025
	)	
v.	)	Conducted by Video Conference
	)	
	)	Date Issued: October 6, 2025
<b>District of Columbia Public Schools,</b>	)	
	)	
<b>Respondent</b>	)	Terry Michael Banks, Hearing Officer

**AMENDED HEARING OFFICER DETERMINATION**

**INTRODUCTION**

Petitioner is the parent of an X-year-old student (“Student”) attending School A. On June 30, 2025, Petitioner filed a due process complaint notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) denied Student a free appropriate public education (“FAPE”) by failing to provide appropriate Individualized Education Programs (“IEPs”), failing to conduct a timely and comprehensive triennial evaluation, failing to develop an appropriate behavior intervention plan (“BIP”), failing to implement Student’s IEPs, and failing to provide Petitioner complete access to Student’s educational records. On July 11, 2025, DCPS filed *District of Columbia Public Schools’ Response to Petitioner’s Administrative Due Process Complaint* (“*Response*”), denying that it had denied Student a FAPE in any way.

**SUBJECT MATTER JURISDICTION**

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

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

## PROCEDURAL HISTORY

On June 30, 2025, Petitioner filed her *Complaint* alleging that DCPS (1) failed to provide an appropriate IEP on November 7, 2023, (2) failed to provide an appropriate IEP on September 30, 2024, (3) failed to provide an appropriate IEP on November 6, 2024, (4) failed to conduct a triennial evaluation during the 2023-24 school year, (5) failed to conduct an appropriate speech and language (“S/L”) evaluation on March 7, 2025, (6) failed to implement Student’s IEPs during the 2023-24 school year by failing to provide all of the speech and language therapy (“SLP”) services and occupational therapy (“OT”) services prescribed on her/his IEPs, (7) failed to implement Student’s IEPs during the 2024-25 school year by failing to provide all of the SLP and OT services prescribed on her/his IEPs, and (8) failed to provide Petitioner complete access to Student’s educational records as requested on November 26, 2024. For relief, Petitioner requested, *inter alia*, (1) an order requiring DCPS to conduct or fund and review a functional behavior assessment (“FBA”), (2) an order requiring DCPS to fund an independent S/L evaluation, (3) an order requiring DCPS to reconvene the IEP team to review, revise and/or amend the IEP as appropriate based upon the updated data from the aforementioned evaluations and develop a BIP Student, to review, revise and/or amend the IEP to reflect appropriate goals and PLOPs in the area of Adaptive/ Daily living Skills, to provide a dedicated aide, and to provide behavior support services (“BSS”), (4) compensatory education services, (5) the right to request additional compensatory education upon completion of the aforementioned evaluations, (6) that all meetings shall be convened through counsel for the parent, and (7) attorneys’ fees and costs.

On July 11, 2025, DCPS filed its *Response* to the *Complaint* denying that it had denied Student a FAPE. DCPS asserted, *inter alia*, that in response to a request from Petitioner’s counsel on or about December 3, 2024, DCPS conducted an Analysis of Existing Data (“AED”) meeting on January 13, 2025 meeting. On or about January 27, 2025, DCPS sent Petitioner a consent to evaluate, a Prior Written Notice, a draft IEP and, the AED document<sup>2</sup> The IEP meeting date was confirmed with all parties’ availability on or about February 3, 2025. Thereafter, DCPS conducted an IEP meeting on March 7, 2025. DCPS completed a timely, comprehensive, and appropriate S/L evaluation in March 2025. Since November 19, 2024, DCPS has sent multiple records to Petitioner and/or her counsel through July 10, 2025. The documents include approximately up to or exceeding 30-40 student records including multiple service records from related service providers and report cards.

The parties conducted a resolution meeting on July 14, 2025 that did not result in a settlement. A prehearing conference in this case took place by video conference on July 29, 2025 and the *Prehearing Order* was issued that day.

The due process hearing was conducted on September 24-25, 2025 by video conference facilities. The hearing was open to the public at Petitioner’s request. Petitioner filed Five-day Disclosures on September 17, 2025, containing a witness list of four witnesses, and 73 documents- Petitioner filed revised Disclosures on September 23, 2025 at the hearing officer’s request. Petitioner’s Exhibits P1-P12, P14-P31, 33, 43, 45, 47-49, 52-68, and 71-73 were admitted into evidence.

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<sup>2</sup> During the prehearing conference, Respondent’s counsel reported that DCPS completed OT and psychological evaluations in March 2025.

Respondent also filed Disclosures dated September 17, 2025, containing a witness list of 8 witnesses and 49 documents. Petitioner did not file objections to DCPS' disclosures. Respondent's Exhibits R2-R13, R15-R20, R26-R43, and R45-R49 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A, Father, Petitioner, and Witness B. Witness A was admitted as expert in speech and language therapy ("SLP") and Witness B was admitted as an expert in special education. Respondent presented as witnesses in chronological order: Witness C, Witness D, Witness E, Witness F, and Witness G. Witness D was admitted as an expert in school psychology, Witness F was admitted as an expert in OT, and Witness G was admitted as an expert in special education. At the conclusion of testimony, the parties' counsel provided oral closing arguments.

## ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on November 7, 2023. Specifically, Petitioner asserts that the IEP (a) did not provide appropriate Adaptive/Daily Living Skills goals and/or Present Levels of Academic Performance ("PLOPs"), (b) did not provide appropriate S/L goals and/or PLOPs, (c) did not provide behavior support interventions (no behavior support services ("BSS") and/or a behavior intervention plan ("BIP")), and (d) failed to include a dedicated aide despite the student's elopement issues and crucial need for hand-to-hand transfer during the school day.
2. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on September 30, 2024. Specifically, Petitioner asserts that the IEP (a) did not provide appropriate Adaptive/Daily Living Skills goals and/or PLOPs, (b) did not provide appropriate S/L goals and/or PLOPs, (c) did not provide behavior support interventions, no BSS and/or a BIP, and (d) failed to include a dedicated aide despite Student's elopement issues and crucial need for hand-to-hand transfer during the school day.
3. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on November 6, 2024. Specifically, Petitioner asserts that the Student's previous IEP expired as of that date.
4. Whether DCPS denied Student a FAPE by failing to conduct a triennial evaluation during the 2023-24 school year. Petitioner asserts that DCPS did not reevaluate Student after initial evaluations were conducted in April 2021 until Petitioner requested evaluations on or about December 3, 2024. Thereafter, DCPS convened an Analysis of Existing Data (AED") meeting and agreed to conduct OT, S/L, psychological, and an FBA, but it failed to conduct the FBA.

5. Whether DCPS denied Student a FAPE by failing to conduct an appropriate S/L evaluation on March 7, 2025. Petitioner asserts that DCPS failed to conduct necessary subtests.
6. Whether DCPS denied Student a FAPE by failing to implement Student's November 14, 2022 and November 7, 2023 IEPs. Specifically, Petitioner asserts that during the 2023-24 school year, Student was entitled to receive a total of 40 hours of SLP services as well as 40 hours of OT related services. Student's service trackers show that s/he received approximately 9 hours of OT and approximately 20 hours of SLP up until January 2024. Student missed half of his/her SLP services (20 hours) amounting to approximately 50% of missed services. In the same manner, Student missed approximately 31 hours of OT, amounting to approximately 77% of missed services.
7. Whether DCPS denied Student a FAPE by failing to implement Student's November 7, 2023 and September 30, 2024 IEPs during the 2024-25 school year. Service trackers provided by DCPS reveal that Student did not receive all of the SLP and OT services to which s/he was entitled.
8. Whether DCPS denied Student a FAPE by failing to provide Petitioner complete access to Student's educational records as requested on November 26, 2024.<sup>3</sup>

#### **FINDINGS OF FACT<sup>4</sup>**

1. Student is an X-year-old student who was in grade H at School A during the 2024-25 school year and was eligible for special education services with a classification of Autism Spectrum Disorder ("ASD").<sup>5</sup>

2. On April 28, 2021, when Student was X-months old, Examiner A of Facility A completed a Developmental Evaluation of Student. Petitioner solicited the evaluation out of concerns for language development, social skills, and behavior regulation, as well as specific concerns for autism spectrum disorder.<sup>6</sup> Examiner A administered the Bayley Scales of Infant and Toddler Development, the Autism Diagnostic Observation Schedule, Toddler Module ("ADOS-2"), and the Autism Diagnostic Interview Revised ("ADI-R"). Student's gross motor skills were functional for daily living. Her/his fine motor/play skills were 8 to 11 months delayed but s/he completed one puzzle approaching age level appropriateness. Her/his overall language skills were more than 14-months delayed and social foundations for language were reduced and atypical. Socially, Student displayed significantly reduced social interest and engagement. S/he

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<sup>3</sup> During the prehearing conference, Petitioner's counsel reported that Petitioner still had not received service trackers for the 2024-25 school year and incident reports for the 2023-24 and 2024-35 school years. The Response also asserts that a S/L evaluation was conducted in March 2025.

<sup>4</sup> The Findings of Fact includes all of the oral and written evidence that I considered material in rendering the decision in this matter. The quotations of oral testimony are from my notes during the hearing, not the transcript.

<sup>5</sup> Petitioner's Exhibit ("P.") 12 at page 1. The exhibit number is followed by the exhibit page number and the digital page number in parentheses, i.e., P12:1 (187).

<sup>6</sup> P4:1 (39).

demonstrated difficulties with transitions and changes in routines. Student exhibited delayed language abilities, social communication difficulties, limited social interest and engagement, and exhibited restricted and repetitive behaviors. Examiner A concluded that Student met the clinical criteria for a diagnosis of ASD.<sup>7</sup>

Children with ASD frequently exhibit poor frustration tolerance, cognitive rigidity, and impairments in the development of reciprocal social interaction associated with impairments in verbal communication skills. They are prone to difficulties with language development (particularly expressive language) and, as they mature, difficulties correctly implementing language in social contexts.

The standard of care for children diagnosed with autism spectrum disorder includes speech therapy, occupational therapy, and applied behavior analysis (ABA). [Student] currently receives weekly virtual speech therapy and twice monthly virtual occupational therapy through [Facility B]. Based on [her/his] performance and [her/his] parents' reports of [his/her] current functioning, more intensive intervention services are medically necessary including intensive ABA therapy (15-20 hours per week) and feeding therapy, in addition to continued speech and occupational therapies.<sup>8</sup>

3. On November 24, 2021, when Student was in grade M at Facility C, DCPS developed an initial IEP. Student had a classification of ASD.<sup>9</sup> The Consideration of Special Factors reported that Student's behavior did not impede her/his learning or that of others, but his/her receptive and expressive language delays affected his/her communication skills in the classroom. Student required supports to follow directions, comprehend language concepts, and express his/her wants and needs. The Assistive Technology ("A/T") section indicated that Student would benefit from access to low tech A/T such as picture cues to assist with her/his ability to express her/his wants and needs throughout the day.<sup>10</sup> The IEP included Areas of Concern in Adaptive/Daily Living Skills ("ADLs"), Cognitive, Communication/Speech and Language ("Communication"), and Motor Skills/Physical Development ("Motor"). The IEP team prescribed 25.5 hours per week of specialized instruction outside general education, four hours per month each of speech language pathology ("SLP") services and OT services outside general education, and a number of Other Classroom Aids and Services.<sup>11</sup>

4. On December 7, 2021, DCPS issued a Prior Written Notice indicating that upon having received Petitioner's consent for services, it would begin providing services to Student.

5. On November 14, 2022, when Student was in grade Q in School A, DCPS conducted an IEP Annual Review meeting.<sup>12</sup> The Consideration of Special Factors section was amended only in the A/T section to indicate the need for an A/T consultation to determine if Student could benefit from additional A/T. Student did not use oral language to communicate,

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<sup>7</sup> *Id.* at 3 (41).

<sup>8</sup> *Id.* at 4 (42).

<sup>9</sup> P8:1 (87).

<sup>10</sup> *Id.* at 3 (89).

<sup>11</sup> *Id.* at 13 (99).

<sup>12</sup> P9:1 (104).

“which impacts [his/her] ability to have [his/her] wants and needs met, answer curriculum-related WH questions, make requests and comments and fully participate across all school environments.”<sup>13</sup> The ADLs PLOP reported that Student was in an Early Learning Support (“ELS”) classroom.<sup>14</sup> Student could not yet use language to articulate and express her/his thoughts and needs or use language to engage in simple conversations with her/his friends or teachers. Student was able to listen to and understand simple language and to understand and follow one step directions. S/he could easily lose focus in classroom activities and needed prompting to remain on-task. Student’s attention span was reported to have improved over the past year: “[s/he] is able to attend to morning meeting with fewer prompts and stay in a designated seat for breakfast, snack, lunch, and small group instruction.” Student was not potty trained and did not indicate the need to use the restroom or be changed when soiled. S/he walked independently and demonstrated age-appropriate strength and coordination to perform daily gross and fine motor and classroom tasks: using scissors, opening containers, writing, etc. Student was able to undress her/himself and put on her/his shoes and socks independently. The goals were: (a) Given visual cues and support, Student will transition appropriately between routine classroom activities with no more than one verbal prompt, (b) to increase peer engagement, Student will sustain positive interactions (e.g., looks at the same book; takes turns during a game; works together on block structure or floor puzzle; shares toys/objects) with one or two children with no more than one adult prompt, and (c) given a consistent toileting routine and appropriate communication supports, Student will use verbal, gestural, or pictorial communication methods to purposefully indicate to an adult when s/he has a wet or soiled diaper and needs to be changed.<sup>15</sup>

In Cognitive, the PLOP reported that Student had knowledge of knowledge of letters and numbers; s/he was able to count to 20, 10 objects, identify colors and shapes, and complete puzzles. Student was able to grip writing tools with his/her whole hand and use whole-arm movements to make marks. S/he was beginning to draw with increasing detail. Student did not engage in sociodramatic play in the classroom or respond to “read alouds” but enjoyed looking at books and engaging with familiar books; s/he turned the pages correctly and oriented the book accurately. Student did not have at least one preferred playmate but would sometimes play with his/her peers but preferred to explore and play alone in the classroom. The goals were: (a) Student will demonstrate improved safety awareness by responding when an adult calls his/her name or provides familiar instructions across all environments by looking to the speaker and complying with the command, given no more than one repetition, (b) given visual cues and support, s/he will comply with routine classroom directions related to instructional tasks (i.e., pick up the book; put the block in the box) with no more than one verbal prompt, (c) given classroom supports, Student will demonstrate improved attending skills by actively participating in tasks for a period of ten minutes during whole-group activities with no more than one verbal or gestural prompt, and (d) given adult demonstrations and prompting, Student will display functional or appropriate play with a variety of toys, using at least three toys for their intended purpose (i.e., serving toys foods to a

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<sup>13</sup> *Id.* at 2 (105).

<sup>14</sup> The ELS program provides full-time, early intervention for students with developmental delays or other health impairments. *Special Education Programs & Resources Guide for Families – School Year 2021-2022*, DCPS <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Special%20Education%20Family%20Guide%20SY21-22.pdf>

<sup>15</sup> *Id.* at 3-4 (106-7).

doll, pushing a train across railroad tracks, etc.) in a variety of settings (i.e., housekeeping, transportation, etc.).<sup>16</sup>

In Communication, the PLOP reported that Student had identified items by their color in 10/10 opportunities and size in (big versus small) after initial teaching/reminders in 4/5 opportunities. S/he did not yet consistently use speech independently to communicate wants and needs. Student required hand-over-hand assistance to request “more” and “my turn” but needed only partial prompting this quarter. Given a choice of two, and after multiple examples, and given 1-2 verbal prompts, [Student] demonstrated the ability to follow 1-step directions with him/her pronouns in 4/5 opportunities. The therapist worked to get Student to use words or sign to communicate “my turn” “two minutes” and “thank you.” S/he required hand over hand support to produce these signs. The goals were: (a) Student will identify by pointing and expressively name (utilizing total communication) age-appropriate vocabulary (i.e. body parts, clothes, food, verbs) when presented with pictures, from a field of three or more, (b) s/he will independently follow novel 1-step direction containing words related to size (big, small, tall, short) and location (i.e. prepositions such as “in” “on” “next to”) concepts, and (c) given just one model, Student will use signs, words, word approximations or pictures to express a variety of pragmatic functions (i.e. ask for assistance, terminate interactions, ask for recurrence, comment, ask/answer questions, etc.) in 8 instances in a 30 minute session/observation period.<sup>17</sup>

In Motor, the PLOP reported that Student demonstrated fine motor precision skills of releasing, grasping, and rotating with a global grasp, for 1-2 step tasks such as sorting manipulatives, using playdough, coloring, with moderate assistance, such as partial physical prompting. S/he was able to copy/imitate vertical lines and circles with some hand over hand assistance but was not able to use scissors. S/he was also able to trace age-appropriate pre-writing strokes with moderate deviation from the lines with hand over hand assistance. Student performs fine motor functions such as alternating hands with moderate assistance. During OT sessions, Student was able to attend to tasks for up to half the session when given alternative seating and some verbal cues. The PLOP reported that Student was administered OT and S/L evaluations in 2020 and 2021. The goals were: (a) Provided multi-sensory strategies, Student will demonstrate an effective calming or alerting response to support participation in 4 out of 5 daily classroom activities (i.e. engage in imitative and/or reciprocal play, remain in designated area, transition from preferred activity, follow class routines, etc.), (b) provided demonstration, and verbal and physical prompts, Student will hold a crayon with a functional grasp to complete art and/or drawing activities incorporating pre-writing forms (imitating straight lines, circle) with accurate slant and closure, and (c) provided demonstration and minimal verbal and/or physical prompts, s/he will coordinate both hands to use a variety of classroom materials while completing 4 out of 5 play activities (i.e. cap/uncap marker, open/close assorted containers to store objects, string 3 beads, manipulate play dough with tools, etc.).<sup>18</sup>

The IEP did not change Student’s services from the previous IEP. Other Classroom Aids and Services included access to picture cues as needed, core boards, and visuals. Sensory-based supports (i.e. calm down space, targeted movement breaks, structured tactile exploration, use of

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<sup>16</sup> *Id.* at 4-6 (107-9.)

<sup>17</sup> *Id.* at 6-7 (109-10).

<sup>18</sup> *Id.* at 7-9 (110-12).

headphones, deep pressure experiences through natural play, positioning away from distracting visual/auditory stimuli, etc.) should be provided proactively and incorporated throughout Student's day. Utilization of support cues such as visual schedules, timers, and advanced warnings to support learning and responding. Use social stories to assist with peer interactions. Use a "First \_\_\_, then \_\_\_" approach to support compliance with tasks.<sup>19</sup>

6. On June 22, 2023, DCPS issued Student's IEP Progress Report for the fourth reporting period. In ADLs, Student was reported to have Mastered the first goal (transitioning) and the second goal (increasing peer engagement), but had made No Progress on the third, relating to toileting. "[Student] still does not show awareness and communicate/indicate to an adult when [s/he] has a wet or soiled diaper and needs to be changed. [S/he] will however, void in the toilet when asked to do so, but will not indicate when [s/he] was wet." In Cognitive, Student was reported to be Progressing on the first goal, demonstrating safety awareness, and had Mastered the other three goals. In Communication, Student was reported to be Progressing on all three goals: "Given multiple learning opportunities and a choice of three, [Student] has demonstrated the ability to identify colors in 6/6 opportunities, shapes in 6/6 opportunities, farm animals in 8/10 opportunities, body parts in 10/15 opportunities... [Student] follows directions with "big/small" with 60% accuracy. [S/he] requires max support to follow directions with "in," "next to" and "under." ... During the month of June, continued to show that after teaching and given a choice two, [s/he] will follow directions with in, next to, and under with varying accuracy (50-70%)... [Student] continues to require hand-over-hand assistance to use sign or core-board to request "more" and "my turn" "all done" "help" and "open" but needs only partial prompting... During the month of June, [Student] demonstrated that [her/his] language has developed since I went on leave! Given a picture sentence starter and initial models, [Student] demonstrated the ability to use 2-3 word phrases (e.g. I want \_\_, my turn, more please) to meet [her/his] wants and needs in at least 10 instances throughout a 30-minute session. [S/he] needs fewer and fewer models." In Motor, Student was reported to be Progressing on all three goals: "Currently, [Student] is able to transition to the OT space with minimal difficulties. [S/he] is able to participate in the session with moderate verbal cues to attend and to stay in [his/her] assigned area. This quarter, [Student] has shown progress with completing an activity in its entirety before eloping from the table. [Student] demonstrates minimal difficulties with transitioning from non-preferred activities. [Student] benefits from verbal and visual warnings before a preferred activity to assist with an ease of transitions. Currently, [Student] holds writing and coloring utensils with a 3-4 finger grasp. At times, [s/he] requires assistance to adjust [her/his] grasp. [Student] benefits from using short writing and coloring utensils to assist with a functional grasp. [Student] is able to imitate and trace age appropriate prewriting strokes... [S/he] is able to open and manipulate packages at snack time with minimal difficulties. [Student] requires some assistance with twisting the tops off of drinks. [Student] will become upset if [s/he] cannot open a container and [s/he] will need verbal cues to calm [her/him] down."<sup>20</sup>

7. On November 14, 2023, DCPS issued Student's IEP Progress Report for the reporting period ending November 3, 2023. In ADLs, it was reported that goals in toileting, transitioning, and initiating social interaction were Not Introduced. The three Communication goals were Just Introduced. Student was reported to be Progressing on the Motor goal relating to

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<sup>19</sup> *Id.* at 10 (113).

<sup>20</sup> P20:1-7 (322-28).

functional grasp, but the other two goals were Just Introduced. The Cognitive goal was Not Introduced.<sup>21</sup>

8. On November 7, 2023, when Student was in grade Q at School A, DCPS conducted an IEP Annual Review meeting.<sup>22</sup> The A/T section of Special Considerations provided that Student benefitted from a core-based augmentative and alternative communication (“AAC”) system.<sup>23</sup> The ADLs PLOP was largely unchanged from the previous IEP other than to report that Student will repeat language when asked and will sing spontaneously. The goals were the first (transitioning) and third (toileting) goals from the previous IEP, and in three different settings, Student will initiate social interaction with a peer using a verbal or non-verbal cue.<sup>24</sup> In Communication, The PLOP reported that Student was able to complete tasks and target goals when provided with maximal levels of redirection. S/he used gestures, AAC, and some spoken language to express his/her thoughts, ideas, and responses. Student enjoyed interacting with her/his peers. S/he also showed strength in the area of receptive language by his/her ability to identify basic foods, animals, and colors. Student followed simple one-step directions when provided with maximal levels of support. S/he needed models to use spoken language appropriately and effectively to communicate with others. S/he also required support to identify higher level objects/actions and to follow novel directions. However, Student had severe difficulty formulating cohesive and coherent 1-2 word phrases, requesting, and following basic 1- step directions independently. The goals were: (a) the second goal from the previous IEP (following one-step directions), and (b) given a common object, noun, or action, Student will expressively name (utilizing total communication) items/objects in a picture/story/video.<sup>25</sup> In Motor, the PLOP was largely unchanged from the previous IEP. It was reported that Student would ask adults for assistance with food or containers if s/he needed help opening packages. The goals were: (a) after having engaged in sensory-motor activities and practiced copying and tracing models, and when given a drawing utensil and paper, Student will independently draw lines and shapes that closely resemble vertical, horizontal, crossed vertical and horizontal lines and circles, with no more than 2 verbal cues for correction, and (b) and (c) the first (calming and alerting) and second (functional grip) goals from the previous IEP.<sup>26</sup> In Cognitive, the PLOP was largely unchanged from the previous IEP but noted that Student had begun to engage in sociodramatic play with his/her peers. The goal was: given a real-world connection to a target word, a shared reading of an illustrated literary story excerpt containing the target word, and a verbal question to elicit the target word (e.g., "What is this character doing?"), xx.<sup>27</sup>

The Services page did not list any services.<sup>28</sup> The Least Restrictive Environment section indicated that Student would be in inside general education 100% of the week.<sup>29</sup>

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<sup>21</sup> P21:1-3 (330-32).

<sup>22</sup> P10:1 (118).

<sup>23</sup> *Id.* at 3 (120).

<sup>24</sup> *Id.* at 4-6, 20 (121-23, 137)

<sup>25</sup> *Id.* at 8 and 14 (125, 131).

<sup>26</sup> *Id.* at 10, 16 , and 18 (127, 133, and 135).

<sup>27</sup> *Id.* at 22 (139).

<sup>28</sup> *Id.* at 24 (141).

<sup>29</sup> *Id.* at 25 (142).

9. During the 2023-24 school year, Student was entitled to receive four hours per month of OT services. S/he received no services during the last week of August 2024. In September, s/he received one hour of services with no reported absences. In October, s/he received two hours with one reported absence. In November, s/he received two hours with no reported absences. In December, with only three school weeks, s/he received one hour with one reported absence. In January and February, s/he received one hour in each month with no reported absences. Student received no services in March, April (three school weeks), May, or June (two school weeks), with one absence reported in May and one in June. Therefore, during the 2023-24 school year, DCPS failed to provide Student 25 of the 37 hours of OT services to which s/he was entitled.<sup>30</sup>

10. During the 2023-24 school year, Student was also entitled to receive 37 hours per month of speech and language services. S/he received 28 hours of services and was absent on five days (October 4, December 13, January 17, May 15, and June 5) on which one hour of services was scheduled. Therefore, Student was deprived of four of the 37 hours of speech and language services to which s/he was entitled.<sup>31</sup>

11. On September 19, 2024, when Student was in grade H at School A, Student's beginning of the year ("BOY") i-Ready Math assessment score of 344 placed her/him at the Emerging grade H level, one grade his/her below grade level. S/he was at grade level on the Numbers and Operations subtest.<sup>32</sup> On September 20, 2024, Student's BOY i-Ready Reading score of 305 also placed her/him at the Emerging grade H level.<sup>33</sup>

12. On September 30, 2024, DCPS issued an IEP Amendment to address the "IEP system error" that resulted in the original IEP not including Student's services. The services added to the IEP were identical to the 2021 and 2022 IEPs.<sup>34</sup>

13. On November 22, 2024, DCPS issued Student's IEP Progress Report for the period ending November 4, 2024. In ADLs, Student was reported to have Mastered the toileting goal and Progressing on the transitioning goal. "[Student] has shown [s/he] can independently use the bathroom and typically remain accident free in 85% of opportunities. [Student] has shown a lot of growth in her/his ability to comfortably transition throughout her/his daily schedule. [S/he] initially was exhibiting crying, screaming, and/or refusal to move by pulling back or pulling away when we were transitioning outside the classroom. Once [Student] developed an understanding and a comfort level for the schedule, [s/he] became much calmer and had an awareness of what we were doing/where we were going... [Student] is currently able to manage in classroom and throughout school transitions with one verbal prompt or less in 50% of transitions." In Communication, Student was reported to be Progressing on all three goals: "[Student] is progressing in expressively naming common objects, nouns, and actions using a total communication approach (verbal responses, gestures, or visuals) in structured activities. With

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<sup>30</sup> R39:239-250. Student was entitled to one hour of services for each school week during each month less each day of a reported absence. There were seven months with four school weeks, two months with three (December and April), one month with two (June), and one month with one (August). Thus, Student was entitled to a total of 37 hours of OT services.

<sup>31</sup> *Id.* at 251-284.

<sup>32</sup> P54:1 (484).

<sup>33</sup> P55:1 (487).

<sup>34</sup> P11:25 (177).

maximal supports, [s/he] currently names items accurately in 4/10 trials, showing improved engagement when visuals and verbal repetitions are provided. [His/her] attention remains variable, but familiar pictures and stories help [him/her] focus better. Visual models and repetition continue to help increase [her/his] response accuracy.... [Student] is beginning to use 2-3 word phrases to comment, describe, and answer questions about objects and pictures in structured activities. Using a total communication approach, [s/he] requires maximum prompts and models to produce 2-3 word utterances consistently. With this level of support, [s/he] can respond in 3/10 trials. [Student] responds well to picture cards, and [s/he] may benefit from an AAC (Augmentative and Alternative Communication) system to support [her/his] expressive language skills. Visual supports and repetition continue to aid [her/his] progress... [Student] is making progress with following 1-step directions that include size and location words, such as “big” and “in,” but has not yet begun following 2-step directions independently. [His/her] attention can impact the consistency of [her/his] responses, requiring models and support to maintain focus. With visual aids and verbal repetitions, [s/he] currently follows 1-step directions accurately in about 4/10 trials.” In Motor, Student was reported to have Mastered the goal of drawing lines and shapes as well as the functional grasp goal. In Cognitive, Student was reported to be Progressing on the goal of responding to a question about a story: “[Student] will repeat a correct response, especially when [s/he] hears a peer do it. [S/he] has only been able to answer questions verbally for books read multiple times and that occurs for 1 in 3 questions asked. During other readings of familiar books, [Student] typically does not answer questions but can choose a choice response card in 2 out of 4 opportunities.”<sup>35</sup>

14. Petitioner’s counsel made a written request for Student’s educational records on November 26, 2024.<sup>36</sup>

15. On December 3, 2024, Petitioner’s counsel sent a letter to Witness C, the Principal of School A, requesting that DCPS conduct a comprehensive psychological evaluation, including cognitive, adaptive, educational, and social/emotional assessments.<sup>37</sup>

16. During 2024, DCPS first invited Petitioner to an IEP meeting on December 30, 2024, when it proposed a meeting date of January 8, 2025. The meeting was rescheduled to January 30, 2025. The first updated draft IEP was sent to Petitioner and her attorneys on January 27, 2025. Petitioner was not available for the meeting on January 30, 2025.<sup>38</sup>

17. On January 13, 2025, DCPS conducted an Analysis of Existing Data (“AED”) meeting. The multidisciplinary team (“MDT”) determined that DCPS would conduct psychological, occupational therapy, and speech and language evaluations.<sup>39</sup>

18. On March 5, 2025, Witness F completed an Occupational Therapy Evaluation of Student. The IEP team ordered the evaluation due to fine motor, visual motor, and sensory processing concerns.<sup>40</sup> Teacher A, Student’s special education teacher, reported that Student’s

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<sup>35</sup> P25:1-4 (350-53).

<sup>36</sup> P64:1 (517).

<sup>37</sup> P65:1 (522).

<sup>38</sup> R45:322.

<sup>39</sup> R16:113; R12:91.

<sup>40</sup> P5:1 (44).

writing is legible when s/he is using a visual model, can copy a single sentence, and can write her/his name. She also reported that Student is independent in some self-care activities including toileting and hand-washing; at times, s/he needs help with her/his backpack and jacket. Student requires verbal prompts to follow directions. S/he has gotten “a lot better with transitions. [S/he] has shown a decrease in screaming and crying. New transitions can be difficult.”<sup>41</sup> Student’s fine motor skills were assessed with the School Fine Motor Assessment (“Schoodles”). In Letter and Number Identification, Student pointed to the letters and numbers correctly when asked. There were times when Student pointed to multiple letters when asked to point to a specific letter. Student used a right hand functional dynamic grasp on writing and coloring utensils and demonstrated age-appropriate tracing skills; s/he was able to trace between straight lines, wavy lines and zig zag lines with minimal to moderate deviation outside of the lines. Student was able to copy a vertical line, horizontal line, circle, cross, square and a wavy line. When asked to draw a person, s/he was able to complete this task. Student could copy the upper- and lower-case letters of the alphabet legibly from a visual model, write his/her first name from memory, and copy his/her first and last name from a visual model legibly. Student could color inside of basic shapes and pictures with some deviating from the border. S/he demonstrated age-appropriate cutting skills; s/he held scissors with proper scissor orientation when given minimal verbal cues and a visual demonstration and cut along a straight line and cut out a circle with minimal deviation from the lines.<sup>42</sup> The Sensory Processing Measure 2 (“SPM-2”) was administered to measure Student’s ability to organize and interpret information from the environment to produce an appropriate response and interact within the environment. Teacher A completed rating scales. Her responses yielded scores in the Severe Difficulties range in Social Participation, Vision, Hearing, and Touch, and in the Moderate Difficulties range in Taste and Smell, Body Awareness, Balance and Motion, and Planning and Ideas, with a Total Sensory Systems score in the Severe Difficulties range. “[Student] may become distracted when [s/he] sees certain people, [s/he] may leave answers blank on a busy worksheet despite knowing the answer, etc... [Student] may demonstrate difficulties with multi step tasks, difficulties keeping [her/his] workspace organized and [s/he] may need an extended amount of time to complete tasks. Overall, [Student’s] sensory total score was in the severe difficulties range. [Student’s] difficulties in the above-mentioned areas play a role in [her/his] ability to focus and pay attention in the academic setting which may cause [her/him] to miss instruction from academic instructors.”<sup>43</sup>

Student’s muscle tone was within functional limits, demonstrated “fair” postural control with the ability to sit upright with both feet on the ground, demonstrated age-appropriate muscle strength, a full range of motion, and was able to navigate the school and play area with one on one support; s/he could follow directions with moderate redirection and sequencing.<sup>44</sup> Student uses a functional right hand tripod grasp on writing/coloring utensils and can manipulate writing tools without difficulty. S/he holds scissors properly with minimal verbal cues for correction. S/he is independent with feeding and manipulating clothing fasteners. Student demonstrates functional bilateral coordination skills. S/he can stabilize paper with his/her non- dominant hand when given 1-2 physical prompts. S/he can manipulate and open containers with minimal difficulty and transfer small items from one hand to another. S/he was able to track a highlighter with her/his

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<sup>41</sup> *Id.* at 3-4 (46-47).

<sup>42</sup> *Id.* at 5-6 (47-48).

<sup>43</sup> *Id.* at 6-7 (49-50).

<sup>44</sup> *Id.* at 8 (51).

eyes and head in each direction with slow movements. Student can cut out basic shapes such as a circle, toss and catch a ball and color a picture with minimal to moderate deviation from the lines. S/he demonstrates some difficulties with visual perceptual skills such as figure ground skills. S/he has difficulties locating objects from a messy background and needs verbal directions and visual cues to assist with these tasks. Her/his writing samples are legible when given a visual model and can copy upper- and lower-case letters A-Z. His/her writing demonstrates proper letter formation the majority of the time. Student's sensory processing skills are within the severe difficulties performance range in the educational environment. S/he would benefit from alternative seating options, frequent breaks, and clear visual schedules.<sup>45</sup> Witness F reached the following overall conclusions:

Difficulties with manual dexterity will impact classroom activities such as assembling objects/materials for projects. Difficulties with general visual perceptual skills will impact classroom activities such as recognizing letters or numbers when tracing or identifying letters. [S/he] may also demonstrate some difficulties with locating objects and materials needed for activities and assignments. Difficulties with sensory processing will impact [Student's] ability to maintain attention to academic instruction and focus on tasks. [Student] often misses instruction due to difficulties with sensory processing.<sup>46</sup>

Witness F's recommendations included the following: Preferential seating, alternative seating options such as using a wiggle seat, wobble cushion, standing during some assignments, additional time to complete classroom-based tasks, frequent movement breaks, opportunities to gather materials needed for activities and assignments such as running books to the library, performing jobs for the teacher, place items in various locations during daily tasks, multi-sensory instructions and check for understanding prior to task initiation, clear and concise verbal instructions paired with visual directions and demonstrations, and various visual supports such as a visual schedule and a visual timer.<sup>47</sup>

19. On March 7, 2025, Examiner B completed a Speech & Language Reevaluation Report of Student for DCPS as part of her/his triennial review.<sup>48</sup> Teacher A, Student's special education teacher, reported that Student had a stronger understanding of math than the i-Ready data reflected and that s/he was working on more complex skills than recommended by the iReady report. In Reading, Student struggled with timed assessments and did better when not timed. Teacher A noted that s/he was creative and innovative in the classroom. Teacher B, the general education teacher, commented that Student had been making progress in joining his/her peers for morning meetings. S/he was able to stay seated and participate in morning meetings, engaged with peers, and answered questions with a "yes" and "no."<sup>49</sup> Examiner B observed that Student's hearing "should not impact [her/his] speech or language abilities in the classroom or at home." Student's articulation was measured using the Goldman Fristoe Test of Articulation ("GFTA-3"). Standard scores were not obtained because of Student's reluctance to repeat names or label pictures

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<sup>45</sup> *Id.* at 8-9 (51-52).

<sup>46</sup> *Id.* at 12 (55).

<sup>47</sup> *Id.*

<sup>48</sup> P6:1 (58).

<sup>49</sup> *Id.* at 2 (59).

as required. Informally, Examiner B found that Student “appeared to produce all age-appropriate sounds in English at the sentence and conversational levels. Given [her/his] articulation skills, [s/he] should be able to clearly communicate [her/his] wants and needs to classmates and adults across all settings. There should be no negative academic impact.”<sup>50</sup> Student’s voice was “functional,” indicating that there was no negative academic impact from her/his vocal quality. “[S/he] could communicate his/her thoughts and ideas without the presence of repetitions, prolongation, or hesitations. [S/he] was not observed to display any stuttering episodes according to this examiner.”<sup>51</sup> Student’s receptive and expressive vocabulary could not be measured due to his/her refusal to cooperate.<sup>52</sup> Examiner B found Student’s social language skills to be atypical of his/her peers; s/he inconsistently speaks when addressed, says please and thank you, or makes eye contact with familiar peers and adults.<sup>53</sup>

Examiner B noted that in order for a student to meet eligibility requirements for a student with a Speech Language Impairment within the DCPS, s/he must present with the following: 1) demonstrate a disabling oral communication disorder and 2) that disorder must negatively impact that student’s ability to access or gain benefit from the general education curriculum. While Examiner B deferred to the Multi-Disciplinary Team (“MDT”) the final determination of eligibility, “Given the data from this evaluation, [Student’s] oral language functioning does not appear to be a reason for educational struggle... [Student] presents with functional communication skills that do not indicate a disabling communication disorder.”<sup>54</sup>

20. On March 7, 2025. Witness D completed a Psychological Reevaluation of Student as part of a triennial review.<sup>55</sup> Teacher A, Student’s special education teacher, reported that Student demonstrates very limited verbal communication compared to his/her peers. S/he typically uses single words or basic phrases such as “yes,” “no,” or “yes, I do.” His/her listening comprehension was also reported as limited. Student does not always understand what is being asked of him/her as is evident through slow or absent reactions, changes in behavior, or a lack of response altogether. In reading, Teacher A reported that Student can visually recognize and identify letters and has some ability to determine their corresponding sounds, including listening for sounds in spoken words. However, s/he has not yet demonstrated the ability to read words by sounding them out or recognizing them on sight. His/her math skills were reported to be inconsistent. While s/he demonstrates a variety of math abilities when interested and engaged, her/his performance varies across different settings, modalities, and even from day to day. In writing, Student holds a pencil correctly and can write both uppercase and lowercase letters. S/he is beginning to sound out and write letters for basic words. While s/he has some understanding of punctuation, such as periods and question marks, s/he has not yet developed a strong awareness of capitalization rules and their purposes. Student often struggles to maintain attention during academic tasks and can become distracted by his/her own interests rather than focusing on the lesson. S/he frequently needs repeated reminders to stay on task and complete assignments as initially explained. Transitions pose a challenge for Student; within the classroom, s/he has difficulty cleaning up, often yelling “no” when asked to do so and requiring multiple reminders. During transitions throughout the

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<sup>50</sup> *Id.* at 3 (60).

<sup>51</sup> *Id.* at 3-4 (60-61).

<sup>52</sup> *Id.* at 4-5 (61-62).

<sup>53</sup> *Id.* at 6 (63).

<sup>54</sup> *Id.* at 7 (640).

<sup>55</sup> P7:1 (67).

school building, especially when leaving the playground, s/he may refuse to move, resist holding an adult's hand, and sometimes cry or yell. In extreme cases, s/he may physically resist by pulling away or planting her/his feet to avoid movement. Student also experiences difficulty in the general education classroom, particularly during morning meetings and specials. S/he is easily distracted by off-task behaviors exhibited by peers and frequently imitates behaviors such as yelling, vocalizing loudly, or rolling on the floor.<sup>56</sup>

On the Wechsler Preschool and Primary Scale of Intelligence (“WPPSI-IV”), Student’s score of 70 on the Nonverbal Index, a measure of general intellectual functioning, was in the Borderline range.<sup>57</sup> Student’s ability to carry out daily living skills was measured on the Vineland Adaptive Behavior Scales. Rating scales were provided to Student’s parents and Teacher A; only Teacher A submitted completed ratings. Student’s adaptive functioning fell significantly below age expectations. His/her overall adaptive behavior was notably delayed, with significant weaknesses in communication, daily living skills, and socialization. In Communication, which evaluates the ability to understand, express, and exchange information through verbal and written means, Student demonstrated considerable difficulty. His/her performance suggests that s/he struggles with both receptive and expressive language skills in comparison to his/her peers. Socially, Student struggled with interpersonal interactions, play and leisure activities, and coping strategies in social settings. These difficulties may impact her/his ability to form and maintain relationships with peers and adults. Conversely, Student’s abilities in gross and fine motor tasks were age appropriate.<sup>58</sup>

Teacher A was also the only contributor to the Behavior Assessment System for Children (“BASC-3”), which measures problem behaviors. Student’s externalizing and internalizing behaviors at school were in normal range. However, behavioral symptoms indicate some areas of concern. S/he occasionally engages in behaviors that may seem unusual or disconnected from his/her surroundings, and s/he tends to withdraw socially, preferring to be alone and struggling to form peer connections or engage in group activities. His/her ability to maintain attention in class is also an area of difficulty. Student’s adaptive skills are significantly delayed, impacting her/his ability to navigate social and academic expectations effectively.<sup>59</sup>

Witness D concluded that Student remained eligible for services with an ASD classification.<sup>60</sup>

21. At the IEP meeting on March 7, 2025, the parties discussed the safety plan that was developed in October 2024 to address Student’s elopements. “[Teacher A] said the plan has been implemented and is proving to be helpful for [Student]. There have been no further incidents of elopement from the building or assigned location. The IEP team agreed that the drafted safety plan is appropriate and will continue to be implemented across the school day.”<sup>61</sup> The IEP team maintained Student’s specialized instruction outside general education at 25.5 hours per week, but

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<sup>56</sup> *Id.* at 2-3 (68-69).

<sup>57</sup> *Id.* at 6-9 (72-75).

<sup>58</sup> *Id.* at 9-10 (75-76).

<sup>59</sup> *Id.* at 10-12 (76-78).

<sup>60</sup> *Id.* at 15 (81).

<sup>61</sup> P14:3 (281).

it reduced both his/her OT and S/L services by one hour per month to three hours. The Other Classroom Aids and Services were unchanged.<sup>62</sup>

22. During the 2024-25 school year, Student was entitled to receive 37 hours of OT services.<sup>63</sup> S/he received 11.5 hours of services and was absent for 1.75 hours of attempted services. Therefore, DCPS failed to provide Student 23.75 of the 37 hours to which s/he was entitled.<sup>64</sup>

23. During the 2024-25 school year, Student was entitled to receive 37 hours of speech and language services.<sup>65</sup> S/he received three hours of services; no absences were documented. Thus, DCPS. Failed to provide Student 34 of the 37 hours to which Student was entitled.<sup>66</sup>

24. Witness A was Petitioner's expert in speech and language pathology. When asked if he had any concerns about Examiner B's March 7, 2025 Speech and Language Reevaluation, she replied that certain assessments in the Reevaluation were not completed due to Student being nonverbal and nonresponsive: the expressive and receptive vocabulary tests and the GTFA-3. Witness A opined that Examiner B should have conducted a "dynamic evaluation." When I asked the name of the dynamic evaluation, Witness A replied that there is no name for it. She also suggested that a Functional Communications Battery and an FCP.<sup>67</sup> Witness A also criticized the lack of adaptive information and no consideration of the need for AAC devices, assuming the evaluator was qualified to evaluate for such a need. She opined that the evaluation was not comprehensive because it lacked an AAC evaluation. Attorney A asked Witness A if the expressive language goal in the November 7, 2023 IEP was appropriate; Witness A opined that it was. Witness A opined that Student required an independent evaluation ("IEE"). On cross-examination, Witness conceded that she had never met or observed Student.<sup>68</sup>

25. Attorney A asked Father what communication he had with School A during the 2024-25 school year. He replied that Student eloped twice during the year; no one told him about the first occurrence until he picked up Student at the end of the day. The second time, Father was notified at home after picking Student up. Father said DCPS developed a safety plan, but it did not work. Student is enrolled at School B for the 2025-26 school year.<sup>69</sup>

26. Attorney A asked Petitioner about the communication with School A staff. She replied that it was good in 2023-24 but not in 2024-25. Petitioner was informed that there was no SLP provider and Student was not receiving services in 2024-25. She received a phone call in November 2025 informing her that Student had eloped from school. School A agreed to develop

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<sup>62</sup> P12:29 (215).

<sup>63</sup> See n. 30, *supra*.

<sup>64</sup> R41:285-299.

<sup>65</sup> See n. 30, *supra*.

<sup>66</sup> R42:301-3.

<sup>67</sup> Witness S did not discuss the Functional Communications Battery or the FCP. My Google search indicates that "The Functional Communications Profile Revised ("FCP-R") allows SLPs and special educators to evaluate and account for some of the unique communication skills in individuals with developmental and acquired delays across a broad age range."

<sup>68</sup> Testimony of Witness A.

<sup>69</sup> Testimony of Father.

a safety plan and ensure that doors were guarded. Petitioner testified that Student eloped a second time; she could not remember when, but it was during recess, and Student was found hiding in a closet in the building. On a third occasion, Student ran from her/his assigned area and jumped into a collection of water within the building.<sup>70</sup>

27. Witness B was Petitioner’s educational advocate. When asked what records that had been requested had not been provided, Witness B identified (a) reports regarding elopements, (b) the safety plan, and (c) related services tracking forms. Witness B testified that the Communication goals on Student’s June 23, 2025 IEP Progress Report confirmed that there was no SLP provider at School A. When asked how DCPS addressed the elopements, Witness B testified that School A was collaborative at first and agreed to conduct an FBA, but no FBA was ever conducted. When asked for her concerns about the September 30, 2024 amended IEP, Witness B testified that in Adaptive, it was confirmed that transitioning was a problem. Witness B conceded that she did not know the class size or the number of staff members in the classroom. When asked why the updated IEP was five months overdue, Witness B conceded that both parties had scheduling conflicts. Witness B opined that in addition to the three evaluations that DCPS conducted in 2025, it should have also conducted an FBA because of Student’s elopements, and his/her transitioning goals has not been mastered over several years. On cross-examination, Witness B conceded that she received a copy of the safety plan.<sup>71</sup> She was unaware if it addressed elopement.<sup>72</sup>

Witness B completed a Compensatory Education Proposal for Student.<sup>73</sup> She proposed, *inter alia*, that Student receive 150 hours of Academic Tutoring Services, 40 hours of SLP services, 30 hours of OT services, 40 hours of Applied Behavior Analysis (“ABA”) therapy, a comprehensive FBA and a developed BIP, a funded independent S/L evaluation, and a dedicated aide.<sup>74</sup>

28. Witness C was the Principal of School A. She testified that Student was in the ELS class at School A. Student’s class had 6-7 students with one teacher and two teacher assistants. ELS classrooms are designed to serve students with needs in communication, behavior, or academics. During “specials,” (Art, Music, Physical Education, etc.) students in the class are accompanied by a teacher’s assistant. Student was nonverbal but responded to receptive language. His/her non-verbal communication was strong; Student was able to show, get, or point to what s/he wanted. Witness C testified that in Student’s first elopement during the 2024-25 school year, during recess one day on November 18, 2024, s/he went through a gate that led to the school’s adjoining building. Adults were there waiting to pick their children at the end of the day; they immediately noticed Student and within 20 seconds returned her/him to the recess area. Witness C testified that Student eloped again on April 3, 2025. After recess, s/he came into the building and ran to the sensory room. Witness C testified that School A started the year with two speech pathologists. One was “removed” in September. On February 20, 2025, School A provided Petitioner authorization to receive eighteen hours of independent speech and language services.<sup>75</sup>

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<sup>70</sup> Testimony of Petitioner.

<sup>71</sup> R46:365.

<sup>72</sup> Testimony of Witness B.

<sup>73</sup> P71:1 (561).d

<sup>74</sup> *Id.* at 7-8 (567-8).

<sup>75</sup> R17(114).

The therapist reported that at the beginning of the year, Student cried a lot, but it faded after the second week of school. From the time the amended IEP was issued on September 30, 2024 until the end of the school year, Student's attention span improved, s/he worked more independently, was able to work in small groups, and was able to transition successfully. After his/her November 2023 IEP expired, School A continued to provide Student the services prescribed in that IEP except for the lack of a speech therapist. There were multiple problems scheduling the IEP meeting. On cross-examination, Witness C denied that Student left the school premises during the November 2024 elopement.<sup>76</sup>

29. Witness D was the school psychologist who conducted the Psychological Reevaluation on March 7, 2025. During the evaluation, Student's verbal output was "largely limited." Consequently, Witness D performed the WPPSI-IV, "a standard instrument for children with communication issues and who present with autism." In the Response to Intervention section of her evaluation, Witness D testified that her review of the February 13, 2025 IEP Progress Report indicated that Student was making progress in all areas with some areas marked as "mastered," which led her to surmise that the goals in the IEP were appropriate. Because Student's verbal output was limited, Witness D opined that the goal requiring engagement was "somewhat of a stretch" and inappropriate. On the other hand, the Communication goal of using 2-3 utterances to describe an object or picture was appropriate for someone of limited verbal output.<sup>77</sup>

30. Witness E was a DCPS resolution specialist. She testified that Student had not used any of the authorized independent SLP services. The authorization expired on September 30, 2025.<sup>78</sup>

31. Witness F was an OT service provider at School A. She provided Student's OT services during the 2022-2, 2023-24, and 2024-25 school years. Witness F testified that she worked with Student once a week, sometimes twice a week, both pushing in and pulling her/him out of the classroom for services. Witness F testified that she was absent for medical reasons for one week in November 2023 and 10 days in September 2024, and Student had a number of absences during the 2023-24 school year. She testified that during the third progress reporting period in the 2023-24 school year, Student showed progress with multisensory strategies and evinced no negative behaviors during transitions. During the last reporting period, Student mastered a copying and tracing goal, demonstrating age-appropriate prewriting skills. During the first reporting period of the 2024-25 school year, Student mastered a goal related to functional grasping writing instruments. When asked why she never evaluated Student during the 2022-23 and 2023-24 school years, Witness F testified that the previous evaluation was still valid.<sup>79</sup>

32. Witness G was School A's Director of Specialized Instruction. She testified that at the beginning of the 2023-24 school year, Student had difficulty during transitions: crying, yelling, and screaming. Student had never been required to transition in previous school years. As time went on these behaviors decreased and s/he settled into a routine. Witness G testified that after Student's November 2023 IEP expired, School A continued to provide Student all of the

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<sup>76</sup> Testimony of Witness C.

<sup>77</sup> Testimony of Witness D.

<sup>78</sup> Testimony of Witness E.

<sup>79</sup> Testimony of Witness F.

services on that IEP except SLP due to the lack of a service provider. Witness G testified that she took the meeting notes at the AED meeting on January 13, 2025, and no member of Petitioner’s team, including Attorney A, requested an FBA.<sup>80</sup> On April 10, 2025, Attorney A requested a meeting to discuss the safety plan and an FBA.<sup>81</sup>

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, and this hearing officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows: The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.<sup>82</sup>

The issues in this case include the alleged failure of DCPS to provide appropriate IEPs. Under District of Columbia law, DCPS bears the burden of persuasion as to these issues. Petitioner bears the burden as to all other issues.<sup>83</sup>

**Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on November 7, 2023. Specifically, Petitioner asserts that the IEP (a) did not provide appropriate Adaptive/Daily Living Skills goals and/or PLOPs, (b) did not provide appropriate S/L goals and/or PLOPs, (c) did not provide behavior support interventions (no BSS) and/or a BIP, and (d) failed to include a dedicated aide despite the student’s elopement issues and crucial need for hand-to-hand transfer during the school day.**

The Supreme Court’s first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act (“EHA”), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.<sup>84</sup> The Court noted that the EHA did not require that states “maximize the potential of handicapped children ‘commensurate with the opportunity provided to other

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<sup>80</sup> R12:91-92.

<sup>81</sup> R37:233; testimony of Witness G.

<sup>82</sup> D.C. Code § 38-2571.03(6)(A)(i).

<sup>83</sup> *Schaffer v. Weast*, 546 U.S. 49 (2005).

<sup>84</sup> 458 U.S. 176, 187 (1982).

children.”<sup>85</sup> Rather, the Court ruled that “Implicit in the congressional purpose of providing access to a ‘free appropriate public education’ is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child...”<sup>86</sup> Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”<sup>87</sup>

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.<sup>88</sup> The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”<sup>89</sup> The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.<sup>90</sup>

In *Endrew*, the Supreme Court held that an IEP must be designed to produce more than minimal progress in a student’s performance from year to year:

When 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. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly... awaiting the time when they were old enough to drop out...” The IDEA demands more. The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.<sup>91</sup>

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<sup>85</sup> *Id.* at 189-90, 200

<sup>86</sup> *Id.* at 200.

<sup>87</sup> *Id.* at 203-04.

<sup>88</sup> *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

<sup>89</sup> *Id.* at 997.

<sup>90</sup> *Id.* at 1000-01 (citations omitted).

<sup>91</sup> 137 S.Ct. at 1000-01.

I will address the alleged infirmities of the IEP individually.

***The IEP did not provide appropriate Adaptive/Daily Living Skills goals and/or PLOPs.***

Petitioner's witnesses offered no testimony as to the inappropriateness of the ADLs PLOP in the November 7, 2023 IEP. The ADLs goals addressed transitioning, toileting, and initiating social interaction with peers. Petitioner also offered no testimony as to the inappropriateness of these goals. As each of these goals addresses a significant weakness of autistic children, generally, and Student, particularly, Petitioner's objection to the goals is puzzling.

***The IEP did not provide appropriate S/L goals and/or PLOPs.***

Again, Petitioner's witnesses offered no testimony as to the inappropriateness of the Communication PLOP or goals. The goals addressed following one-step directions and expressively naming objects in a picture/story/video. In fact, Witness A, Petitioner's expert pathologist, opined that the latter expressive language goal was appropriate

***The IEP did not provide behavior support interventions, no BSS and/or a BIP.***

The only witness for Petitioner who addressed Student's behavior was Witness B, Petitioner's special education expert. However, she did not attend the November 7, 2023 meeting and did not testify that the IEP was inappropriate due to the absence of support interventions, BSS, or a BIP. She testified that DCPS' collaboration over elopements waned, but this was a reference to the 2024-25 school year, not the 2023-24 school year. In fact, Student was in an ELS classroom designed for children with Student's profile, with only 6-7 students, a certified special education teacher and a teacher's assistant. The record does not support a finding that Student's behavior, typical of that of autistic children, was unmanageable. In fact, the Special Considerations section indicated that Student's behavior did not impede her/his learning or that of others.

***The IEP failed to include a dedicated aide despite Student's elopement issues and crucial need for hand-to-hand transfer during the school day.***

There was testimony of three very brief elopements during the 2024-25 school year: one in November, one in April, and a third on an unspecified date when Student jumped into a collection of water inside the building. However, there was no testimony about elopements prior to the development of the November 2023 IEP. There was also no testimony that contradicted the entry in Special Considerations section of the IEP that Student's behavior did not impede his/her behavior or that of his/her classmates. Petitioner suggests that Student required a dedicated aide to provide hand-to-hand transfer during transitions. However, Student's 2022-23 year-end Progress Report reveals that Student mastered his/her transitioning goal on his/her November 2022 IEP. Thus, there is no evidence in the record warranting an increase in support during transitions on the November 2023 IEP.

Student's 2022-23 year-end Progress Report, with providers' comments provided in paragraph 6 above, reveals that Student Mastered or was Progressing on all of her/his goals on the November 2022 IEP. Thus, it was reasonable for DCPS to develop an IEP in November 2023 that

continued to build on the progress Student made on the November 2022 IEP. I conclude that Petitioner has failed to meet her burden of establishing a *prima facie* case that DCPS failed to develop an IEP on November 7, 2023 that was reasonably calculated to enable Student to make progress consistent with her/his unique circumstances.

**Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on September 30, 2024. Specifically, Petitioner asserts that the IEP (a) did not provide appropriate Adaptive/Daily Living Skills goals and/or PLOPs, (b) did not provide appropriate S/L goals and/or PLOPs, (c) did not provide behavior support interventions, no BSS and/or a BIP, and (d) failed to include a dedicated aide despite Student’s elopement issues and crucial need for hand-to-hand transfer during the school day.**

On the first issue, I concluded that Petitioner did not establish a *facie case* that DCPS failed to develop an appropriate IEP on November 7, 2023. The September 30, 2024 amendment was issued only to address the “IEP system error” that resulted in the November 2023 IEP failing to include Student’s services. The services added to the IEP by the September 30, 2024 amendment were identical to those in the 2021 and 2022 IEPs. Petitioner apparently concedes that the system error that resulted in services not being listed on the November 2023 IEP was harmless error as it was not included as an additional indication of the inappropriateness of the IEP in the first issue above. Having concluded that the November 2023 IEP was not proven to be inappropriate, the same is true of the September 30, 2024 amendment, which was issued only to correct the system error.

**Whether DCPS denied Student a FAPE by failing to conduct a triennial evaluation during the 2023-24 school year. Petitioner asserts that DCPS did not reevaluate Student after initial evaluations were conducted in April 2021 until Petitioner requested evaluations on or about December 3, 2024. Thereafter, DCPS convened an Analysis of Existing Data (AED”) meeting and agreed to conduct OT, S/L, psychological, and an FBA, but it failed to conduct the FBA.**

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

Each public agency must ensure that... the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities...<sup>92</sup>

The regulations also require reevaluations if a teacher or parent requests them, and at least once every three years:

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<sup>92</sup> 34 C.F.R. § 300.304 (c)(4).

A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.<sup>93</sup>

During the triennial review, the MDT must make a determination if further assessments are necessary to make the eligibility determine or to determine an appropriate educational program for the student:

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child...<sup>94</sup>

DCPS conducted the initial evaluation of Student on April 28, 2021. Therefore, it was obligated to conduct a reevaluation of Student by April 28, 2024. The record reveals that DCPS took no steps to reevaluate Student prior to that date. DCPS did not schedule an AED meeting to reevaluate Student until January 13, 2025, and that was only after Attorney A, Petitioner's counsel, sent a letter on December 3, 2024 requesting that DCPS conduct a psychological evaluation of Student.

The failure to conduct a timely triennial reevaluation is a procedural violation. A hearing officer's determination of whether a child was denied a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii)

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<sup>93</sup> 34 C.F.R. §300.303.

<sup>94</sup> 34 C.F.R. §300.305(a). *See also, Office of the State Superintendent's Special Education Process Handbook at 12* (IEP teams may determine that sufficient data exists to support an eligibility determination without additional assessments)

[https://osse.dc.gov/sites/default/files/dc/sites/osse/service\\_content/attachments/OSSE%20Special%20Education%20Process%20Handbook%20%28Sept%202023%29.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/OSSE%20Special%20Education%20Process%20Handbook%20%28Sept%202023%29.pdf).

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.<sup>95</sup> In other words, an IDEA claim is viable only if procedural violations affected the child's substantive rights.<sup>96</sup>

While DCPS clearly violated its obligation to conduct a timely reevaluation of Student, the failure to conduct a timely triennial reevaluation would constitute a denial of FAPE in this case only if the evaluations that should have been conducted before April 28, 2024 would have had a significant effect on the development of, and services provided in, Student's September 30, 2024 IEP, or the IEP that was due on November 6, 2024. If so, that omission would have impeded Student's right to a FAPE and would have caused a deprivation of educational benefit.

Student's September 30, 2024 amended IEP prescribed 25.5 hours per week of specialized instruction outside general education, and four hours per month each of BSS and OT services. In the Occupational Therapy Evaluation conducted on March 5, 2025, Examiner C found Student to be largely functional in most areas: muscle tone was within functional limits, postural control was fair, muscle strength age appropriate with a full range of motion, s/he could follow directions with moderate redirection, s/he had a functional right hand tripod grasp on writing/coloring utensils and could manipulate writing tools without difficulty, s/he held scissors properly, was independent with feeding and manipulating clothing fasteners, and demonstrated functional bilateral coordination skills. The only area in which Student was characterized as having severe difficulties was in sensory processing skills for which Examiner C recommended only classroom accommodations. Student's September 2024 IEP included the maximum amount of OT services prescribed on DCPS IEPs, four hours per month, and included Other Classroom Aids and Services to address Student's sensory issues: calm down space, targeted movement breaks, structured tactile exploration, use of headphones, deep pressure experiences through natural play, positioning away from distracting visual/auditory stimuli, etc. Thus, the findings and recommendations in the March 5, 2025 evaluation would not have justified an increase in Student's services had an IEP been developed by the time the annual IEP was due on November 6, 2024.

On March 7, 2025, Examiner B completed a Speech and Language Reevaluation of Student. She concluded that Student's oral language functioning did not appear to be a reason for educational difficulty and that Student presented with functional communication skills that did not indicate a disabling communication disorder. Student's September 2024 IEP included the maximum amount of SLP services prescribed on DCPS IEPs, four hours per month. Thus, based on the data and recommendations in this evaluation, an IEP team in November 2024 would not have increased Communication services for Student.

Also on March 7, 2025, Witness D completed a Psychological Reevaluation of Student. Witness A found that Student remained eligible for services under an ASD classification and did not suggest the need for any additional classifications. Student's prior IEPs all prescribed the maximum amount of specialized instruction in the most restrictive environment offered by DCPS,

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<sup>95</sup> 34 C.F.R. 300.513(a).

<sup>96</sup> *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015); *Brown v. District of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), quoting *N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

25.5 hours per week in a self-contained class. Thus, an IEP team in November 2024 would not have prescribed any additional specialized instruction in a more restrictive environment than was prescribed in the September 30, 2024 amended IEP.

Witness C and Witness G testified that Student continued to receive the services prescribed in the September 30, 2024 amended IEP after the November 7, 2023 IEP expired. I have concluded that the findings and recommendations in the three evaluations conducted in 2025 would not have increased the services Student would have received had an IEP been developed timely by November 6, 2024. In fact, the IEP team on March 7, 2025 reduced Student's OT and SLP services by one hour each per month.<sup>97</sup> Therefore, as Student was not deprived of an educational benefit by DCPS' failure to conduct a timely triennial reevaluation, that procedural violation did not rise to the level of a denial of FAPE.

**Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on November 6, 2024. Specifically, Petitioner asserts that the Student's previous IEP expired as of that date.**

The provision of a FAPE must be "in conformity with the [child's] individualized education program required under section 1414(d)..."<sup>98</sup> An IEP "is the means by which special education and related services are tailored to the unique needs of a particular child."<sup>99</sup> An IEP must be in place for each disabled student "[a]t the beginning of each school year,"<sup>100</sup> and must outline a comprehensive plan to "meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum."<sup>101</sup>

Student's 2023-24 IEP was developed on November 7, 2023. Therefore, DCPS was obligated to develop an updated IEP for Student no later than November 6, 2024. According to DCPS' Contact Log, after the entry on November 6, 2023, there is no documentation that DCPS invited Petitioner to an IEP meeting until December 30, 2024, when it proposed a meeting date of January 8, 2025. The meeting was rescheduled to January 30, 2025. The first draft updated IEP was sent to Petitioner and her attorneys on January 27, 2025. Petitioner was not available for the meeting on January 30, 2025.<sup>102</sup> The meeting was ultimately held on March 7, 2025.<sup>103</sup>

Although the development of a timely annual IEP is crucial to the delivery of appropriate and needed services to children with disabilities, the D.C. Circuit has held that even the failure to develop a timely annual IEP is a procedural violation. It becomes a substantive violation only if the student suffers a loss of educational opportunity.<sup>104</sup> Witness C, the school Principal, and

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<sup>97</sup> The March 7, 2025 IEP is not at issue in this proceeding.

<sup>98</sup> 20 U.S.C. § 1401(9)(D). *See id.* § 1414(d)(2).

<sup>99</sup> *Andrew, supra*, 580 U.S. at 391, quotation marks omitted, quoting *Rowley, supra*. 458 U.S. at 181.

<sup>100</sup> 20 U.S.C. § 1414(d)(2)(A).

<sup>101</sup> *Id.* at § 1414(d)(1)(A)(i)(II)(aa).

<sup>102</sup> R45:322.

<sup>103</sup> P12:1 (187).

<sup>104</sup> *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015) ("DCPS has the standard correct: a procedural violation, such as a school district's failure to provide an IEP by the beginning of the school year, will constitute a denial of a free appropriate public education only if it 'result[s] in loss of educational opportunity' for the student."), citing *Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006).

Witness G, the Director of Specialized Instruction, testified that once Student's November 2023 IEP expired on November 6, 2024, School A continued to provide Student the services prescribed in the September 30, 2024 amended IEP except for SLP services, due to the absence of a service provider. Petitioner does not dispute that DCPS continued to provide 25.5 hours per week of specialized instruction and that DCPS did not dispute its continuing obligation to provide four hours each per month of OT and SLP services. In fact, Petitioner's claim for the failure to provide related services during the 2024-25 school year is based on the services prescribed in the September 30, 2024 amended IEP.<sup>105</sup>

For the same reason that the failure to conduct a timely triennial review did not constitute a denial of FAPE, DCPS' four-month delay in updating Student's November 2023 IEP did not cause a deprivation of services. Once DCPS conducted its triennial reevaluations in March 2025, the IEP it developed on March 7, 2025 did not increase the services that Student was receiving through the September 30, 2024 amended IEP; in fact, DCPS reduced each of Student's related services by one hour per month. Therefore, as Student was not deprived of an educational benefit by DCPS' failure to issue a timely annual IEP by November 6, 2024, that procedural violation did not rise to the level of a denial of FAPE.

**Whether DCPS denied Student a FAPE by failing to conduct an appropriate speech and language evaluation on March 7, 2025. Petitioner asserts that DCPS failed to conduct necessary subtests.**

Witness A, Petitioner's expert witness in SLP, opined that DCPS' March 7, 2025 Speech & Language Reevaluation Report was inappropriate for several reasons: the expressive and receptive vocabulary tests and the GTFA-3 could not be completed due to Student's unresponsiveness, and the evaluation did not assess the need for AAC devices. In fact, the GTFA-3 standard scores could not be obtained because of Student's reluctance to repeat names or label pictures as required. His/her receptive and expressive vocabulary could not be measured due to his/her refusal to cooperate. As for the lack of an assessment for the need for an AAC device, in my experience, this is not a typical or required subtest of a speech and language evaluation. Witness A conceded that such an assessment would be possible only if the examiner were qualified to conduct an A/T evaluation, and she did not know if Examiner B was so qualified. Examiner B found Student's social language skills to be atypical of his/her peers; s/he inconsistently spoke when addressed, did not say please and thank you, and did not make eye contact with familiar peers and adults.

Examiner B found that Student "appeared to produce all age-appropriate sounds in English at the sentence and conversational levels. Given [her/his] articulation skills, [s/he] should be able to clearly communicate her/his wants and needs to classmates and adults across all settings." These findings seem inconsistent with the picture painted by most others who describe Student's communication skills. Teacher A, Student's special education teacher, reported to Witness F during the Psychological Reevaluation conducted contemporaneously that Student demonstrated very limited verbal communication compared to her/his peers. Teacher A reported that Student typically uses single words or basic phrases such as "yes," "no," or "yes, I do." His/her listening

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<sup>105</sup> P71:10 (570).

comprehension was also reported as limited, and s/he did not always understand what was being asked of him/her. Thus, it is hard to reconcile Teacher A's daily experience with Student with Examiner B's conclusion that "Given the data from this evaluation, [Student's] oral language functioning does not appear to be a reason for educational struggle... [Student] presents with functional communication skills that do not indicate a disabling communication disorder." Therefore, I conclude that Petitioner has met her burden of proving, at least by a preponderance of the evidence, that Examiner B's evaluation was incomplete, inconsistent with the record, and inappropriate.

**Whether DCPS denied Student a FAPE by failing to implement Student's November 14, 2022 and November 7, 2023 IEPs. Specifically, Petitioner asserts that during the 23-24 school year, Student was entitled to receive a total of 40 hours of S/L related services as well as 40 hours of OT related services. Student's service trackers show that s/he received approximately 9 hours of OT and approximately 20 hours of SLP up until January 2024. Student missed half of his/her S/L services (20 hours) amounting to approximately 50% of missed services. In the same manner, Student missed approximately 31 hours of OT, amounting to approximately 77% of missed services.**

An LEA is culpable for failing to implement a child's IEP if the services provided materially deviate from the services prescribed in the IEP.<sup>106</sup> A material deviation requires more than a minor discrepancy or a "de minimis failure to implement all elements of [the student's] IEP."<sup>107</sup> It is "...[t]he proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement."<sup>108</sup>

The Office of the State Superintendent's Special Education Process Handbook provides the following guidance on missed related services:

If a student is regularly or chronically missing services, it is best practice for the service provider to collaborate with the parent on attendance support and service implementation. The occasional missed related service session may be unavoidable; however, the LEA must always consider the impact of the missed session on the student's progress and performance and ensure the continued provision of FAPE. If the IEP team determines that missed services constitutes a denial of FAPE, it should consider the need for compensatory services. LEAs are

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<sup>106</sup> *Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 144 (D.D.C. 2018); *Van Duyn ex rel. Van Duyn v. Baker School District 5J*, 502 F.3d 811, 822 (9th Cir. 2007).

<sup>107</sup> *Johnson v. District of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013), quoting *Catalan ex rel. E.C. v. District of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). See *J.B. ex rel. Belt v. District of Columbia, Report and Recommendation*, Case No. 17-cv-1298, 2018 WL 10399853 at 17 (D.D.C. May 8, 2018)(a deviation of less than 10% of the school day was deemed *de minimus*).

<sup>108</sup> *Turner v. District of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), citing *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).

encouraged to develop and make available a related services policy that details internal procedures for missed services.<sup>109</sup>

Here, as documented in paragraph 9 above, during the 2023-24 school year, DCPS failed to provide Student 25 of the 37 hours of OT services to which s/he was entitled. As documented in paragraph 10 above, Student was deprived of four of the 37 hours of speech and language services to which s/he was entitled. Therefore, I conclude that Petitioner has met her burden of proving that DCPS denied Student a FAPE by failing to provide Student 67.6%, of the OT services and 10.8% of the speech and language services to which s/he was entitled during the 2023-24 school year.

**Whether DCPS denied Student a FAPE by failing to implement Student's November 7, 2023 and September 30, 2024 IEPs during the 2024-25 school year. Service trackers provided by DCPS reveal that Student did not receive all of the S/L and OT services to which s/he was entitled.**

As documented in paragraph 22 above, DCPS failed to provide Student 23.75 of the 37 hours of OT services to which s/he was entitled during the 2024-25 school year. As documented in paragraph 23 above, DCPS failed to provide Student 34 of the 37 hours of SLP services to which Student was entitled during the 2024-25 school year. Therefore, I conclude that Petitioner has met her burden of proving that DCPS denied Student a FAPE by failing to provide Student 64.2% of the OT services and 91.2% of the speech and language services to which s/he was entitled during the 2024-25 school year.

**Whether DCPS denied Student a FAPE by failing to provide Petitioner complete access to Student's educational records as requested on November 26, 2024.<sup>110</sup>**

The regulations require the local education agency to allow parents to examine their student's records:

- (a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to inspect and review all education records with respect to—
  - (1) The identification, evaluation, and educational placement of the child; and
  - (2) The provision of FAPE to the child.
- (b) Parent participation in meetings.
  - (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—

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<sup>109</sup>

[https://osse.dc.gov/sites/default/files/dc/sites/osse/service\\_content/attachments/OSSE%20Special%20Education%20Process%20Handbook%20%28Sept%202023%29.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/OSSE%20Special%20Education%20Process%20Handbook%20%28Sept%202023%29.pdf) at 23.

<sup>110</sup> During the prehearing conference, Petitioner's counsel reported that Petitioner still had not received service trackers for the 2024-25 school year and incident reports for the 2023-24 and 2024-35 school years.

- (i) The identification, evaluation, and educational placement of the child; and
  - (ii) The provision of FAPE to the child.
- (2) Each public agency must provide notice consistent with [§ 300.322\(a\)\(1\)](#) and [\(b\)\(1\)](#) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.<sup>111</sup>

and

- (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request *without unnecessary delay and before any meeting regarding an IEP*, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.
- (b) The right to inspect and review education records under this section includes—
  - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
  - (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and the right to have a representative of the parent inspect and review the records.<sup>112</sup>

Under the District’s regulations, a parents’ requests for a student’s records must be honored as soon as possible, but in no case more than forty-five days.<sup>113</sup>

Petitioner’s counsel made a written request for Student’s educational records on November 26, 2024. Respondent introduced its Contact Log into evidence to prove that it never received the request.<sup>114</sup> However, in its *Response*, DCPS did not raise as a defense that it did not receive the November 2024 request for records. Instead, it implied that it had received it: “Since on or about November 19, 2024, DCPS has sent multiple records to the parent and/or her counsel.”<sup>115</sup> At the prehearing conference, I asked Petitioner’s counsel which requested documents still had not been provided. She indicated that she had not yet received services tracking forms for the 2024-25 school year and incident reports for the 2023-24 and 2024-25 school years.<sup>116</sup> DCPS subsequently included 2024-25 related services tracking forms in its disclosures, but Respondent’s counsel conceded that DCPS had not provided those forms to Petitioner prior to filing the disclosures. Consequently, when Petitioner’s counsel attempted to determine the amount of related services Student had not received, she did not have the data to make that determination.

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<sup>111</sup> 34 C.F.R. §300.501.

<sup>112</sup> 34 C.F.R. §300.613, emphasis added.

<sup>113</sup> 5-E DCMR § 2600.6.

<sup>114</sup> R45:323. I note that DCPS did not assert that it did not receive Attorney A’s request that Student be reevaluated on December 3, 2024. That letter indicates that it was sent to the same facsimile phone number that was used for the letter making the request for records. DCPS’ Contact Log does reflect receipt of the request for the evaluation. *Id.*

<sup>115</sup> P3:4 (31).

<sup>116</sup> *Id.* at 3, n.1 (30).

The Prehearing Order included the following provision: “Any issue, defense or request for relief that was pleaded in the Complaint and Response that is not memorialized in this Prehearing Order may be precluded from being raised at the due process hearing at the discretion of the Hearing Officer with the exception of jurisdictional issues that may be raised at any time and/or unless good cause is shown.”<sup>117</sup> Since DCPS did not raise the defense in its *Response* that it did not receive Petitioner’s November 26, 2024 records request, Petitioner was not put on notice to produce the facsimile receipt to prove that it was sent on that date. Therefore, DCPS is precluded from denying that it received the records request. Moreover, despite being put on notice at the prehearing conference on July 29, 2025 that Petitioner had not received 2024-25 related services tracking forms, DCPS still failed to provide the forms to Petitioner until the eve of the hearing in late September.

The failure to provide educational records to a parent is a procedural violation. Here, DCPS’ failure to provide Petitioner Student’s records timely significantly impeded Petitioner’s ability to prepare for the hearing. The data provided to Petitioner concerning the related services provided to Student during the 2024-25 school year was incomplete<sup>118</sup> and inconsistent with the data disclosed by DCPS five days before the hearing.<sup>119</sup> Therefore, I conclude that Petitioner has met her burden of proving that DCPS denied Student a FAPE by failing to provide Petitioner timely and complete access to Student’s educational records.<sup>120</sup>

## RELIEF

For relief, Petitioner requests, *inter alia*, (1) an order requiring DCPS to conduct or fund and review an FBA, (2) an order requiring DCPS to fund an independent S/L evaluation, (3) an order requiring DCPS to reconvene the IEP team to review, revise and/or amend the IEP as appropriate based upon the updated data from the aforementioned evaluations and develop a BIP Student, to review, revise and/or amend the IEP to reflect appropriate goals and PLOPS in the area of Adaptive/Daily living Skills, to provide a dedicated aide, and to provide BSS, (4) compensatory education services, (5) the right to request additional compensatory education upon completion of the aforementioned evaluations, (6) that all meetings shall be convened through counsel for the parent, and (7) attorneys’ fees and costs.<sup>121</sup>

Petitioner has the burden of establishing entitlement to compensatory education services.<sup>122</sup> Absent such a showing, any award by the hearing officer would be arbitrary. In this jurisdiction,

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<sup>117</sup> *Id.* at 5 (32).

<sup>118</sup> P47:1 (437); P71:9-13 (569-73).

<sup>119</sup> R41 and R42.

<sup>120</sup> *Malloy v. District of Columbia*, Civil Action No. 20-cv-03219, 2022 WL 971208 at 5-6 (D.D.C. Mar. 30, 2022)(DCPS’ failure to provide the parent with all of the student’s support plans impeded the parent’s ability to fully advocate for the student during the due process hearing).

<sup>121</sup> The *Prehearing Order* noted that hearing officers have no role in the awarding of attorneys’ fees in this jurisdiction.

<sup>122</sup> *J.T. v. District of Columbia*, Civil Action No. 21-3002, 2023 WL 8369938 at 15 (D.D.C. Dec. 4, 2023)(plaintiff failed to demonstrate what compensatory education should be provided to the student to remedy what the plaintiff contends the student has been denied); (*Phillips ex rel. T.P. v. District of Columbia*, 736 F. Supp. 2d 240, 248 (D.D.C. 2010)(plaintiff has the burden of “propos[ing] a well-articulated plan that reflects [the student's] current education abilities and needs and is supported by the record.”) citing *Friendship Edison Public Charter School. Collegiate Campus v. Nesbitt*, 583 F.Supp.2d 169, 172 (D.D.C.2008)(to comply with the *Reid* standard, the petitioner must

petitioners have the burden of persuasion on all issues other than the appropriateness of IEPs and placements. From a practical standpoint, it would be both counterintuitive and unreasonable to require the educational agency to propose a compensatory education plan when its position is that it did not deny a FAPE in the first place. The requirements for an appropriate compensatory education plan are set forth in the D.C. Circuit's decision in *Reid v. District of Columbia*.<sup>123</sup>

Accordingly, just as IEPs focus on disabled students' individual needs, so must awards compensating past violations rely on individualized assessments... In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.<sup>124</sup>

Thus, Petitioner must show (1) what educational harm Student suffered as a result of the alleged denial of FAPE, (2) what type and amount of compensatory services Student requires to put him/her in the position s/he would be had there been no denial of FAPE, and (3) the assessments or educational, psychological, or scientific studies that support the type and amount of services requested.<sup>125</sup>

In her Compensatory Education Proposal for Student, Witness B proposed that Student receive 150 hours of Academic Tutoring Services, 40 hours of SLP services, 30 hours of OT services, 40 hours of Applied Behavior Analysis ("ABA") therapy, a comprehensive FBA and a developed BIP, a funded independent S/L evaluation, and a dedicated aide. Student is entitled to no compensatory tutoring services because it was not alleged or shown that DCPS failed to provide Student specialized instruction to which s/he was entitled. Student was entitled to no compensatory ABA therapy services as none were ever prescribed on his/her IEPs or found herein to have been required. Independent evaluations and dedicated aides are not compensatory services; rather they are items of prospective relief that can be awarded for an LEAs' failure to conduct necessary evaluations, failure to provide necessary dedicated aides, or for LEAs' evaluations found to be inappropriate.

Based on the findings herein, Petitioner did not establish Student's need for a dedicated aide, FBA, or BIP. However, Student is entitled to an independent speech and language evaluation and compensatory related services.

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propose a well-articulated plan that reflects the student's current educational abilities and needs and is supported by the record); *Smith v. District of Columbia, Report and Recommendation*, Case No. 1:22-cv-027555 at 8 (July 31, 2023) *Report and Recommendation*, *Wade v. District of Columbia, Magistrate Judge's Report and Recommendation*, Case No. 20-cv-1433 at 26 (D.D.C. Feb. 19, 2021) (the plaintiff has the burden of proposing a well-articulated plan that reflects the student's current education abilities and needs and is supported by the record) citing *Phillips; Jones v. District of Columbia*, Case No. 15-cv-1505, 2017 WL 10651264 at 9 (D.D.C. Jan. 31, 2017)(Plaintiff presented no evidence concerning a plan of compensatory education as was her burden), citing *Phillips* and *Friendship*.

<sup>123</sup> 401 F.3d 516 (D.C. Cir. 2005).

<sup>124</sup> *Id.* at 524. *See also, B.D. v. District of Columbia*, 817 F.3d 792, 799-800 (D.C. Cir. 2016)

<sup>125</sup> *See Gill v. District of Columbia*, 751 F.Supp.2d 104, 111-12 (D.D.C. 2010) (petitioners offered neither reasoning nor factual findings to support the appropriateness of their proposed compensatory education plan), *further proceedings*, 770 F.Supp.2d 112, 116-18 (D.D.C. 2011).

## ORDER

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

**ORDERED** that within fifteen business days of the issuance of this order, DCPS shall provide Petitioner authorization for 48.75 hours of independent OT services and 38 hours of independent SLP services and reimbursement for Uber/Lyft transportation to attend compensatory related service sessions. Petitioner is not bound by OSSE limitations on hourly compensation for service providers, but the authorizations may require services to be completed within two years from the issuance of this order.

**IT IS FURTHER ORDERED** that within fifteen days of the issuance of this order, DCPS shall provide Petitioner authorization to secure an independent SLP evaluation without limitation on hourly compensation for the therapist.

## APPEAL RIGHTS

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

Terry Michael Banks  
Terry Michael Banks  
Hearing Officer

Date: October 6, 2025

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