

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

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

OSSE
Office of Dispute Resolution
October 13, 2025

Confidential

| | | |
|---|---|---|
| Parent on behalf of Student,¹ |) | Case Nos. 2025-0122 |
| |) | |
| Petitioner |) | Hearing Dates: Sept. 29-30, and Oct. 1, 2025 |
| |) | |
| v. |) | Conducted by Video Conference |
| |) | |
| District of Columbia Public Schools, |) | Date Issued: October 13, 2025 |
| |) | |
| Respondent |) | Terry Michael Banks, |
| |) | Hearing Officer |

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioner is the legal guardian of an X-year-old student (“Student”) attending School A. On July 15, 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 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 24, 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.

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

PROCEDURAL HISTORY

On July 14, 2025, Petitioner filed her *Complaint* alleging that DCPS (1) failed to provide an appropriate IEP on November 2, 2023, (2) failed to provide an appropriate IEP on October 7, 2024, (3) failed to develop an appropriate IEP on April 7, 2025, (4) failed to develop an appropriate BIP during the 2024-25 school year, (5) failed to implement Student's IEPs during the 2023-4 and 2024-25 school years with fidelity, and (6) failed to provide Petitioner complete access to Student's educational records as requested on December 6, 2024. For relief, Petitioner requested, *inter alia*, (1) an order requiring DCPS to conduct or fund an assistive technology ("A/T") evaluation and/or a vocational evaluation, (2) an order requiring to reconvene the IEP team to provide specialized instruction outside the general education setting, Written Expression goals, increased supports to address executive function, attentiveness, assistive technology, and a revised transition plan, (3) placement in a full-time therapeutic program with transportation, (4) an order requiring DCPS to revise the BIP to include incentives such as participation in sports, (5) compensatory education services, and (6) attorneys' fees and costs.

On July 15, 2025, DCPS filed its *Response* to the *Complaint* denying that it had denied Student a FAPE. DCPS asserted, *inter alia*, that the IEPs it developed on November 2, 2023, April 9, 2024, September 19, 2024, October 7, 2024, and April 7, 2025 were developed with Petitioner's participation and were appropriate when they were developed. The IEP developed on April 7, 2025 provides for 15 hours weekly of specialized instruction in the general education setting, 4 hours monthly of BSS inside general education, 30 minutes monthly of OT services outside of general education, and 30 minutes monthly OT consultation services include. On or about September 29, 2024, DCPS conducted a Functional Behavior Assessment ("FBA") Level 1. On or about October 6, 2024, DCPS developed an appropriate Level 1 BIP. The IEP's developed for the 2023-2024 and 2024-2025 school years were appropriately implemented; Student received specialized instruction and related services pursuant to the appropriate IEP for all times relevant to this *Complaint*. DCPS has not failed to provide petitioner access to Student's education records. DCPS responded to Petitioner's records request with records that are in the agency's possession. The records that were not provided are either unavailable or not in the agency's possession.

The parties conducted a resolution meeting on July 28, 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 29-30 and October 1, 2025 by video conference facilities. The hearing was open to the public at Petitioner's request. Petitioner filed Five-day Disclosures on September 22, 2025, containing a witness list of five witnesses, and 58 documents—DCPS did not file objections to Petitioner's Disclosures. Petitioner's Exhibits P1-P58 were admitted into evidence.

Respondent also filed Disclosures dated September 22, 2025 and an amended set of Disclosures on September 23, 2025, containing a witness list of 6 witnesses and 43 documents. Petitioner did not file objections to DCPS' disclosures. Respondent's Exhibits R1-R43 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A, Witness B, and Petitioner. Witness A was admitted as an expert in occupational therapy and assistive technology, 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 C was admitted as an expert in school social work, Witness E was admitted as an expert in occupational therapy, 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 2, 2023. Petitioner asserts that despite Student's substantial delays in Reading and Mathematics, all specialized instructional services outside of the classroom were removed, the Special Consideration page of the IEP failed adequately to address Student's behavior needs or assistive technology ("A/T"), the IEP lacked goals or services in Written Expression, and/or failed to include adequate supports to address executive functioning and inattention. This IEP was amended on or about April 9, 2024, and again on September 9, 2024, to correct errors and/or make changes to his/her supplemental aides and services but no substantial changes were made.
2. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on October 7, 2024. Petitioner asserts that the IEP did not address Student's need for A/T, did not provide sufficient specialized instruction, did not adequately address executive functioning or inattention concerns, did not provide goals in Written Expression or provide support sufficient hours of support to enable him/her to make meaningful progress towards transition goals in that it only provided three hours total of support per year. The IEP also removed direct occupational therapy ("OT") services and replaced them with consultation services.
3. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on April 7, 2025. Petitioner asserts that the IEP did not address Student's need for A/T, did not provide sufficient specialized instruction, did not adequately address executive functioning or inattention concerns, did not provide goals in Written Expression or provide sufficient hours of support to enable him/her to make meaningful progress towards transition goals. While this IEP reinstated direct OT services, it did not provide sufficient service hours (only 30 minutes per month) and removed all consultation services.
4. Whether DCPS denied Student a FAPE by failing to develop an appropriate BIP during the 2024-25 school year. DCPS developed a new BIP for Student in 2024

- that removed the incentive plan even though Student’s behaviors had not improved and were still significantly impeding her/his progress. Petitioner also asserts that the BIP was inappropriate because the Problematic Behaviors section was incomplete, Progress Monitoring was vague, the responsibility for implementation not specified, and the Strategies/Resources section from the prior BIP was removed.²
5. Whether DCPS denied Student a FAPE by failing to implement Student’s IEPs during the 2023-24 and 2024-25 school years. Petitioner asserts that Student is frequently sent home from school due to behavioral incidents without documentation. These action not only suggest that the behavioral support services (“BSS”) for Student are either not being provided or are ineffective but also deprive Student of access to his/her education because s/he is either not in school or not in class and missing instruction.
 6. Whether DCPS denied Student a FAPE by failing to provide Petitioner complete access to Student’s educational records as requested on December 6, 2024, specifically service trackers, behavior records and incident reports, standardized testing results, and the April 2025 IEP.³

FINDINGS OF FACT⁴

1. Student is an X-year-old student who was in grade J at School A during the 2024-25 school year and was eligible for special education services with a classification of Emotional Disturbance (“ED”).⁵
2. On November 27, 2019, when Student was in grade D at School B, Examiner B completed a Psychological Evaluation of Student. Student was referred for an initial evaluation to determine eligibility for special education services.⁶ Petitioner reported that Student struggled in reading, writing, and math, and due to behavioral issues, s/he is frequently put out of class. According to academic records, Student was performing below age and grade expectations in all areas, and behavioral issues were exacerbating his/her academic difficulties. S/he had already received seven disciplinary referrals during the school year due to chewing gum, noncompliance, off-task behaviors, running in the halls, and physical assaults. Student’s Physical Geography and English teachers both noted that s/he was disruptive and confrontational with peers, demonstrated

² The Issues Presented section of the *Complaint* mentioned only the removal of an incentive plan as a specific deficiency but indicated that “several supports” had been removed from a previous BIP. The additional supports listed in the fourth Issue Presented were provided by Petitioner’s counsel during the prehearing conference.

³ During the prehearing conference, Petitioner’s counsel reported that Petitioner still had not received standardized testing. testing results from the 2023-24 school year and behavior records from the 2023-24 and 24-25 school years. She indicated that she is aware of the existence of at least 23 missing incident reports and two off-site suspensions for which no records had been provided.

⁴ 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.

⁵ Petitioner’s Exhibit (“P.”) 15 at page 1. The exhibit number is followed by the exhibit page number and the digital page number in parentheses, i.e., P15:1 (235).

⁶ P4:1 (42).

attention-seeking behaviors (e.g. excessive talking), task avoidance, and failed to comply with classroom rules and expectations. Student’s general education teacher reported that s/he was “extremely physically reactive” and was “quick to instigate a physical altercation.” Student was receiving monthly services from a psychologist at Facility A where s/he had been diagnosed with Disruptive Behavior Disorder, Posttraumatic Stress Disorder (“PTSD”), and Bereavement.⁷

On the Wechsler Intelligence Scale for Children (“WISC-V”), Student scored in the Low Average range on the Verbal Comprehension Index (86) and the Fluid Reasoning Index (88), and in the Very Low range on Full Scale IQ (76), the Visual Spatial Index (75), the Working Memory Index (79), and the Processing Speed Index (77).⁸ On the Woodcock-Johnson Tests of Achievement (“WJ-IV”), Student scored in the Low Average range in Broad Mathematics (83 – Average in Applied Problems (94)), in the Low range in Broad Reading (Low Average, 80-89 in Letter-Word Identification, Passage Comprehension, Word Attack, and Oral Reading, but Very Low in Sentence Reading Fluency (65)), and in the Low Average range in Broad Written Language (85- Average in Spelling (93), Low in Sentence Writing Fluency (77)).⁹

On the Behavior Assessment System for Children (“BASC-3”), Student’s teacher, Teacher A, completed rating scales that yielded T-scores in the Clinically Significant range in Hyperactivity (71), Aggression (76), and Learning Problems (76), and in the At Risk range in Conduct Problems (68), Depression (66), and Attention Problems (65).¹⁰ The Conners-3 was administered to assess for attention deficit hyperactivity disorder (“ADHD”). Petitioner’s and Teacher A’s rating scales both yielded Clinically Significant scores only in Defiance/Aggression (90 and 80, respectively). Petitioner’s score was also Clinically Significant in Peer Relations (71) and At Risk in Inattention (69), Hyperactivity/Impulsivity (69), Learning Problems (62) and Executive Functioning (67). Teacher A rated Student at the Clinically Significant Level in Hyperactivity/Impulsivity (77) and At Risk in Inattention (62) and Peer Relations (67).¹¹

Examiner A diagnosed Student with Disruptive Mood Dysregulation Disorder and PTSD, both by history. She also opined that Student qualified for special education services as a student with ED. Examiner A also suggested a smaller class environment and, due to below average visual-motor integration skills, that an occupational therapy (“OT”) evaluation be conducted.¹²

3. On February 4, 2022, when Student was in grade B at School D, DCPS conducted an IEP Annual Review meeting. Student was classified with an ED.¹³ In Consideration of Special Factors, the IEP team indicated that Student’s behavior impeded her/his learning or that of classmates, that s/he communicated effectively, and that s/he did not require A/T.¹⁴ In Mathematics, the Present Levels of Academic Achievement and Functional Performance (“PLOP”) reported that on a September 17, 2021 i-Ready assessment, his/her score of 432 reflected a grade C performance level, five grade levels below his/her grade, despite Math being his/her

⁷ *Id.* at 2 (43). In 2015, Student had witnessed her/his paternal aunt being shot and killed.

⁸ *Id.* at 3-6 (44-47).

⁹ *Id.* at 6-7 (47-48).

¹⁰ *Id.* at 8-9 (49-50).

¹¹ *Id.* at 9 (50).

¹² *Id.* at 11-12 (52-53).

¹³ P9:1 (108).

¹⁴ *Id.* at 2 (109).

favorite subject. The lone goal was that s/he would increase the ability to identify geometric shapes and apply concepts and properties of geometric figures to solve problems with 80% accuracy.¹⁵ In Reading, the PLOP reported that Student's October 1, 2021 i-Ready score of 461 reflected a grade E performance level, six grades below her/his grade level. The goals were: (a) after listening to a grade-level informational text, given a written excerpt from the text with one technical word underlined with context clues highlighted and a written prompt to define the meaning of the underlined word within the text, Student would write the meaning of the underlined word with at least 80% accuracy, and (b) after reading an instructional level literary text, given a short excerpt and one explicit claim about the text, Student would write two details from the text to support the claim, for 3 out of 4 explicit claims from the text, on 3 of 4 occurrences, with at least 80% accuracy.¹⁶ In Emotional, Social, and Behavioral Development ("Behavior"), the PLOP reported that Student exhibited inappropriate interactions with students and staff including impulsivity, off-task behavior and verbal aggression, although her/his English Language Arts ("ELA") teacher reported that Student putted forth great effort and pride into his/her work. His/her teachers indicated that Student demonstrated verbal aggression when s/he was redirected, reprimanded, given a task to complete, and socializing with other students. His/her Science teacher reported that Student struggled with accepting help, environmental distractions, and antagonizing other students. The goals were: (a) Student would acknowledge a full range of emotions in weekly counseling sessions and would acknowledge negative feelings (anger, sadness, etc.) and sit with them when processing a situation that would evoke a negative emotion, and (b) when feeling unclear or frustrated by an academic assignment, Student would advocate for assistance by asking for support from his/her teachers within five minutes of initiating the task.¹⁷

The IEP team prescribed 18 hours per week of specialized instruction and four hours per month of behavioral support services ("BSS") outside general education. In Other Classroom Aids and Services, the IEP team noted that "[s/he] needs a dedicated aide to remind [him/her] to remain on task," but checked the "No" box for "Student requires the support of a dedicated aide."¹⁸

4. On November 18, 2022, when Student was in grade L at School C, Examiner B completed an Occupational Therapy Initial Evaluation Report as part of a settlement agreement.¹⁹ Examiner B interviewed Student's science teacher, Teacher B, who had no concerns with Student's writing and stated that Student normally completes her/his classroom assignments. Student was argumentative and defiant but did his/her work. Teacher B reported that while Student was more compliant at the beginning of the school year, her/his behavior had deteriorated since then. Student was easily influenced by his/her peers.²⁰ Examiner B reported that Student was reluctant to be assessed and asked who gave permission to test her/him. Once Examiner B explained the need for the assessment, Student agreed, but then refused to take part when the first session was scheduled. S/he refused to participate again the following week, but s/he complied on the third attempt.

On the Bruininks-Oseretsky Test of Motor Proficiency ("BOT-2"), Student scored in the Average range in Fine Manual Control (Above Average range in Fine Motor Precision and

¹⁵ *Id.* at 3-4 (110-11).

¹⁶ *Id.* at 5-7 (112-14).

¹⁷ *Id.* at 8-9 (115-16).

¹⁸ *Id.* at 10 (117).

¹⁹ P6:1 (63).

²⁰ *Id.* at 4 (66).

Average in Fine Motor Integration), and in Manual Coordination (Average in Manual Dexterity and Upper-Limb Coordination).²¹ On the Beery-Buktenica Developmental Test of Visual-Motor Integration (“VMI”), Student scored in the Average range in Visual-Motor Integration, Visual Perception, and Motor Coordination. Overall, Student demonstrated Above Average handwriting performance.²²

Student’s responses to sensory events in the classroom were measured on the Sensory Profile 2: School Companion with rating scales completed by her/his teacher, Teacher C. Student demonstrated like most peers in seeking sensory input. “This tells us that [Student] does not seek sensory input in ways so excessive or disruptive that it interferes with [her/his] participation in tasks completion.” S/he scored more than others in the area of Avoiding, indicating that s/he was likely to retreat from unfamiliar situations. “Significantly, parents often report that children who score much more than others demonstrate stubborn and controlling behaviors. Based on interview, and observation, [Student] can be stubborn and controlling during [his/her] school day.” Student scored more than others in Sensitivity/Sensor, indicating the likelihood of reacting more quickly and more intensely than others. “Significantly these children might be cautious about proceeding in some situations because they are overwhelmed or might become upset with others who interrupt them. They tend to notice every little detail in an environment and if it changes, it can impact their attention and ability to commensurate. Parents or teachers may report that this child appears distractable or hyperactive.” In Registration/Bystander, Student scored like most peers. In the Sensory section of this assessment, in Auditory, Student scored Much More Than Others, meaning s/he responds to things s/he hears and is distracted much more than others. In Visual, s/he scored Much More Than Others, suggesting s/he “may leave items blank on a busy worksheet despite knowing the answers.” In Touch, Student scored Just Like the Majority of Others, an indication that Student “does not resist clothing textures, greeting peers with fist bumps or handshakes, hugs, etc.” In Movement, s/he scored Like the Majority of Others, indicating “that [s/he] does not lose [her/his] balance unexpectedly when walking on an uneven surface and/or have a difficult time engaging in a new or unfamiliar motor/movement task.” In Behavioral, Student scored More Than Others; “[s/he] may become upset in new settings that it may often be difficult to calm {him/her] down... [S/he] may exhibit an outburst when unable to start or complete a task and may benefit from smaller steps and modeling.” The four School Factors reflect the teacher’s perspective about the student in the classroom. In School Factor 1, the need for external support to participate in learning, Student responded like most peers, meaning s/he does not require a lot of sensory input to remain focused in the environment. “[S/he] most likely does not often seek more input by actively engaging in behaviors to get more of the sensory input [s/he] needs.” School Factor 2 is the student’s awareness and attention within the learning environment. Here, Student scored more than others. “This section includes Seeking and sensitivity items... [Student] is not a seeker. Sensors engage in behaviors as a reaction to the sensory input around them. [Student] is a sensor. Students in this category may react to all noticeable input, which can be distracting and lead to the student being overwhelmed. Students with more than others School Factor 2 scores may be pulled away from learning activities because of this attention to other stimuli in the environment.” School Factor 3 is a student’s tolerance within the learning environment. Student responds much more than her/his peers. “This section includes Sensitivity and avoiding items. Sensitivity and Avoiding are both low threshold sensory processing patterns, meaning that the student notices sensory inputs

²¹ *Id.* at 6 -8 (68-70).

²² *Id.* at 8-12 (70-74).

very quickly. With Avoiding, the student is more likely to move away from stimuli, while with Sensitivity the student is more likely to react to stimuli with annoyance or frustration. This student may become overloaded very quickly in typical learning environment, interfering with their ability to understand instructions, complete independent work, or cooperate with other students in groups.” School Factor 4 is the availability for learning. Student scored like most peers in this area. In terms of Neuromotor/Muscular Skills, Student’s muscle tone, range of motion, muscle strength, motor planning, and postural control were all normal.²³ S/he was able to perform all of his/her functions of daily living independently in the school environment.²⁴

Examiner B made no specific recommendation that Student should receive school-based services but opined that “[Student’s] scores on [her/his] Sensory Profile-2 (auditory, visual, and behavioral processing) within the school environment impact [his/her] ability to access the curriculum in the general education setting. [S/he] would benefit from the exploration of incorporating sensory strategies for self-regulation/management.” She also offered several recommendations clearly intended for school-based services.²⁵

5. On November 22, 2022, DCPS conducted an IEP Annual Review meeting. Student’s disability classification remained ED.²⁶ The Mathematics PLOP reported that on her/his September 2022 i-Ready assessment, Student’s score of 413 was at a grade C level, six grades below his/her grade level, and on November 10, 2022, her/his score of 444 was at a grade A level, four grades below grade level. The goals were: (a) when given a set of 3D shapes, Student would calculate the volume of the figure with 80% accuracy, and (b) when given ten one and two-step word problems using any of the four operations and rational numbers, Student would set up an equation and solve the problems with 80% accuracy.²⁷ In Reading, the PLOP reported that on Student’s most recent i-Ready assessment, his/her score of 490 was at a grade C level, six grades below grade level. “[Student’s] scores in the domain of comprehending literary and informational text reveal that [Student] needs support around determining meaning using context clues in the text.” The goals were: (a) when given a grade level informational text, Student would be able to define words and match the words with the relevant context clues that help define the words in 3 out of 4 trials, and (b) Student would be able to draw conclusions when reading informational grade level texts in 3 out of 4 trials.²⁸ In Behavior, the PLOP reported that School C used Kickboard to track behavior. In September 2022, Student earned a 97% positivity rate, October 94%, a positivity rate, and in November, after football season ended, it dropped to a 89% positivity rate. A December 2021 FBA concluded that Student is likely to engage in inappropriate behaviors when s/he is seeking attention from others. Typically, when s/he is in the presence of certain peers, in a less structured environment, met with academic challenges, or feels that her/his character is being attacked, s/he may exhibit the behaviors. This school year, Student received one suspension this year for reckless behavior during recess. The following are behavior infractions noted in Kickboard: one instance of not following School C’s cell phone policy, two referrals for being off-task, three classroom disruptions, five incidents of defiance, four incidents out of location, four incidents of rejecting feedback, one instance of name calling, one threat, and one instance of

²³ *Id.* at 16-17 (78-79).

²⁴ *Id.* at 20 (82).

²⁵ *Id.* at 21 (83).

²⁶ P10:1 (127).

²⁷ *Id.* at 4-5 (130-31).

²⁸ *Id.* at 5-6 (131-32).

physical aggression/play fighting. Student demonstrated emotional dysregulation when s/he felt his/her character was being questioned or s/he was being treated unfairly. The goals were unchanged from the previous IEP.²⁹ In Motor Skills/Physical Development (“Motor”), the PLOP reported, incorrectly, that Student “has an IEP with OHI-Other Health Impairment with a subcategory ruling of ED-Emotional Disturbed/Disability.” The PLOP provided a brief summary of the findings in Examiner B’s November 18, 2022 OT evaluation. The goals were: (a) using sensory strategies and adaptations as needed, Student would demonstrate improved self-regulation as demonstrated by his/her ability to attend and participate in whole group and/or individual learning activities for a duration of at least 15 minutes with no more than minimal redirection for on-task behavior, and (b) Student would state and demonstrate at least two activities to use to maintain a state of calm that enabled him/her to focus, stay on task, and complete classroom tasks when s/he became dysregulated.³⁰

The IEP prescribed 11.25 hours per week of specialized instruction outside general education, 6.75 hours per week inside general education, two hours per month of OT services inside general education, and four hours per month of BSS outside general education. The team did not prescribe a dedicated aide. The Other Classroom Aids and Services included the following: rules and expectations should be clearly stated on a daily basis and before tasks and transitions, seating in close proximity to the teacher, clear directions for new and unfamiliar tasks, breaking large tasks down into small simple steps with modeling cues for Student to see, process, and understand for task engagement, using natural lighting to elicit a calm and self-regulated state, using deep breathing exercises to elicit calming, using strategies such as a timer to establish clear work expectations and limitations, sensory breaks as needed, directions presented in small increments, increased time to complete assignments, repeating verbal instructions as needed, using a visual model to copy from when completing handwriting tasks with the use of a highlighter to decrease visual clutter, providing positive reinforcement to promote engagement and motivation, a trial allowing Student to listen to quiet/calming music during work time, and use of desk top dividers to decrease visual stimuli.³¹

6. On February 6, 2023, Student’s ANET Math assessment score of 25 was Below District Average.³² On February 14, 2023, Student’s middle of year (“MOY”) i-Ready Reading score of 548 represented a 322% progress toward Annual Typical Growth from her/his beginning of the year (“BOY”) score of 490. The BOY score was at a grade C level; her/his MOY score was at a grade A level, four grades below Student’s grade level. However, on the MOY assessment, Student was at or above grade level in Phonological Awareness, Phonics, and High-Frequency Words. Her/his Overall score was depressed by a grade E (seven grades below grade level) score in Comprehension: Informational Text and a grade C (six grades below grade level) level in Comprehension: Literature.³³ On May 25, 2023, Student’s end of year (“EOY”) i-Ready Math assessment score of 448 represented a gain of 35 points from his/her September 9, 2022 BOY score of 413. The BOY score was at a grade C level, the EOY score was at a grade F level, five grades below Student’s grade level.³⁴

²⁹ *Id.* at 7-9 (133-35).

³⁰ *Id.* at 9-10 (136-37).

³¹ *Id.* at 12 (138).

³² P46:7 (576).

³³ P45:1-2 (567-8).

³⁴ P44:1 (564).

7. During the 2022-23 school year, Student earned the following grades with teacher comments in parentheses where provided: Math – B (Good participation, Excellent behavior), English – C+ (Pleasure to have in class), Science – C+ (Pleasure to have in the class), Reading Workshop – A- (Pleasure to have in the class), U.S. History & Geography – B- (Pleasure to have in the class), Graded Advisory – A- (Pleasure to have in the class), Health & Physical Education – B+. Character Development – B, Design & Modeling – C, and Art – B- (Needs to study more). Student scored 464 on a January 10, 2023 Scholastic Reading Inventory (“SRI”) assessment, reflecting a grade C performance level, six grades below grade level. Student was absent thirteen days.³⁵

8. During the 2022-23 school year, Student was suspended on two occasions. On October 27, 2022, s/he was suspended for 1-5 days for a Tier IV behavior: an unprovoked assault on a student on the playground. On March 3, 2023, s/he was suspended for a Tier IV offense: hitting a student in the face in the cafeteria.³⁶

9. On July 14, 2023, DCPS issued Student’s year-end IEP Progress Report.³⁷ In Mathematics, Student was reported to be Progressing on both goals: “On [his/her] most recent iReady diagnostic, [Student] grew by two levels in the area of geometry and measurement and data. [Student] still requires prompting to find the area and perimeter of a shape but when reminded of the formulas, [s/he] can solve independently... [Student] is close to mastering [the word problem] goal. On a recent assignment that required [him/her to] solve two step equations, [s/he] did so with 90% accuracy.” In Reading, Student was reported to be Progressing on both goals: “On [her/his] most recent Reading Inventory exam, [s/he] scored a 554, which is growth from the BOY score of 356... [Student] has shown mastery on [drawing conclusions when reading informational grade level texts] this quarter in both science and ELA content classes... [Student] has a shown a considerable degree of progress.” In Behavior, Student was reported to have Mastered both goals: “Behavior support sessions show that [Student] is making progress towards achieving [the acknowledging emotions] goal. [Student] is beginning to understand how [his/her] core values and previous experiences impact how [s/he] responds to others... Teacher reports show that [Student] is a strong advocate for [her/himself].” In Motor, Student was reported to have Mastered both goals: “During general education classes, [Student] demonstrates improved self-regulation as evidenced by attending to instructions from teachers and showing appropriate attention and arousal level in the classroom activity for approximately 20 minutes with minimal to moderate verbal prompting to avoid distracting behavior from other students. Current Progress: During whole group on individual task, [Student] has demonstrated improved self-regulation as demonstrated by [her/his] ability to attend and appropriately participate for 15 minutes with minimum verbal cues (2-3). [S/he] has used self-regulation techniques to appropriately help [him /her] redirect [him/her] to tasks... Current Progress: Per observation, [Student] has demonstrated increased self-regulation in regards to maintaining a state of calm that enables [her/him] to focus, stay on task, and complete classroom tasks when [s/he] becomes dysregulated. [Student] has advocated for [her/himself] and appropriately demonstrated two activities (movement break, breathing techniques) to use when in a dysregulated state.”³⁸

³⁵ P36:1-4 (530)-33).

³⁶ P48:2 (592). Tier IV behaviors result in off-site suspensions.5-B DCMR§ 2502.4.

³⁷ P20:1 (296).

³⁸ P20:1-6 (296-301).

10. On November 2, 2023, when Student was in grade K at School A, DCPS conducted an IEP Annual Review meeting. Her/his disability classification remained ED.³⁹ In Special Considerations, the IEP team checked the “No” boxes as to whether the child’s behavior impeded the child’s behavior or that of other children, whether the child had communication needs, or needed A/T.⁴⁰ The Mathematics PLOP reported that on a February 6, 2023 Achievement Network (“ANet”) assessment, Student’s score of 25 was “Below District Average.” On a September 5, 2023 NWEA MAP assessment, Student score of 188 was in the 1st percentile. On a May 19, 2023 Partnership for Assessment of Readiness for College and Careers (“PARCC”) assessment, Student’s score of 650 did “Not Yet Meet Expectations.” Student had earned 100% for class participation and an overall grade of 70.96 C-. His/her general education Math teacher reported that Student was focused and that s/he caught on to any mathematical problems presented, but when s/he became distracted, s/he lost focus. The goals were: (a) given a numeric expression involving a rational exponent that simplifies to a whole number, Student would evaluate the expression by applying the properties of rational exponents, and (b) given a graph of a two-variable equation, Student would identify points on the graph that were solutions to the equation.⁴¹ In Reading, the PLOP reported that Student’s February 6, 2023 ANet score of 46 was Below District Average. Her/his May 19, 2023 PARCC score of 650 was “below level.” Her/his September 5, 2023 HMH Reading Inventory score of 196 was Below Basic. “Relative to formative assessment and or classroom-based assessment [Student] earned an overall Grade Point Average of 88.79 , B+.” Student performed well in vocabulary exercises and analytical activities where s/he scored 100% for all activities administered. S/he needed to improve on writing a narrative, finding evidence in a text independently and determining the main idea of a passage. The goals were: (a) given a grade-level informational text and an implicit or explicit claim about the text, Student would cite one piece of evidence to support the claim in writing, for 4 out of 5 explicit and/or implicit claims, and (b) after reading a grade-level informational passage, Student would explain the development of a central idea by identifying one central idea and two details or quotes that contribute to the development of the central idea, in writing.⁴² In Behavior, the PLOP reported that Student had good attendance but had been tardy eight times. His/her grades were in the B/C range. At the beginning of the school year, Student was disruptive in class by yelling across the room to talk to other students, using inappropriate language, and being distracted by his/her cell phone. S/he was reported to have learned to reduce these incidents and was learning to behave more appropriately. “[Student] has a big personality with a lot of charm and leadership abilities if [s/he] chooses to focus on being positive. [S/he] is very popular and is liked by many of [her/his] peers and staff members. [S/he] is usually in a positive mood but will express [his/her] emotions when [s/he] is not happy.” The lone goal was that in counseling sessions, Student would accurately identify feelings and appropriate coping strategies when presented with real or imagined situations.⁴³ In Motor, the PLOP reported that during the 2022-23 school year, Student mastered all his/her goals, demonstrating improved self-regulation as evidenced by her/his ability to attend to the teacher’s instruction and engage appropriately with minimal verbal cues for fifteen minutes. Student was able independently to demonstrate two sensory strategies in periods of dysregulation: movement breaks and breathing techniques. During the 2023-2024 school year, Student sometimes

³⁹ P11:1 (147).

⁴⁰ *Id.* at 2 (148).

⁴¹ *Id.* at 3-4 (149-50).

⁴² *Id.* at 5-6 (151-52).

⁴³ *Id.* at 7 (153).

had difficulty initiating and completing her/his daily in-class work, requiring moderate to maximum verbal and visual prompts to initiate and complete classroom assignments. Student demonstrated disruptive behaviors such as rapping or talking loudly in class during tasks or instruction and being physical with students in class. The goals were: (a) Using multisensory strategies and adaptations as needed, Student would demonstrate improved self-regulation as evidenced by his/her ability to attend and participate in whole group and or individual learning activities for at least fifteen minutes with no more than two prompts for redirection for off-task behavior, and (b) using multisensory strategies and adaptations as needed, after receiving written instructions for an independent in class assignment and when expected to start immediately, Student would ask for clarification if needed, gather all necessary materials (e.g. notebook, tools, pencil, laptop, textbook) and start working within 2 minutes without being distracted by other materials or electronics, inappropriate socializing, or distracting others.⁴⁴

The IEP team prescribed fifteen hours per week of specialized instruction inside general education, and ninety minutes per month of OT services and four hours per month of BSS outside general education. The only Other Classroom Aides and Services were seating in close proximity to the teacher and repeating rules and expectations daily.⁴⁵

11. Student's January 18, 2024 HMH Reading Inventory score of 421 was Below Basic, as were his/her scores in September 2021, June 2022, September 2022, January 2023, and September 2023. Curiously, Student scored 464 on January 10, 2023, fell to 196 on September 5, 2023, then up to 421 on January 18, 2024.⁴⁶

12. On April 9, 2024, DCPS issued an amended IEP to the November 2, 2023 IEP: "Relative (sic) Service Provider hours are missing from the IEP. There was an error in the PSSP platform."⁴⁷

13. On June 6, 2024, DCPS issued Student's year-end IEP Progress Report. In Mathematics, Student was reported to be Progressing on both goals: "[Student] has shown relative progress with scores of 69.1 (D+) in content area Mathematics for school term 2023 - 2024." In Reading, Student was reported to be Progressing on both goals: "[Student] has shown progress with scores of 84.99 (B) in content area Reading for school term 2023 - 2024." In Behavior, Student was reported to be Progressing on the goal of identifying feelings and appropriate coping strategies: "[Student] is making progress on [her/his] goals and is learning how to process [her/his] emotions when feeling vulnerable and discuss [his/her] trauma over the loss of [his/her] father as evidenced by [his/her] High score for emotional distress and overall stress on the SDQ data. [S/he] struggles with remaining in [his/her] classes the entire time and will become distracted easily; however, when [s/he] needs a break [s/he] will come to this writer for needed support. [S/he] is still working on increasing [his/her] coping skills and will work diligently to maintain [her/his] assignments." In Motor, Student was reported to be Progressing on both goals: "[Student] is able to attend to tabletop activities in a small quiet room for 15- minute intervals with minimal verbal prompts (1-2 cues) for on-task behaviors with 71% accuracy across 4 opportunities. [S/he] was

⁴⁴ *Id.* at 8-9 (154-55).

⁴⁵ *Id.* at 10 (156).

⁴⁶ P46:5 (574).

⁴⁷ P12:1 (164). The exhibit included only the cover page.

able to independently attend to fine-motor task for 8 minutes without requiring redirection once. [S/he] was able to attend to tabletop tasks for 15-minute intervals with moderate verbal prompts for on-task behaviors with 29% accuracy across 4 opportunities. [Student] is able to utilize [her/his] headphones and listen to music for improved self-regulation. [Student] has been observed to ask for breaks as needed. [S/he] responds well to timers and verbal cues... [Student] is able to initiate and complete classroom writing task within 2 minutes with minimal verbal prompts to initiate tabletop tasks in 100% presented opportunities. [S/he] gets distracted by [his/her] phone between tasks and requires minimal verbal cues for redirection and breaks. [S/he] is able to retrieve the necessary materials with minimal verbal cues to initiate the assigned tasks.⁴⁸

14. During the 2023-24 school year, Student was entitled to two hours per month of OT services per month from the beginning of the school year until November 2, 2023, when s/he was prescribed ninety minutes per month.⁴⁹ Therefore, Student was entitled to receive 14.64 hours of OT services during the school year.⁵⁰ S/he received no services in August and September, two hours in October, two hours in November, two hours in December, one hour in January, two hours in February, two hours in March, 90 minutes in April, 95 minutes in May, and s/he refused services on June 3 and 7, 2024, for a total of 14.08 hours.⁵¹

15. Throughout the 2023-24 school year, Student was entitled to four hours per month of BSS.⁵² Therefore, Student was entitled to receive 36 hours of BSS during the school year.⁵³ S/he received no services in August and September, four hours in October, 4.75 hours in November, two hours in December, four hours in January, two hours in February, three hours in March, two hours in April, five hours in May, and one hour in June.⁵⁴ As Student received 27.75 hours of BSS during the school year, s/he was denied 6.25 hours to which s/he was entitled.

16. During the 2023-24 school year, Student earned the following grades: Algebra 1 – C, Spanish – C-, English – B-, Sculpture – B-, Fitness & Lifetime Sports – B, World History & Geography – C-, Advanced Algebra with Financial Applications – C, Argument Writing — C+, Biology – C+.⁵⁵

17. During the 2023-24 school year, Student was disciplined on five occasions. On September 19, 2023, Petitioner was contacted when Student was found in the hallway without permission “several times throughout the day.” On December 11, 2023, Petitioner was contacted when Student again eloped from the classroom and cursed at a staff member. On December 12,

⁴⁸ P23:1-3 (310-12).

⁴⁹ P11:10 (156).

⁵⁰ There was but one week of school in August, three weeks in November, December, and April, and two weeks in June. Thus, I conclude that s/he was entitled to 0.5 hours in August, two hours each in September and October, 1.13 hours each in November, December, and April, 90 minutes each in January, February, March, and May, and 0.75 hours in June.

⁵¹ P27:1-86 (333-418).

⁵² P10:12 (138), P11: 10 (156).

⁵³ There was but one week of school in August, three weeks in November, December, and April, and two weeks in June. Thus, I conclude that s/he was entitled to one hour of BSS in August, three hours each in November December, and April, four hours each in September, October January, February, March, and May, and two hours in June.

⁵⁴ P27:2-90 (334-422).

⁵⁵ Respondent’s Exhibit (“R.”) 35 at page 15. The exhibit number is followed by the exhibit page number and the digital page number in parentheses, i.e., R35:15 (263).

2023, Student received unspecified on-site suspension for causing a disruption in the classroom. On January 23, 2024 and February 13, 2024, Student received verbal reprimands for elopements.⁵⁶

18. On September 19, 2024, when Student was in grade J at School A, DCPS issued an amended IEP to the November 2, 2023 IEP to provide Student transportation services.⁵⁷

19. On September 25, 2024, DCPS completed a BIP for Student. The Problematic Behaviors were (a) Student struggles to maintain attention or focus on a given task (four times per week for six hours each time), and (b) Student becomes very impulsive, often making impulsive decisions such as leaving class daily and becoming confrontational with staff (four times per week for four hours each time). The Methods/Strategies/Tools for addressing inattentiveness were preferred seating, frequent breaks, and check-ins. The Incentives were that (a) Student would receive a hall pass once s/he had completed her/his classroom assignment or the teacher felt that s/he had completed sufficient work, and (b) Petitioner would be notified of a reward for Student each day s/he stayed in class for the duration of classes in all four periods. The Consequences were: (a) not receiving a hall pass if s/he was not productive during the first half of the class., and (b) cell phone use could possibly be prohibited during class time. The Methods/Strategies/Tools for addressing impulsive behaviors were discussing his/her avoidance behaviors in counseling and evaluating his/her triggers and motives, preferred seating, frequent breaks, and check-ins. The Incentive was positive affirmations from teachers, the social worker, and other relevant school staff. The Consequence was potential suspension.⁵⁸

20. On October 7, 2024, DCPS conducted an IEP Annual Review meeting. Student's classification remained ED. In Special Considerations, the IEP team indicated that Student's behavior impeded his/her learning or that of other children: "[Student] is not focused while in class which keeps [her/him] from completing the majority of [her/his] assignments. [Student's] distracting behaviors cause [him/her] to be redirected multiple times throughout the day. [S/he] walks around the class and distracts peers by talking to them at least 4 to 5 times a class." In Mathematics, the PLOP reported that Student's score of 209 on a September 23, 2024 MAP assessment placed her/him in the 3rd percentile. His/her current grade in Geometry was 77.43, a C+. Student's strength was class participation. However, s/he was easily distracted by her/his cellphone and conversation with peers. S/he failed to return to class when excused to go to the bathroom. The goals were: (a) Quarter 1 Goal: Utilizing new material, starting at a present level of 0, Student would prove that 2 triangles are congruent using 1 of the 5 triangle congruence theorems, (b) Quarter 2 Goal: Utilizing new material, starting at a present level of 0, Student would prove that 2 triangles are similar using 1 of the 3 triangle theorems, and (c) Quarter 3 Goal: Utilizing new material, starting at a present level of 0, Student would be able to find the missing angle or side applying the trigonometric ratios on 6 out of 10 opportunities.⁵⁹

In Reading, The PLOP reported that Student demonstrated strong verbal skills and was able to participate in class discussions about the text. With read aloud and scaffolding supports, s/he was able to comprehend and answer basic comprehension questions from text which showed

⁵⁶ P48:1-2 (591-92)>

⁵⁷ P13:1, 20 (166, 185).

⁵⁸ P34:1-3 (520-22).

⁵⁹ *Id.* at 3-4 (203-4).

an understanding of main idea and supporting details. However, Student struggled with reading fluency, requiring extra support: chunking of text and audio/read-alouds. Independent reading was challenging for Student due to a lack of focus without support. The complexity of longer text (novels, chapters) was overwhelming for Student making it difficult for him/her to engage fully with independent reading task. S/he currently had a 71.1% C-. His/her assessment average for the class is a 75. His/her class assignments, 50% of the grade, is a 13.75, an F. Student's January 18, 2024 Reading Inventory score of 421 was at a grade A level, five grades below grade level at that time. Student's August 28, 2024 MAP assessment score placed her/him at a grade F to A level, six to seven grades below grade level. "According to [her/his] ELA teacher, the student struggles to maintain attention or focus on a given task for five minutes or more. This results in distractions, or shifting attention to unrelated activities, or the student asking for a break. The intensity of this behavior is severe; tasks remain incomplete. [His/her] distracting behavior and attention shifting occurs every class period and lasts throughout the entire class period. The behavior is moderate to severe – only because the student class work remains incomplete and inconsistent." The goals were: by the end of the IEP cycle, Student would be able to read independently, cite strong textual evidence, support an analysis of the text, and draw inferences from the text on 4 out of 5 opportunities with a score of at least 75% mastery. Quarter 1: when given a reading assignment, Student would be able to independently read and cite strong and thorough textual evidence on 4 out of 5 opportunities. Quarter 2: when given a reading assignment, Student would be able to independently read and support analysis of what the text says explicitly on 4 out of 5 opportunities. Quarter 3: when given a reading assignment, Student would be able to use the text to draw inferences on 4 out of 5 opportunities.⁶⁰ In Written Expression, the goals were: by the end of the IEP cycle, after independently reading grade-level informational text and given one written explicit claim, Student would write one key detail or example that supports a claim. Quarter 1: after independently reading a grade-level informational text, given a word from the text, Student would write a sentence that includes a key detail from the text that supports the meaning of the word. Quarter 2: after independently reading a grade-level informational text, given a written sentence stating the main idea, Student would write one sentence from the text that supports the main idea. Quarter 3: after independently reading a grade-level informational text, given a written inference about the text, Student would write one piece of evidence that supports the inference.⁶¹

In Behavior, the PLOP reported that Student's attendance was good, but s/he got restless at times and frequently asked for hall passes. Student was suspended once this school year for his/her participation in a group fight. "[Student] has a history of minor behavioral infractions, but hopefully the fight and suspension are isolated incidents. This writer has addressed the behavioral infractions while also attempting to build a rapport with [Student]. The plan is to continue assisting [Student] with reducing behavioral, emotional, and social challenges that interfere with [her/his] academic success." The lone goal was that Student would utilize strategies learned in counseling to identify and verbalize the correlation between her/his thoughts, feelings, and behaviors as well as reduce his/her impulsive behaviors (primarily class avoidance) that interfere with his/her academic success.⁶² In Motor, the PLOP reported that during the 2024-2025 school year, Student had consistently refused to participate in occupational therapy services. Student would be agreeable to the therapist during notice periods; however, Student would state that s/he did not

⁶⁰ *Id.* at 8-9 (208-9).

⁶¹ *Id.* at 10-11 (210-11).

⁶² *Id.* at 6 (206).

want to participate in OT sessions at the agreed scheduled time. When asked why s/he did not want to participate in OT services, Student stated to the clinician that s/he didn't feel like participating and it was not a good time. At the start of the 2023 school year, Student refused to participate in occupational therapy services, stating that his/her grandmother had approved termination of OT services. S/he was able to participate in occupational therapy services with her/his grandmother's encouragement. Concerns included Student's ability to attend to instruction in the classroom due to cellphone distractions, peer distractions, and behavioral challenges. The goal was: provided extra time and minimal (2-3) cues, Student would use organizational and sensory supports (e.g., graphic organizers, chunking, examples, checklist, fidgets, movement breaks, timer) as needed to participate in classroom activities, work through completion of assignments, or complete multi-step projects, without inappropriate socializing or distraction from peers and electronics, to increase self-regulation.⁶³

The IEP team prescribed fifteen hours per week of specialized instruction and four hours per month of BSS inside general education and 90 minutes per month of OT consultation services. Other Classroom Aids and Services included a checklist, scaffolding, chunking, teacher writing exemplars, graphic organizers, clear verbal and written directions, visual timers, structured breaks between tasks, highlighting/underlining/bolding key information, a dictionary, annotations in margins, and all service providers will go to class to get Student instead of providing him/her a hall pass.⁶⁴

21. On December 6, 2024, Attorney A, by email, requested that DCPS provide Petitioner "trackers or logs documenting what BSS the student had received... Parent would really like to have access to those service trackers and logs for both 2023/2024 and 2024/2025 to date..."⁶⁵

22. On January 14, 2025, Student's NWEA MAP Reading assessment score of 205 was in the 16th percentile.⁶⁶ On January 16, 2025, her/his NWEA MAP Geometry score of 208 was in the 6th percentile.⁶⁷

23. On March 2, 2025, Examiner C completed a Psychological Triennial Reevaluation of Student. It was reported to Examiner C that Student "is not focused while in class, which keeps [her/him] from completing the majority of [her/his] assignments. [Student's] distracting behaviors cause [her/him] to be redirected multiple times throughout the day. [S/he] walks around the class and distracts peers by talking to them at least 4 to 5 times a class."⁶⁸ During Examiner C's observation of Student, the teacher showed a video on colonization. Student spent the duration of the video on his/her cellphone despite being redirected.⁶⁹ On the Woodcock-Johnson Test of Achievement ("WJ-IV"), Examiner B did not administer all of the subtests in each subject matter cluster and offered no explanation why she did not. In the only Reading subtest administered, Student scored in the Below Average range in Letter-Word Identification (88). In Broad Math,

⁶³ *Id.* at 12-13 (212-13).

⁶⁴ *Id.* at 14 (214).

⁶⁵ P52:1 (603).

⁶⁶ P46:5 (574).

⁶⁷ *Id.* at 7 (576).

⁶⁸ P8:1 (93).

⁶⁹ *Id.* at 7 (99).

Student scored in the Extremely Low range (66): Below Average in Applied Problems (84) and Extremely Low in Calculation (57). Subtests in Math Facts Fluency and Number Matrixes were not administered. In the Broad Reading cluster, Student scored in the Below Average range in Spelling (89); subtests in Writing Samples, Sentence Writing Fluency, and Editing were not administered.⁷⁰ On the Behavior Rating Inventory of Executive Function, (“BRIEF-2”), Teacher D completed rating scales. The overall index score was clinically elevated (T-score: 90).

One or more of the individual BRIEF2 scales were elevated, suggesting that [Student] exhibits difficulty with some aspects of executive function. Concerns are noted with their ability to resist impulses, be aware of their functioning in social settings, adjust well to changes in environment, people, plans, or demands, react to events appropriately, get going on tasks, activities, and problem-solving approaches, sustain working memory, plan and organize their approach to problem-solving appropriately, be appropriately cautious in their approach to tasks and check for mistakes and keep materials and their belongings reasonably well organized.⁷¹

Examiner C did not administer a behavioral assessment but noted that Student had 13 reported behavioral incidents, none of which resulted in an off-site suspension: seven unauthorized presences in the hallway during class time, two behaviors that disrupted or interfered with classroom teaching and learning, one instance of directing profanity or obscene/offensive gestures toward a staff member, one instance of engaging in reckless behavior with the potential of causing harm to her/himself or others, one instance of fighting with the potential for minor injury, and one other instance of fighting which resulted in a serious physical injury.⁷²

After discussing the criteria for a classification of ED, Examiner C opined that “[Student] has a history based on previous reports and data reviewed of exhibiting behaviors that fall under the criteria of ED.” Examiner C provided numerous recommendations to address the deficits found in her evaluation.⁷³

24. On March 7, 2025, DCPS issued Student’s IEP Progress Report for the period ending January 27, 2025. In Mathematics, Student was reported to be Progressing on [his/her] quarterly goals: “[Student] earned a 71.86, C- in Honors Geometry for Term 11 and is well on her/his way to earning [her/his] 1.0 credit for the honors geometry course. During Term 1 [Student] earned a 76.8, a C+, which puts [her/his] final grade for semester 1 of the course a C. [Student] has also been keeping [his/her] absences to a minimum in [her/his] geometry course. [Student] has attended school regularly with only 5 absences during this reporting period. These absences have not significantly impacted [her/his] progress in meeting [her/his] IEP goals. However, consistent attendance will further support growth in proving theorems about triangles. [Student] has made significant progress in improving from [her/his] present level of 0 to proving that 2 triangles are congruent and/or similar. [S/he] has successfully met the target of 3 out of 5 opportunities with an accuracy of 75%.”

⁷⁰ *Id.* at 8-10 (100-102).

⁷¹ *Id.* at 11 (103).

⁷² *Id.*

⁷³ *Id.* at 12-13 (104-5).

In Reading, Student was reported to be Progressing on both goals: “[Student] earned a 71.25, C- for Term 11 and has earned [her/his] 1.0 credit for the English II course. During Term 1 [Student] earned a 70.11 a C+, which puts [her/his] final grade for semester 1 of the course a C. [Student] has also been keeping [her/his] absences to a minimum in [her/his] English II course. [Student] has attended school regularly with only 10 absences during this reporting period. These absences have not significantly impacted [his/her] progress in meeting [her/his] IEP goals. However, consistent attendance will further support growth in being able to read independently, cite strong textual evidence, support an analysis, and draw inferences from the text... [Student] has made significant progress in improving from [her/his] present level of heavy scaffolding and audio read aloud to being able to read independently. [S/he] has successfully met the target of 4 out of 5 opportunities with an accuracy of 75% during heavy scaffolding... [Student] has made significant progress in improving from [her/his] present level of after independently reading a grade level informational text, given a sentence stating the main idea, [Student] will write 1 sentence to support the main idea to being given an inference about the text, [Student] will write 1 piece of evidence that supports the inference. [S/he] has successfully met the target of 4 out of 5 opportunities with an accuracy of 75% during heavy scaffolding.”

In Behavior, Student was reported to be Progressing on her/his goal: “[Student] has made good social/emotional progress over this 2nd quarter of the school year. [His/her] grades are 5C’s, and 1D’s. Regarding [his/her] attendance, [s/he] has missed 5 unexcused days. When present [s/he] is routinely available for counseling and makes good use of [her/his] time in counseling. We moved from individual counseling sessions to group sessions. However, [Student] struggled with over stimulation in the sessions, and I decided to go back to individual. At times, [Student] shows improvements in regards to [her/his] management of emotions and decision making, then other days [s/he] regresses. Based on service delivery and records review through January 26, 2024, it has been determined that [s/he] is making good progress.” In Motor, the goal of participating in class without socialization or distraction was Just Introduced.⁷⁴

25. On March 10, 2025, Student was suspended for two days for a Tier 4.10 behavior: inciting others to violence or disruption.⁷⁵ On April 9, 2025, Student was suspended for three days for a Tier 5.09 behavior: assault/physical attack on a student or staff member.⁷⁶

26. On April 7, 2025, DCPS conducted an IEP Annual Review meeting. Petitioner was represented by Attorney A.⁷⁷ The comment as to Student’s behavior in Special Considerations was repeated from the previous IEP.⁷⁸ In Mathematics, the PLOP was unchanged from the October 7, 2024 IEP. The goals were: (a) when given five problems involving finding the measures of central and inscribed angles in circles that intercept an arc using digital media videos as examples, Student will correctly solve 4 out of 5 problems with 80% accuracy, and (b) by the end of the IEP cycle, when given problems involving adding, subtracting, or multiplying polynomials, Student will use correct operations (e.g. combining like terms, distributive property) to solve problems with 80% accuracy. By the end of Quarter 1, when given problems involving adding, subtracting,

⁷⁴ P25: 1-4 (320-23).

⁷⁵ P49:1 (594). Tier IV behaviors result in off-site suspensions.5-B DCMR§ 2502.4.

⁷⁶ P51:1 (600). Tier V behaviors result in off-site suspensions or expulsions. 5-B DCMR§ 2502.5. Student was suspended from April 10 through 21, 2025, but spring break was from April 14-18, 2025.

⁷⁷ P15:1 (235).

⁷⁸ *Id.* at 2 (236).

or multiplying simplified polynomials with like terms color-coded, Student will use color-coded tiles to add and subtract polynomials and an area model with each term labeled outside the diagram and the products of the terms given in each cell of the diagram to multiply polynomials to solve 4 out of 5 problems with 70% accuracy. By the end of Quarter 2, when given problems involving adding, subtracting, or multiplying simplified polynomials with like terms color-coded, Student will use color-coded tiles to add and subtract polynomials and an area model with each term labeled outside the diagram and the products of the terms given in each cell of the diagram to multiply polynomials to solve 4 out of 5 problems with 80% accuracy. By the end of quarter 3, when given problems involving adding, subtracting, or multiplying polynomials and reference materials regarding how to add, subtract, or multiply polynomials, Student will use correct operations to solve 4 out of 5 problems with 80% accuracy.⁷⁹ In Reading, the PLOP was largely unchanged from the October 7, 2024 IEP. The goals were: (a) By the end of the IEP cycle, Student will be able to read independently, cite strong textual evidence, support an analysis of the text, and draw inferences from the text on 4 out of 5 opportunities with a score of at least 75% mastery, and (b) after reading a grade-level informational text, Student will explain the connection between two ideas in the text, use evidence to support those ideas and analyze how those ideas support the connection in writing. By the end of Quarter 1, after reading a grade-level informational text, Student will identify and list three facts from the text, in writing, for 3 out of 3 rubric points. By the end of Quarter 2, after reading a grade-level informational text, Student will identify and list three facts from the text, in writing, and add supporting evidence for those facts for 3 out of 3 rubric points. By the end of Quarter 3, after reading a grade-level informational text, given an implicit question, Student will answer the question with at least two details to support his/her answer and an analysis, in writing, for 5 out of 6 rubric points.⁸⁰

In Behavior, the PLOP was largely unchanged in the description of Student's behavior except to add that lately, Student had been a bit more confrontational with his/her peers, and at times staff too, but most often s/he accepted redirection well. The lone goal was unchanged from the previous IEP.⁸¹ In Motor, the PLOP was largely unchanged from the previous IEP except to add the response to Student's aversion to OT services:

Historically [Student] has been aversive to receiving direct occupational therapy services therefore [s/he] was placed on consultative occupational therapy to support [her/his] access to instruction. Due to recent psychological evaluation findings, the team agreed to revisit direct services. Presently, [Student] is inconsistent with work submission and struggles with staying in certain classrooms. [S/he] is able to stay in certain classrooms at times for the duration of the period at times as well. [Student's] preferred breaks involve undisturbed phone usage or taking a walk out of the classroom. At this time, direct and consultative services are proposed to support [Student] directly and should [s/he] continue to refrain from engaging with therapy [s/he] may benefit from consultative support.⁸²

⁷⁹ *Id.* at 3-7 (237-41).

⁸⁰ *Id.* at 9-12 (243-46).

⁸¹ *Id.* at 8 (242).

⁸² *Id.* at 13 (247).

The goal was: with accommodations as needed (checklists, movement breaks, structured timed breaks, timer, etc.), Student will submit 50% of class assignments in a timely manner as identified by teacher deadlines using a monitoring system (work checklist, digital planner, etc.) in all core content classes.⁸³

The only changes the IEP team made to Student's services were to add 30 minutes per month of OT services outside general education and to reduce OT consultation services from 90 to 30 minutes per month.⁸⁴

27. On May 29, 2025, Student's NWEA MAP Reading score of 211 was in the 25th percentile.⁸⁵

28. During the 2024-25 school year, Student was entitled to 90 minutes per month of OT services per month from the beginning of the school year until October 7, 2024, when direct OT services were terminated.⁸⁶ Services were reinstated on April 7, 2025 in the amount of 30 minutes per month. Student refused services on four occasions in September and was absent for sessions scheduled on April 22, April 29, May 6, and June 5, 2025.⁸⁷

29. During the 2024-25 school year, Student was entitled to four hours per month of BSS per month throughout the school year.⁸⁸ Therefore, Student was entitled to receive 36 hours of BSS during the school year.⁸⁹ S/he received no services in August, five hours in September, two hours in October, 1.5 hours in November, 1.5 hours in December, 1.5 hours in January, and 1.5 hours in February.⁹⁰ As Student received 13 hours of BSS during the school year, s/he was denied 23 hours to which s/he was entitled.

30. During the 2024-25 school year, Student earned the following grades: Honors Geometry – C, Culinary Arts – B, Health Education – C. General Music – C+, English – C-, Chemistry – D, Extended Literacy – C+, Body Conditioning & Fitness – B, Fitness & Lifetime Sports – C, World History – D.⁹¹

31. Witness A was Petitioner's OT and A/T expert witness. When asked if the OT goals in the November 2023 IEP were appropriate, Witness A opined that due to Student's dysregulation and elopement, it needed a "richer sensory processing goal." When I asked her what that goal would look like, Witness A replied, "a goal measuring [his/her] use of some of the [self-regulation] strategies." When asked if the multisensory strategies goal in the October 2024 goal was appropriate, Witness A opined that the "as needed" caveat was reactive rather than proactive.

⁸³ *Id.* at 14 (248).

⁸⁴ *Id.* at 15 (2490).

⁸⁵ P46:5 (574).

⁸⁶ P11:10 (156).

⁸⁷ P28:5-61 (429-485).

⁸⁸ P11:10 (156).

⁸⁹ There was but one week of school in August, three weeks in November, December, and April, and two weeks in June. Thus, I conclude that s/he was entitled to one hour of BSS in August, three hours each in November December, and April, four hours each in September, October January, February, March, and May, and two hours in June.

⁹⁰ P28:1-62 (425-486).

⁹¹ R35:24-25 (272-73).

She opined that it was not appropriate to terminate direct OT services because Student needed weekly services; she opined that Student required four hours per month of direct OT services and 30 minutes per month of consultation services. Witness A opined that the thirty minutes per month prescribed in the April 2025 IEP was insufficient “for a kid with so much dysregulation. [S/he] needs more than that.” When asked if anything suggested the need for A/T, Witness A replied that Student was struggling with reading, writing, completing work independently, and organizing. “Some sort of reading and writing software might engage [him/her] to do it more independently.” An A/T evaluation would be needed to determine the appropriate tools. On cross-examination, Witness A conceded that the OT goals in Student’s IEPs were measurable, that the goals in the October 2024 IEP addressed multisensory strategies, that Student consistently refused OT services, and that Student showed progress on OT goals during the 2023-24 and 2024-25 school years.⁹²

32. Witness B was Petitioner’s educational advocate and expert witness in special education. When asked if he had any concerns about the November 2023 IEP, Witness B replied that he was concerned about the reductions in specialized instruction outside general education and OT services and the lack of goals in Written Expression. He questioned the propriety of reducing services based on Student’s performance as well as the transition to high school where the demands would be greater. When asked if there were any records as to which he did not have access in preparing for the hearing, Witness B testified that he did not have a Panorama report and disciplinary records. He noted that the April 11, 2025 IEP Progress report stated that Student is able to complete writing tasks when the teacher scribes for her/him.⁹³ When asked if he had any concerns about the BIP developed by School A, Witness B testified that it lacked tracking and incentives. When asked if he had concerns about the April 2025 IEP, Witness B referenced the Dissent Letter he sent to DCPS on July 10, 2025 addressing (a) Inadequate IEP Placement and Services, (b) Academic Deficits in Math and Reading, (c) Executive Function and Attention Deficit Issues, (d) Lack of Assistive Technology Evaluation and Supports, and (e) Delayed and Missing Records.⁹⁴ Witness B opined that the IEP was inappropriate because services were provided exclusively inside general education, services should have been increased due to deficits in Reading and Math, and there was no A/T evaluation. When asked why an A/T evaluation was necessary, Witness B replied that it was because teachers had to scribe for Student. When asked when he received service trackers, Witness B replied that it was after the first week of September 2025.⁹⁵

Witness B developed a Compensatory Education Proposal for Student. The period of harm for the failure to provide appropriate IEPs was from November 2, 2023 to the present. The period of harm for the failure to develop an appropriate BIP was from August 26, 2024 to the present. The period of harm for the failure to implement the IEPs was from November 2, 2023 to the present.⁹⁶ The harm to Student was a lack of services. Witness B opined that the services would not have guaranteed success, but Student “would have had a better opportunity to progress toward grade level proficiency.” When I asked if Student suffered regression or a lack of progress, Witness B opined that it was a lack of meaningful progress. When asked where Student would have been

⁹² Testimony of Witness A

⁹³ P26;5 (330). *See also* P28:18, 24 (442, 448) for evidence of writing difficulty.

⁹⁴ P552-3 (617-18).

⁹⁵ Testimony of Witness B.

⁹⁶ P56:6 (625).

but for the denials of FAPE, Witness B opined that Student would have been closer to grade level performance. “[S/he] showed impressive progress at the end of the 2022-23 school year.” When I asked him what Student’s rate of progress was at that time, Witness B offered no responsive answer, but referenced studies cited in the Proposal,⁹⁷ and opined that Student would have gained 10-20 percentile points. The proposal for compensatory services included 300 hours of academic tutoring, 100 hours of counseling, 25 hours of OT services, and an A/T evaluation.⁹⁸

On cross-examination, Witness B conceded that he did not attend the April 2025 IEP meeting, that Student performed better in class than on standardized tests, and that s/he was progressing on all of his/her goals. When asked if his estimate of Student’s academic growth was based on similarly situated students or Student’s record, Witness B did not answer. He subsequently conceded that there was no analysis of Student’s expected academic growth rate. Witness B conceded that Student refused OT services. He also conceded that he could not specify where Student would have been academically but for the denial of FAPE.⁹⁹

33. Petitioner testified that she enrolled Student at School E for the 2025-26 school year because “[s/he] was getting into too much trouble at [School A]. [S/he] liked [School A]. This was a way of punishing [her/him]. [S/he] was getting into too many fights. [S/he] was not getting support.” When s/he enrolled Student at School A, they didn’t know s/he had an IEP. Petitioner testified that she received phone calls almost every day because Student was cutting class, walking the halls, being disrespectful, on his/her cellphone, and generally doing whatever s/he wanted to do. Petitioner struggled during the 2023-24 school year at School A because “they didn’t understand [her/him].” When I asked what they did not understand, she replied, “[his/her] IEP – redirection. [S/he] was going through a lot: grief, [her/his] aunt’s death, [his/her] friend’s death, [s/he] was getting counseling. [S/he] didn’t know how to deal with it. [In grade J his/her] father got killed.” She testified that at School C in grade L, there was more structure: smaller setting. “The school wasn’t as busy as [School A]: more settled.” Petitioner testified that Student was suspended four times in grade J at School A for three days each time; she testified that she received no written notice of any of the suspensions. When asked what Student needed that s/he was not getting, she replied that his/her cellphone was a distraction; s/he needed something to keep her/him from being distracted. “[S/he] needed more support, more tools... If you just give [her/him] the work and expect [her/him] to do it. [s/he’s] not going to.” Petitioner testified that Student did not want to be labeled “special ed... [S/he] didn’t like people to know [s/he’s] special ed.” On cross-examination, Petitioner conceded that some of Student’s issues were caused by his/her not attending classes and that s/he refused OT services.¹⁰⁰

34. Witness C was DCPS’ expert in school social work. Student was on Witness C’s BSS caseload for the 2024-25 school year. Witness C opined that the goal on the November 2023 IEP¹⁰¹ was appropriate because it was important for her/him to understand his/her feelings. The four hours per month of BSS was appropriate because Student needed a lot of support. Witness C opined that the BIP was appropriate because “[s/he] needs breaks, [s/he] appreciates rewards,

⁹⁷ *Id.* at 12 (631).

⁹⁸ *Id.* at 10 (629).

⁹⁹ Testimony of Witness B.

¹⁰⁰ Testimony of Petitioner.

¹⁰¹ P11:7 (153).

[s/he] appreciates being recognized.” He opined that the Behavior goal on the November 2023 IEP was appropriate because it was important that Student understood the information s/he was receiving; s/he needed to understand the stimuli affecting her/his behavior. Witness C opined that the BIP was appropriate because “the strategies that we tried before were on point.” Information was gathered from a number of sources to develop it. On cross-examination, Witness C conceded that Student needed a calm environment and a setting outside general education was likely be calmer with fewer distractions.

35. Witness D was Student’s Math teacher during the 2024-25 school year. She testified that Student did not present behavioral problems in her class. However, Student struggled to stay in class; s/he would not come back to class when granted a break. Witness D told Student s/he could not play in a school football tournament unless s/he completed his/her work. Student did “just enough” work to play in the tournament then reverted to eloping. Witness D testified that Student’s cellphone interfered with his/her learning, but “we couldn’t take [her/his] phone away.” The class size was 13 students with two teachers. Witness D opined that Student did not try his/her best on standardized tests. Witness D testified that Student was capable of doing grade level work, but s/he never mastered her/his goals due to absences. S/he was not exposed to some of the curriculum due to his/her absences. Student did not need one-on-one support to access the curriculum. On cross-examination, Witness D testified that she is certified in special education.¹⁰²

36. Witness E was DCPS’ expert witness in occupational therapy. Student was on her caseload from February through June of 2025. She testified that Student was resistant to receiving any services from her. If Witness E entered the room, Student would leave the room. Student would agree to meet at designated times but not show up or would refuse to accompany Witness E.¹⁰³

37. Witness F was Student’s special education teacher in ELA during the 2024-25 school year. She described Student as a class leader. Student could access the curriculum on his/her computer. Student liked to be in the hallway “dapping everyone up. [S/he] had to be seen. In the classroom, [s/he] was not a problem.” Witness F opined that the Reading goal on the October 2024 IEP¹⁰⁴ was appropriate because when Student was in class, s/he was capable of accessing the curriculum. Student would ask to be excused from class to meet a related service provider, but s/he would be hanging in the hallway. Consequently, they required service providers to come to get him/her from the classroom. Witness F testified that Student was able to access the general education curriculum. The October 2024-25 IEP was appropriate because Student was able to relate to what was going on in the texts. On cross-examination, Witness F conceded that Student performed below grade level on standardized tests, “but in the classroom, [s/he] earned [her/his] credits.”¹⁰⁵

38. Witness G was DCPS’ local education agency (“LEA”) Representative. She opined that Student did not require A/T because s/he could access the curriculum without it. An email sent to Petitioner’s attorney on July 23, 2025 confirms that DCPS provided Petitioner all of

¹⁰² Testimony of Witness D.

¹⁰³ Testimony of Witness E.

¹⁰⁴ R20:9 (155).

¹⁰⁵ Testimony of Witness F.

the records that were requested.¹⁰⁶ On cross-examination, Witness G refuted Petitioner’s testimony that School A was unaware that Student had an IEP when s/he was enrolled; she testified that she talked to Petitioner about Student’s IEP on the first day of the 2023-24 school year. Witness G testified that the box checked “No” in Special Considerations on the November 2023 IEP regarding Student’s behavior impeding learning was due to a “glitch” in the system, which is corroborated by the three succeeding boxes not being marked at all. Witness G refuted Attorney A’s suggestion that Student began refusing OT services during the 2024-25 school year. She testified that during the 2023-24 school year, Student told the staff that s/he had mastered his/her OT goals and did not want any more OT services, but Petitioner wanted her/him to continue to receive them.¹⁰⁷

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.¹⁰⁸

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.¹⁰⁹

¹⁰⁶ R33:1 (244).

¹⁰⁷ Testimony of Witness G.

¹⁰⁸ D.C. Code § 38-2571.03(6)(A)(i).

¹⁰⁹ *Schaffer v. Weast*, 546 U.S. 49 (2005).

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on November 2, 2023. Petitioner asserts that despite Student’s substantial delays in Reading and Mathematics, all specialized instructional services outside of the classroom were removed, the Special Consideration page of the IEP failed adequately to address Student’s behavior needs or A/T, the IEP lacked goals or services in Written Expression, and/or failed to include adequate supports to address executive functioning and inattention. This IEP was amended on or about April 9, 2024, and again on September 9, 2024, to correct errors and/or make changes to his/her supplemental aides and services but no substantial changes were made.

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*.¹¹⁰ The Court noted that the EHA did not require that states “maximize the potential of handicapped children ‘commensurate with the opportunity provided to other children.’”¹¹¹ 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...”¹¹² 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.”¹¹³

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.¹¹⁴ 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*.”¹¹⁵ 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

¹¹⁰ 458 U.S. 176, 187 (1982).

¹¹¹ *Id.* at 189-90, 200

¹¹² *Id.* at 200.

¹¹³ *Id.* at 203-04.

¹¹⁴ *Andrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

¹¹⁵ *Id.* at 997.

who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.¹¹⁶

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.¹¹⁷

The provision of a FAPE must be “in conformity with the [child's] individualized education program required under section 1414(d)...”¹¹⁸ An IEP “is the means by which special education and related services are tailored to the unique needs of a particular child.”¹¹⁹ An IEP must be in place for each disabled student “[a]t the beginning of each school year,”¹²⁰ 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.”¹²¹

I will address each of the alleged deficiencies in the IEP individually.

All specialized instructional services outside of the classroom were removed.

The justification for eliminating Student's specialized instruction outside general education could be made based on Student's performance at School C during the 2022-23 school year. There, School C reduced Student's instruction outside general education from eighteen hours per week to 11.25 hours on the November 22, 2022 IEP but maintained her/his overall specialized instruction level at eighteen hours per week. At year-end, Student was reported to be progressing on both Math goals, s/he was close to mastering the word problem goal, and had improved by two grade levels on the i-Ready Geometry and Measurement and Data subtests. On the Reading Inventory, Student's score had improved from 356 to 554. S/he earned a B in Math, a C+ in ELA, and all but one (Art) of her/his teachers said s/he was a pleasure to have in class. In Behavior and Motor, Student had mastered all four goals.

However, DCPS offered no such justification. In fact, none of DCPS' witnesses offered an explanation for reducing Student's specialized instruction from eighteen hours per week to fifteen or for eliminating all instruction outside general education. Despite Student's improvement on the EOY i-Ready Math assessment, s/he remained four grades below grade level at year-end. On the

¹¹⁶ *Id.* at 1000-01 (citations omitted).

¹¹⁷ 137 S.Ct. at 1000-01.

¹¹⁸ 20 U.S.C. § 1401(9)(D). *See id.* § 1414(d)(2).

¹¹⁹ *Endrew, supra*, 580 U.S. at 391, quotation marks omitted, quoting *Rowley, supra*. 458 U.S. at 181.

¹²⁰ 20 U.S.C. § 1414(d)(2)(A).

¹²¹ *Id.* at § 1414(d)(1)(A)(i)(II)(aa).

Reading Inventory, s/he remained six grades below grade level. On the NWEA MAP Math assessment on September 5, 2023, Student's score was in the 1st percentile, and her/his score on the HMH Reading Inventory given that day was Below Basic. At the time the IEP was developed, Student was earning a C- in Math. Although Student's general education Math teacher reported that Student caught on to any mathematical problems presented, when s/he became distracted, s/he lost focus. In ELA, Student was performing better, earning a B+ with no negative comments from his/her teacher in the Reading PLOP. In Behavior, at the beginning of the school year Student was disruptive in class by yelling across the room to talk to other students, using inappropriate language, and being distracted by his/her cell phone, but these behaviors had reportedly moderated somewhat by the time of the IEP meeting.

The case for maintaining or increasing Student's specialized instruction outside general education is stronger than the case for reducing it. While s/he made some progress during the previous school year with reduced instruction outside general education, Student remained four to six grades below grade level in Math and Reading. Although s/he appears to perform better in class than on standardized tests, the grade level gap is too great to discount as cultural differences or a lack of interest in test-taking on Student's part. Student is more likely than not to improve in Math and Reading in a smaller class environment with more individualized attention. Moreover, Student's behavior can be more effectively managed in an environment with a lower student to teacher ratio, as DCPS' Witness C conceded.

The Special Consideration page of the IEP failed adequately to address Student's behavior needs or A/T.

The box checked "No" in Special Considerations, referring to whether Student's behavior impeded learning, was adequately explained by Witness G to have been a system "glitch." Moreover, it was a harmless error as Student's IEP clearly addressed Student's maladaptive behaviors with Behavior goals and the maximum amount of BSS offered by DCPS, four hours per month.

Witness A, Petitioner's expert in OT and A/T opined that due to Student's struggles in reading and writing, an A/T evaluation would be useful in identifying tools that could help Student in these areas. Attorney A's firm seems to request A/T routinely for virtually every student that they represent. In this case, with Student's relatively advanced age and performance levels so far below grade level, an A/T evaluation appears to be a reasonable option, particularly in light of Witness F's testimony that Student uses a computer effectively. DCPS offered no persuasive testimony as to the inadvisability of an A/T evaluation in Student's case.

The IEP lacked goals or services in Written Expression.

This claim lacks merit. Student was in an ELA class in which both reading and writing were taught by the same teacher. Both Reading goals on the November 2023 IEP included writing requirements.¹²²

¹²² P11:5-6 (151-52).

The IEP failed to include adequate supports to address executive functioning and inattention.

This claim also lacks merit. The OT goals addressed self-regulation, his/her ability to attend and participate in class, starting to work on assignments promptly, and avoiding distractions.¹²³

On balance, I conclude that DCPS has failed to meet its burden of proving, by a preponderance of the evidence, that the IEP it developed on November 2, 2023, which (1) reduced the level of specialized instruction by three hours per month, (2) eliminated specialized instruction outside general education, and (3) failed to consider the need for A/T, was reasonably calculated to enable Student to make progress consistent with his/her unique circumstances.

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on October 7, 2024. Petitioner asserts that the IEP did not address Student’s need for A/T, did not provide sufficient specialized instruction, did not adequately address executive functioning or inattention concerns, did not provide goals in Written Expression or provide support sufficient hours of support to enable him/her to make meaningful progress towards transition goals in that it only provided three hours total of support per year. The IEP also removed direct OT services and replaced them with consultation services.

The IEP did not address Student’s need for A/T.

As was discussed in the previous section, Student’s severe deficits in reading and writing lend credence to Witness A’s testimony that an A/T evaluation might be useful in determining A/T products that might benefit Student. DCPS offered no persuasive testimony that such an evaluation would be disadvantageous.

The IEP did not provide sufficient specialized instruction

In the previous section, I concluded that the record did not support a reduction in Student’s specialized instruction from the 18 hours prescribed in the 2022 IEP, nor the elimination of instruction provided outside general education. The year-end 2023-24 IEP Progress Report revealed that “[Student] has shown relative progress with scores of 69.1 (D+) in content area Mathematics for school term 2023-2024.” This statement is puzzling for two reasons. First, Student earned a B in school year 2022-23 in Math at School C, so a D+ did not reflect progress. Second, Student’s 2023-24 report card at School A reflected an Algebra 1 grade of C, not D+. The Mathematics PLOP in the October 2024 IEP reported that on a September 23, 2024 MAP assessment, Student scored in the 3rd percentile. The Reading PLOP revealed that independent reading was challenging for Student due to a lack of focus without support. The complexity of longer texts was overwhelming for Student, making it difficult for him/her to engage fully with independent reading tasks. On his/her class assignments, 50% of the grade, Student earned 13.75%, an F. Student’s January 18, 2024 Reading Inventory score of 421 was at a grade A level, five grades below grade level at that time. Student’s August 28, 2024 MAP assessment score

¹²³ *Id.* at 8-9 (154-55).

placed her/him at a grade F to A level, six to seven grades below grade level. “According to [her/his] ELA teacher, the student struggles to maintain attention or focus on a given task for five minutes or more. This results in distractions, or shifting attention to unrelated activities, or the student asking for a break. The intensity of this behavior is severe; tasks remain incomplete. [His/her] distracting behavior and attention shifting occurs every class period and lasts throughout the entire class period. The behavior is moderate to severe – only because the student class work remains incomplete and inconsistent.”

Student’s behavior appears to have deteriorated since the previous IEP was developed. In Special Considerations, the IEP team noted that “[Student] is not focused while in class which keeps [her/him] from completing the majority of [her/his] assignments. [Student’s] distracting behaviors cause [him/her] to be redirected multiple times throughout the day. [S/he] walks around the class and distracts peers by talking to them at least 4 to 5 times a class.” In the BIP that was developed on September 25, 2024, it was reported that Student struggled to maintain attention or focus on a given task four times per week for six hours each time and made impulsive decisions such as leaving class daily and becoming confrontational with staff four times per week for four hours each time. *Thus, Student was inattentive for at least 24 hours of the 32.5 hours in a school week and eloping for up to one half of the 32.5 hours during the week.*

As Student made no objective academic improvement since the previous IEP and his/her behavior was out of control, an increase in the restrictiveness of his/her educational environment was clearly warranted.

The IEP did not adequately address executive functioning or inattention concerns.

As in the previous section, the OT goals addressed these issues.¹²⁴

The IEP did not provide goals in Written Expression

As in the previous section, the IEP included goals addressing Written Expression.¹²⁵

The IEP did not provide support sufficient hours of support to enable him/her to make meaningful progress towards transition goals in that it only provided three hours total of support per year.

Petitioner’s witnesses offered no testimony on the issue of transition hours or goals.

The IEP removed direct OT services and replaced them with consultation services.

As discussed in paragraphs 36 and 38 above, by the time of the IEP meeting in October 2024, Student had made it clear that s/he would not attend OT services throughout the school year.

¹²⁴ P14:12-13 (212-13).

¹²⁵ *Id.* at 11 (211).

In the previous section, I concluded that the 2023 IEP that (1) reduced the level of specialized instruction by three hours per month, (2) eliminated specialized instruction outside general education, and (3) failed to consider the need for A/T, was inappropriate. These conditions were unchanged in the October 2024 IEP despite a lack of objective academic improvement and behavioral deterioration. I conclude that DCPS has failed to meet its burden of proving, by a preponderance of the evidence, that the IEP it developed on October 7, 2024 was reasonably calculated to enable Student to make progress consistent with his/her unique circumstances.

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on April 7, 2025. Petitioner asserts that the IEP did not address Student’s need for A/T, did not provide sufficient specialized instruction, did not adequately address executive functioning or inattention concerns, did not provide goals in Written Expression or provide sufficient hours of support to enable him/her to make meaningful progress towards transition goals. While this IEP reinstated direct OT services, it did not provide sufficient service hours (only 30 minutes per month) and removed all consultation services.

The IEP did not address Student’s need for A/T.

As was discussed in the previous sections, Student’s severe deficits in reading and writing lend credence to Witness A’s testimony that an A/T evaluation might be useful in determining an A/T product that would benefit Student. For this IEP, Witness B, Petitioner’s educational advocate, also noted that Student’s Progress Report indicated that Student could complete work only if the teacher sat with him/her and scribed for him/her.¹²⁶ DCPS offered no persuasive testimony that an A/T evaluation would be disadvantageous.

The IEP did not provide sufficient specialized instruction.

The April 2025 IEP team had access to Examiner C’s March 2, 2025 Psychological Triennial Reevaluation. It was reported to Examiner C that Student “is not focused while in class, which keeps [him/her] from completing the majority of [her/his] assignments. [Student’s] distracting behaviors cause [her/him] to be redirected multiple times throughout the day. [S/he] walks around the class and distracts peers by talking to them at least 4 to 5 times a class.” On the WJ-IV, Examiner B did not administer all of the subtests in each subject matter cluster and offered no explanation why she did not. Thus, the achievement portion of the evaluation was not as instructive as it could have been. Nevertheless, it confirmed Student’s continued weakness in Math with her/his score in the Extremely Low range Broad Math. There was no score reported for Broad Reading or Broad Writing due to the absence of necessary subtests. Examiner C also did not administer a social/emotional assessment such as the BASC but noted that Student had 13 reported behavioral incidents during the school year.

In March, Student was suspended for two days for inciting others to violence or disruption. In April, s/he was suspended for three days for a physical attack.

¹²⁶ P25:4 (323).

The Math and Reading PLOPs of the IEP were largely unchanged from the October 2024 IEP; thus, there was no documentation of any objective improvement in Student's Math or ELA performance. In Behavior, the PLOP was largely unchanged in the description of Student's behavior except to add that lately, Student had been a bit more confrontational with his/her peers and staff, but mostly s/he accepted redirection well. In Motor, the PLOP was largely unchanged from the previous IEP except to document Student's aversion to OT services. Nevertheless, the IEP team agreed to provide thirty minutes per month of direct OT services in an attempt to address Student's off-task behavior.

The IEP did not adequately address executive functioning or inattention concerns.

As in the previous sections, the OT goal addressed these issues.¹²⁷

The IEP did not provide goals in Written Expression

As in the previous sections, the IEP included goals addressing Written Expression.¹²⁸

The IEP did not provide sufficient hours of support to enable him/her to make meaningful progress towards transition goals.

Petitioner's witnesses offered no testimony on the issue of transition hours or goals.

While this IEP reinstated direct OT services, it did not provide sufficient service hours (only 30 minutes per month) and removed all consultation services.

As discussed in paragraphs 36 and 38 above, by the time of the IEP meeting in October 2024, Student had made it clear that s/he would not attend OT services throughout the school year, and s/he did not when services were reinstated in April 2025.

For the same reasons as for the October 2024 IEP, I conclude that DCPS has failed to meet its burden of proving, by a preponderance of the evidence, that the IEP it developed on April 7, 2025 was reasonably calculated to enable Student to make progress consistent with his/her unique circumstances.

¹²⁷ P15:14 (248).

¹²⁸ *Id.* at 10 (244).

Whether DCPS denied Student a FAPE by failing to develop an appropriate BIP during the 2024-25 school year. DCPS developed a new BIP for Student in 2024 that removed the incentive plan even though Student's behaviors had not improved and were still significantly impeding her/his progress. Petitioner also asserts that the BIP was inappropriate because the Problematic Behaviors section was incomplete, Progress Monitoring was vague, the responsibility for implementation not specified, and the Strategies/Resources section from the prior BIP was removed.¹²⁹

DCPS developed a BIP for Student on September 25, 2024. As described in paragraph 19 above, the BIP identified Student's Problematic Behaviors, the Methods/Strategies/Tools for addressing the Problematic Behaviors, and Incentives to discourage the Problematic Behaviors. While the 2024 BIP may have differed from BIPs developed for Student in the past, Petitioner offered virtually no testimony as to its deficiencies and no testimony as to why those deficiencies rendered the document inappropriate. The only testimony offered by Petitioner about the BIP was a one-liner by her educational advocate, Witness B, that it lacked tracking and incentives. In fact, it included incentives for each of the Problematic Behaviors. Therefore, I conclude that Petitioner has failed to meet her burden of proving that DCPS failed to develop an appropriate BIP for Student on September 25, 2024.

Whether DCPS denied Student a FAPE by failing to implement Student's IEPs during the 2023-24 and 2024-25 school years. Petitioner asserts that Student is frequently sent home from school due to behavioral incidents without documentation. These actions not only suggest that the BSS for Student are either not being provided or are ineffective but also deprive Student of access to her/his education because s/he is either not in school or not in class and missing instruction.

During the 2023-24 school year, Student was disciplined on five occasions, but none of the discipline involved off-site suspensions, as described in paragraph 17 above. During the 2024-25 school year, there is documentation of two suspensions totaling five days in paragraph 25 above. Petitioner testified that Student was suspended four times, but she offered no dates, alleged offenses, email correspondence, or any other corroborating evidence of the two additional alleged suspensions. The record does not support a finding that Student was "frequently sent home from school" or that any of the disciplinary actions taken by DCPS against Student were unjustified or were the result of inadequate BSS.

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.¹³⁰ A material deviation requires more than a minor discrepancy or a "de minimis failure to implement all elements of [the student's]

¹²⁹ The Issues Presented section of the *Complaint* mentioned only the removal of an incentive plan as a specific deficiency but indicated that "several supports" had been removed from a previous BIP. The additional supports listed in the fourth Issue Presented were provided by Petitioner's counsel during the prehearing conference.

¹³⁰ *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).

IEP.”¹³¹ 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.”¹³²

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 encouraged to develop and make available a related services policy that details internal procedures for missed services.¹³³

Petitioner did not allege that DCPS failed to provide prescribed OT services during the two school years at issue, and there is no evidence of a material deprivation of OT services. The record reveals that during the 2023-24 school year, Student received all but 0.56 hours of the 14.64 hours of OT services to which s/he was entitled. During the 2024-25 school year, Student consistently refused OT services.

As for BSS services, as documented in paragraph 15 above, during the 2023-24 school year, Student was not provided 6.25 hours of the 36 hours to which s/he was entitled, or 17.4%. During the 2024-25 school year, as documented in paragraph 29 above, Student was not provided 23 hours of the 36 hours to which s/he was entitled, or 63.9%. Therefore, I conclude that Petitioner has met her burden of proving that DCPS denied Student a FAPE by failing to provide her/him 29.25 hours of BSS during the 2023-24 and 2024-25 school years.

¹³¹ *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*).

¹³² *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).

¹³³

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.

Whether DCPS denied Student a FAPE by failing to provide Petitioner complete access to Student’s educational records as requested on December 6, 2024, specifically service trackers, behavior records and incident reports, standardized testing results, and the April 2025 IEP.¹³⁴

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—
 - (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.¹³⁵

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.¹³⁶

¹³⁴ During the prehearing conference, Petitioner’s counsel reported that Petitioner still had not received standardized testing. testing results from the 2023-24 school year and behavior records from the 2023-24 and 24-25 school years. She indicated that she is aware of the existence of at least 23 missing incident reports and two off-site suspensions for which no records had been provided.

¹³⁵ 34 C.F.R. §300.501.

¹³⁶ 34 C.F.R. §300.613, emphasis added.

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.¹³⁷

On December 6, 2024, Attorney A, by email, requested that DCPS provide Petitioner "trackers or logs documenting what BSS the student had received... Parent would really like to have access to those service trackers and logs for both 2023/2024 and 2024/2025 to date..." The only testimony Petitioner adduced about this records request was that of Petitioner's educational advocate, Witness B who testified that he did not have a Panorama report and disciplinary records. Witness G provided credible testimony and documentation that DCPS provided Petitioner all the records requested by her attorney including numerous documents not requested on December 6, 2024. Therefore, as there is no evidence that DCPS failed to provide Petitioner related services tracking forms, and Petitioner included tracking forms in her Disclosures, I conclude that Petitioner has failed to meet her burden of proving that DCPS failed to provide full access to Student's educational records.

RELIEF

For relief, Petitioner requests, *inter alia*, (1) an order requiring DCPS to conduct or fund an A/T evaluation and/or a vocational evaluation, (2) an order requiring to reconvene the IEP team to provide specialized instruction outside the general education setting, Written Expression goals, increased supports to address executive function, and attention, assistive technology, and a revised transition plan, (3) placement in a full-time therapeutic program with transportation, (4) an order requiring DCPS to revise the BIP to include incentives such as participation in sports, (5) compensatory education services, and (6) attorneys' fees and costs.¹³⁸

In light of Student's severe deficits in Reading and Math of four to six grade levels, his/her proclivity for elopement, and disruptive behavior when in class, I conclude that DCPS should not have reduced Student's specialized instruction from 18 to 15 hours on the November 2, 2023 IEP. Additionally, I conclude that in light of Student's failure to evince objective academic improvement under that IEP and his/her increasingly dysfunctional, aggressive, and disruptive behavior during the 2023-24 school year, Student required a full-time out of general education classroom designed to serve students with extreme behavioral dysfunction, such as a Behavior Education Supports ("BES") classroom, as of the development of the October 7, 2024 IEP. I was particularly persuaded that Student required a much more restrictive environment by the data in the September 2024 BIP that revealed that Student was inattentive for at least 24 hours of the 32.5 hours in a school week and eloping for up to one half of the 32.5 hours during the week.

Petitioner has the burden of establishing entitlement to compensatory education services.¹³⁹ Absent such a showing, any award by the hearing officer would be arbitrary. In this jurisdiction,

¹³⁷ 5-E DCMR § 2600.6.

¹³⁸ The Prehearing Order noted that hearing officers have no role in the awarding of attorneys' fees in this jurisdiction.

¹³⁹ *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*

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*.¹⁴⁰

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.¹⁴¹

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.¹⁴²

Witness B proposed that Student receive 300 hours of academic tutoring, 100 hours of counseling, 25 hours of OT services, and an A/T evaluation. However, the proposal is not supported by an analysis consistent with the requirements imposed by the *Reid* court. First, Student is entitled to no compensatory OT services. The *Complaint* did not allege that DCPS failed to provide prescribed OT services. Moreover, during the 2023-24 school year, Student received all but 0.56 hours of the 14.64 hours of OT services to which s/he was entitled, and during the 2024-25 school year, Student consistently refused OT services. Second, an independent evaluation is not compensatory relief. Rather, it is the appropriate relief for an LEA's failure to conduct a necessary evaluation.

Witness B's proposal for 300 hours of tutoring services does not meet the requirement of *Reid* because *Reid* requires a determination of the educational harm suffered by the child as a result of the denial of FAPE: the academic achievement the student lost or failed to gain. Once the academic harm has been quantified, *Reid* requires a fact-based analysis of the type and amount of services that would compensate the student for the harm suffered. Witness B simply proposed an

Campus v. Nesbitt, 583 F.Supp.2d 169, 172 (D.D.C.2008)(to comply with the *Reid* standard, the petitioner must propose a well-articulated plan that reflects the student's current educational abilities and needs and is supported by the record); *Smith v. District of Columbia, Report and Recommendation*, Case No. 1:22-cv-027555 at 8 (July 31, 2023) *Report and Recommendation*, *Wade v. District of Columbia, Magistrate Judge's Report and Recommendation*, Case No. 20-cv-1433 at 26 (D.D.C. Feb. 19, 2021) (the plaintiff has the burden of proposing a well-articulated plan that reflects the student's current education abilities and needs and is supported by the record) citing *Phillips*; *Jones v. District of Columbia*, Case No. 15-cv-1505, 2017 WL 10651264 at 9 (D.D.C. Jan. 31, 2017)(Plaintiff presented no evidence concerning a plan of compensatory education as was her burden), citing *Phillips* and *Friendship*.

¹⁴⁰ 401 F.3d 516 (D.C. Cir. 2005).

¹⁴¹ *Id.* at 524. See also, *B.D. v. District of Columbia*, 817 F.3d 792, 799-800 (D.C. Cir. 2016)

¹⁴² 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).

arbitrary, flat amount of services. Witness B opined that the services would not have guaranteed success, but Student “would have had a better opportunity to progress toward grade level proficiency.” When I asked if Student suffered regression or a lack of progress, Witness B opined that it was a lack of meaningful progress. When asked where Student would have been but for the denials of FAPE, Witness B opined that Student would have been closer to grade level performance. “[S/he] showed impressive progress at the end of the 2022-23 school year.” When I asked him what Student’s rate of progress was at that time, Witness B offered no responsive answer, but referenced studies cited in the Proposal, and opined that Student would have gained 10-20 percentile points. Witness B’s Proposal makes no correlation from the studies cited and Student’s record. The *Reid* court rejected the parent’s request for tutoring on an hour-for-hour lost basis as arbitrary.¹⁴³ Similarly, the court rejected DCPS’ proposed award, “although 810 hours certainly seems like a significant award,” because it, too, was not based on a fact-specific assessment.¹⁴⁴ Instead, the court stated that an award must be based on an individualized assessment: “... just as IEPs focus on disabled students' individual needs, so must awards compensating past violations rely on individualized assessments.”¹⁴⁵

Reid requires an analysis of the type and amount of services required to bring a student to the point s/he would have been but for the denial of FAPE. Unfortunately, while they are well-intentioned, *Reid* and its progeny are unworkable for a number of reasons. I was a Hearing Officer when *Reid* was issued in 2005. In fact, I believe I was the first Hearing Officer to order DCPS to fund an independent evaluation to address *Reid*’s requirements. However, in the two intervening decades, I have never seen a compensatory education plan that met its requirements. First, *Reid* requires an individualized assessment of what the child lost or failed to gain during the period of harm and an analysis of the type and amount of services that would compensate for that loss. Obviously, such an analysis must be presented at the hearing by the petitioner,¹⁴⁶ because the school district’s position is that it offered a FAPE. I have never conducted a hearing in which a petitioner submitted a qualifying analysis as part of its direct case. I have never seen an analysis quantifying what a student lost, or failed to gain, in terms of grade equivalence or percentile rankings as a result of a denial of FAPE during a period of harm. Here, Witness B’s Plan cites no data establishing Student’s expected growth, or lack thereof, during the period of harm. Thus, a fundamental requirement of *Reid* was not documented: the loss to be compensated. Second, I have never seen a credible, individualized analysis presented during a hearing, based on the student’s cognitive level and history of academic achievement, of how much one-on-one tutoring would be necessary to produce a finite amount of academic growth. Here, there was no explanation why 300 hours of tutoring services was appropriate for the FAPE that was denied. Consequently, Witness B’s proposal was as equally arbitrary as the *Reid* petitioner’s hour- for-hour request or DCPS’ 810-hour proposal that the *Reid* court deemed “significant” yet arbitrary.

There are several reasons why *Reid* is unworkable in due process hearings. First, as is the case here, there may be no reliable data as to a student’s academic growth rate during the period of harm. If the complaint is filed during or shortly after the period of harm, there is likely to be no data as to the student’s expected growth rate with the necessary support. Without such data, it would

¹⁴³ 401 F.3d. at 523.

¹⁴⁴ *Id.* at 524.

¹⁴⁵ *Id.*

¹⁴⁶ *Phillips and Gill, supra.*

be difficult to determine the amount of services needed to compensate a student for the loss sustained. Here, no data was presented or available as to Student's expected academic growth rate from mid-May 2023 to the end of the school year, the period of time Student was denied services. Without such data, the academic harm cannot be accurately determined.

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

In Case No. 2020-0138-B, the petitioner offered no evidence consistent with *Reid's* requirements. Nevertheless, because the student was clearly entitled to a considerable amount of tutoring as compensatory education services, I awarded 100 hours of tutoring and ordered the LEA to fund an evaluation to determine how much additional services were warranted under *Reid*. Because I could not retain jurisdiction once the HOD was issued, I further ordered that the IEP team reconvene upon completion of the evaluation to determine an appropriate amount of compensatory education services. Either the LEA would agree with the proposal in the petitioner's plan or the petitioner would have an evaluation in-hand to support a due process claim for services. However, the LEA justifiably appealed on the grounds that the petitioner had not established an entitlement for compensatory education services under *Reid*. The court agreed that my award of even 100 hours was "not supported by any individualized assessments or facts..." and disallowed consideration of the evaluation that I authorized and a determination of a compensatory education award by the IEP team, as a delegation of my authority "to a group that includes an individual specifically barred from performing the hearing officer's functions."¹⁴⁷ Despite my finding, upheld by the court, that the student made no objective academic progress for three years while enrolled at the LEA's school, and the LEA developed three inappropriate IEPs, that student received no compensatory education services. On remand, the petitioner again failed to present a plan that met *Reid's* requirements, but the LEA proposed an amount of services that it was willing to fund, which I ordered in an HOD on remand, seven school years after the issuance of the first inappropriate IEP.¹⁴⁸ Thus, if a petitioner fails to submit a plan at the hearing that is supported by an evaluation that complies with *Reid*, the hearing officer is limited to ordering the LEA to fund such an evaluation, but the hearing officer no longer has jurisdiction of the case.

Third, and most important, there appear to be no academic studies available to provide the support for *Reid's* requirements. *In the twenty years since Reid was issued, I have never seen a study cited that addressed the likely quantifiable benefits of one-on-one tutoring of students with various disabilities.* While tutoring obviously would help any student performing below expectation, the efficacy of tutoring would likely vary depending upon the child's disability. For example, a student with a Specific Learning Disability ("SLD") and a low IQ who has been deprived of FAPE for two years would likely need significantly more intensive tutoring, i.e., a higher percentage of hour-for-hour compensation, than a student classified Other Health Impairment due to ADHD with an average IQ who has been deprived of FAPE for one or two reporting periods. As expert witnesses have testified in previous hearings I have conducted, there is no evidence-based

¹⁴⁷ Case No. 21-cv-0223 (RCL) at 39 (D.D.C. April 20, 2023).

¹⁴⁸ *Hearing Officer Determination on Remand*, ODR Case No. 2020-0138-B (Sep. 19, 2024).

equation to determine the appropriate amount of tutoring to compensate for lost specialized instruction.

In *Stanton v. District of Columbia*,¹⁴⁹ Judge Ellen Segal Huvelle remanded a hearing officer's ruling rejecting a compensatory education plan. In *dictum*, Judge Huvelle stated, "A hearing officer may 'provide the parties additional time to supplement the record' if she believes there is insufficient evidence to support a specific award."¹⁵⁰ This is untrue. IDEA compels hearing officers to issue their final decisions within 75 days of the filing of the *Compliant*, a requirement that is monitored by closely by the Department of Education ("DOE"). The Office of the State Superintendent of Education's Office of Dispute Resolution ("ODR"), which governs due process hearings in the District, must submit regular reports to DOE as to hearings not completed within 75 days.¹⁵¹ Non-compliance could affect federal funding of a state agency. Unlike federal judges, once a hearing officer completes a hearing and makes a determination as to a denial of FAPE, there is no authority to retain jurisdiction indefinitely to commission additional evaluations and await their completion to undergird a request for compensatory education.¹⁵² Of course, if a case is remanded to a hearing officer, he or she is not bound by the timeline applicable to initial complaints.

The *Reid* court described its test as flexible:

Unlike the Reids' one-for-one standard, this flexible approach will produce different results in different cases depending on the child's needs. Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE. In addition, courts have recognized that in setting the award, equity may sometimes require consideration of the parties' conduct, such as when the school system reasonably "require[s] some time to respond to a complex problem," *M.C.*, 81 F.3d at 397, or when parents' refusal to accept special education delays the child's receipt of

¹⁴⁹ 680 F.Supp.2d 201 (D.D.C. 2010).

¹⁵⁰ *Id.* at 207, citing *Friendship Edison Public Charter School Collegiate Campus v. Nesbit*, 532 F.Supp.2d 121, 125-26 (D.D.C. 2008), where Judge John M. Facciola remanded a hearing officer's award because her "mechanical hour-per-hour" calculation violated *Reid*'s requirement for a fact-based analysis. The judge cited the hearing officer's statement during the hearing that she had but 10 days to write her decision and the record supporting a compensatory education award as "nebulous" as proof that the hearing officer knew that her award did not meet *Reid*'s requirements. Precisely. The hearing officer knew she was required to issue a decision within 10 days and was powerless to order and await the completion of evaluations to supplement the record to even attempt to develop an appropriate plan.

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

¹⁵² Petitioners' attorneys previously have cited 34 C.F.R. § 300.515(c) to suggest that hearing officers have unfettered authority to extend HOD deadlines. This is untrue. ODR insists that extensions of the deadline must be for "good cause," and the only good cause it recognizes is attorneys or witnesses' conflicts with other legal proceedings. ODR is particularly critical of extensions beyond one month. In my experience, finding an appropriate evaluator and completing an evaluation can take several months. The petitioner's counsel in Case No. 2020-0138B took four *years* to submit the compensatory education evaluation that I authorized in my 2020 HOD, and that evaluation was not remotely compliant with *Reid*.

appropriate services, *Parents of Student W.*, 31 F.3d at 1497. In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.¹⁵³

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

Over the past six years, *all* of the compensatory education proposals that I have seen have been hour-for-hour calculations or some fraction thereof, with no empirical evidence to explain how the ratio (tutoring hours-to-hours of lost/denied services) was determined. Witness B's proposal makes hour-for-hour proposals seem exquisite. His proposed award is completely arbitrary. As in this case, the data normally does not exist that would support a quantification of the educational loss during a period of harm. This is even true in appeals, as well, where petitioners have been afforded the opportunity to supplement the record with additional evaluations.¹⁵⁴ Proposals for tutoring services invariably devolve into tortured, unsuccessful efforts to avoid resembling hour-for-hour calculations.

In ODR Case No. 2022-0171,¹⁵⁵ Expert A, the petitioner's expert in compensatory education, proposed 45 hours of individual tutoring for the loss of 120 hours specialized instruction, or one hour of tutoring for every 2.67 hours of services missed, because one-on-one tutoring is more "potent" than classroom instruction. He testified that his compensatory education plan was based solely on his experience as a special educator and special education consultant, including the development of approximately twenty-five compensatory education plans. I granted relief when the respondent did not cross-examine the Expert A or offer testimony to refute the validity of his plan.

The day after the hearing in ODR Case No. 2022-0171,¹⁵⁶ Expert A testified in Case No. 2022-0161. In that case, Expert A testified that one-half hour of tutoring would be appropriate for every hour of classroom time missed. I found the proposal flawed because the witness did not submit a written proposal, many of the factual underpinnings of his proposal were incorrect, and he was unable to explain the discrepancy from the ratio he used the day before. Nevertheless, I awarded the student 75 hours of tutoring for the 150 hours of instruction that the respondent caused him/her to miss, using the 1:2 ratio recommended by the petitioner's expert.

¹⁵³ *Id.*

¹⁵⁴ See, e.g., *Gill, supra*, 751 F.Supp.2d 104, 112 (D.D.C 2010); *Hearing Officer Determination on Remand*, ODR Case No. 2021-0173 (Sep. 5, 2024); *Hearing Officer Determination on Remand*, ODR Case No. 2020-0093 (Dec. 31, 2023).

¹⁵⁵ Issued November 30, 2022

¹⁵⁶ Issued December 27, 2022.

ODR Case No. 2020-0093¹⁵⁷ was a remand in which the magistrate ordered a determination as to whether the student was entitled to compensatory education services. The petitioner's counsel submitted a written compensatory education plan developed by the same Expert A. Expert A's plan proposed 1100 hours of tutoring services for 1408 hours of allegedly deprived services. On remand, I again found Expert A's plan to be factually and legally flawed. The student was deprived of only 1213 hours of services, the various ratios of tutoring hours to deprived services in the three cases were arbitrary, and the petitioner also failed to provide the data Expert A used to calculate the student's anticipated academic growth rate:¹⁵⁸

Even assuming the accuracy of Witness A's [Expert A here] unexplained projection of Student's growth rate supported with specialized instruction, Witness A offered no correlation between the amount of tutoring he proposed and the expected growth in each subject. Thus, the conclusion is inescapable that the "formula" he used to determine the ratio of proposed tutoring hours to total specialized instruction hours lost is both unexplained and arbitrary: 37.5% in case No. 2022-0171, 50.0% a day later in Case No. 2022-0161, and 78.1% here. Witness A's determination of Student's annual growth rates was a projection made without explanation, and he offered no explanation as to how he determined that Student required one-on-one tutoring for 78.1% of the specialized instruction hours missed from April 2018 to August 2020 to advance at roughly the same rate s/he advanced from August 2020 to February 2023, *which included nearly a full school year without specialized instruction*. Finally, Witness A offered no persuasive explanation for the various levels of tutoring recommended for Reading (475 hours), Writing (350 hours), and Math (275 hours), when Student's grade equivalent scores were relatively consistent on the February 2023 evaluation: 5.0, 5.3, and 5.0, respectively.¹⁵⁹

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

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

¹⁵⁷ Issued December 31, 2023.

¹⁵⁸ I had also rejected Expert A's plan at the first hearing, a finding with which the magistrate concurred: "Here, this Court cannot rely on [Witness A's] conclusions because the foundation of his opinion was flawed... Indeed, the hearing officer correctly relied on "pertinent findings" when he dismissed [Witness A's] recommendations for failing to satisfy the *B.D.* standard." Civil Action No. 22-cv-2755-TSC-ZMF at 13, citation omitted. (D.D.C. 2023).

¹⁵⁹ ODR Case No. 2020-0093 at 16.

of services considering that they are likely to be provided in one or two-hour sessions after school or on the weekend -- anywhere from 200 up to 400 tutoring sessions.¹⁶⁰

I made the same recommendation in ODR Case No. 2020-0138-B (Sep. 19, 2024) and in Case No. 2023-0229¹⁶¹ where I found that the petitioner's proposal violated *Reid* in a several respects, particularly an unexplained ratio of .774:1 of tutoring hours to deprived services, and a proposal for mentoring services, which cannot be justified as compensation for deprived specialized instruction. I awarded the student 288 hours of tutoring for the 863.6 hours of specialized instruction that was not provided, a ratio of one hour of tutoring for every three hours of deprived services.¹⁶² In ODR Case No. 2023-0210,¹⁶³ I found the proposed plan violated *Reid* where the unexplained ratio was .281:1. The author of the compensatory education plan conceded that she was unaware of *Reid* or its requirements. I awarded the student 170 hours of tutoring on the basis of the 1:3 ratio that I have proposed, and 14 hours of counseling for the 14 hours of counseling of which the student was deprived.¹⁶⁴ In Case No. 2021-0173,¹⁶⁵ I dismissed the complaint because DCPS had offered what I considered to be full relief prior to the hearing, including slightly more compensatory education services than the petitioner had requested. The case was remanded to consider Petitioner's professed right, that was "reserved" at the hearing, to request additional compensatory education services based on evaluations that were ordered as relief at the hearing. On remand, I denied further relief on grounds that there is no authority to postpone proving entitlement to relief at a due process hearing under IDEA, and because petitioner's proposal was a strictly mechanical hour-for-hour calculation.¹⁶⁶ In the consolidated cases of Case Nos. 2025-0002 and 2025-0020,¹⁶⁷ I found that the proposed plan violated *Reid* because the expert proposed a tutoring hours-to-hours ratio of 50% with no explanation other than "my knowledge and experience."¹⁶⁸ Finally, in Case No. 2025-0024, I found that the proposal for 1920 hours of tutoring was completely untethered to the established denial of FAPE.¹⁶⁹

In cases where hearing officers find a denial of FAPE due to a failure to provide appropriate IEPs or a failure to implement IEPs, there is obviously educational harm or the services would not have been prescribed, even if the harms cannot be measured. The hours of lost services are usually disputed, but also always easily quantified. In this case, for example, Student was denied 630 hours of specialized instruction, ten hours per week for 63 school weeks. The affected struggling students would be much better served if hearing officers had the option of awarding a flat percentage of hours lost due to a denial of FAPE, perhaps one hour of tutoring for every three hours of deprived specialized instruction and hour-for-hour compensation for denied related services. The 1:3 ratio is a rough approximation of the most individual attention a student would be likely to receive in a

¹⁶⁰ *Id.* at 18-19.

¹⁶¹ Issued January 29, 2024.

¹⁶² ODR Case No. 2023-0229 at 21-24.

¹⁶³ Issued January 10, 2024.

¹⁶⁴ ODR Case No. 2023-210 at 25-30.

¹⁶⁵ Issued September 5, 2024.

¹⁶⁶ ODR Case No. 2021-0173 at 19-23.

¹⁶⁷ Issued March 16, 2025.

¹⁶⁸ Case Nos. 2025-0002 and 2025-0020 at 42.

¹⁶⁹ ODR Case No. 2025-0024 at 33-34, issued May 31, 2025.

small class environment. In *Hill v. District of Columbia*,¹⁷⁰ Magistrate Judge G. Michael Harvey revealed that the District Judges in this jurisdiction use ratios to determine tutoring awards in cases in which they elect not to remand that determination to hearing officers.¹⁷¹ In *Hill*, Magistrate Harvey used a ratio of 1:5.

The Court will apply a one-to-five ratio because the Court believes that an hour of one-on-one tutoring fairly approximates five hours of the type of specialized education that R.H. was denied. In his January 2013 and December 2013 IEPs, R.H's specialized instruction was to occur "outside the general education setting," or, in other words, in a small-class setting with few other students and a greater emphasis on individualized attention from the teacher.¹⁷²

Hearing Officers should be afforded the same latitude. This would get services to needy students immediately rather than having them endure years of litigating legal niceties, time lost forever during which they are not given the additional support they deserve and need to achieve higher levels of academic performance.¹⁷³ Therefore, I will order DCPS to fund 133 hours of tutoring services, a ratio of 1:3 of tutoring service hours to hours of specialized instruction denied along with 29.25 hours of psychological counseling services on an hour-for-hour basis.¹⁷⁴

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 ten business days of the issuance of this order, DCPS shall coordinate with Petitioner's counsel to schedule an IEP meeting to place Student in a self-contained class designed to serve students with extreme behavioral histories (such as a BES classroom) with a minimum of 25 hours per week of specialized instruction outside general education. In the event DCPS has no such facilities available for Student, DCPS shall coordinate with the Office of the State Superintendent of Education to effectuate Student's placement in a nonpublic, therapeutic day school.

IT IS FURTHER ORDERED that within fifteen business days of the issuance of this order, DCPS shall provide Petitioner authorization for 133 hours of independent tutoring services

¹⁷⁰ Case No. 14-cv-1893, *Memorandum Opinion*, 2016 U.S. Dist. LEXIS 114924 (D.D.C. Aug. 26, 2016).

¹⁷¹ *Id.* at 55.

¹⁷² *Id.* at 55.

¹⁷³ I proposed the same option in my *Hearing Officer Determination on Remand* in Case No. 2020-0093, in Case No. 2023-0029, and in a *Hearing Officer Determination on Remand*, ODR Case No. 2021-0173, all discussed above, as well as Case No. 2020-0138B, the *Hearing Officer Determination on Remand* issued in response to the remand order.

¹⁷⁴ Student was denied three hours per week of specialized instruction from November 2, 2023 until October 7, 2024, a period of 33 school weeks (factoring breaks for Thanksgiving, Christmas, and spring break). Thus, s/he was denied 99 hours of instruction during this period. From October 7, 2024 until the end of the 2024-25 school year, a period of 30 school weeks, s/he was denied 10 hours per week, or 300 hours. Altogether, Student was denied 399 hours of specialized instruction.

and 29.25 hours of independent psychological counseling services and reimbursement for Uber/Lyft transportation to attend compensatory services sessions. Petitioner is not bound by OSSE limitations on hourly compensation for service providers, but the authorizations may require the tutoring services to be completed within three years from the issuance of this order and the counseling services to be completed within two years of 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 A/T evaluation without limitation on hourly compensation for the examiner.

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 13, 2025

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