

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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| Parent, on behalf of Student,¹ |) | Hearing Officer: Michael Lazan |
| Petitioner, |) | |
| |) | Hearing Dates: |
| v. |) | 10/6/25; 10/7/25 |
| |) | |
| District of Columbia Public Schools, |) | Case No. 2025-0092 |
| Respondent. |) | |

HEARING OFFICER DETERMINATION

I. Introduction

This case involves an X-year-old student (the “Student”) who is currently eligible for special education services. A due process complaint (“Complaint”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) was filed by the Student’s parent (“Petitioner”) and received by District of Columbia Public Schools (“DCPS” or “Respondent”) on May 30, 2025.

II. Subject Matter Jurisdiction

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

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

III. Procedural History

A prehearing conference was held on July 22, 2025. Participating in this conference were Attorney A, Esq., attorney for Petitioner, and Attorney B, Esq., attorney for Respondent. On July 29, 2025, a prehearing conference order was issued, summarizing the rules to be applied in the hearing and identifying the issues in the case. This order was revised on October 7, 2025.

The matter was scheduled to proceed to trial on August 25, 2025, and August 26, 2025. Before the first hearing date, on August 12, 2025, Petitioner moved to adjourn the hearing dates because of witness availability. There was no objection, and the parties rescheduled the hearing to dates that the witnesses were available. The hearings were rescheduled to October 6, 2025, and October 7, 2025. On September 3, 2025, Petitioner filed a motion to extend the Hearing Officer Determination (“HOD”) due date to October 15, 2025. The motion was granted on September 8, 2025.

The hearing proceeded on October 6, 2025, and October 7, 2025, through the Microsoft Teams videoconferencing platform, without objection. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-59. DCPS objected to exhibits P-5 through P-16. Objections were sustained with regard to exhibits P-5, P-6, and P-7. All other objections were overruled. Exhibits P-1 through P-4 and P-8 through P-59 were admitted. Respondent moved into evidence exhibits R-1 through R-32 without objection.

Petitioner presented as witnesses, in the following order: Witness A, a speech-language pathologist (expert in speech-language pathology); Witness B, an educational advocate (expert in special education as it relates to Individualized Education Program (“IEP”) development, placement or eligibility); and Witness C, a psychologist (expert in

clinical psychology, psychoeducational evaluations, and school psychology).

Respondent presented as witnesses: Witness D, a special education teacher and case manager; Witness E, a speech-language pathologist (expert in school-based speech-language pathology); and Witness F, a Local Educational Agency (“LEA”) representative and special education teacher.

After the presentation of testimony and evidence, on October 7, 2025, the parties presented oral closing statements.

IV. Issues

As identified in the prehearing conference order and in the Complaint, the issues to be determined in this case are as follows:

1. Did DCPS deny the Student a Free Appropriate Public Education (“FAPE”) by failing to provide an appropriate IEP, placement, and/or location of services during the 2023-2024 and 2024-2025 school years, including through the February 15, 2024, IEP (and all amendments), the meetings on May 17, 2024, and June 3, 2024, and the February 3, 2025, IEP (and all amendments)?

Petitioner contended that the IEP of February 15, 2024, denied the Student a FAPE when it failed to: (1) be based on comprehensive evaluative data; (2) provide sufficient support so that the Student could be placed in a setting outside general education for all academic courses, specials, and transitions; (3) provide for a placement in an therapeutic environment; (4) provide appropriate speech and language goals and services of at least 120 minutes per month outside general education; and (5) provide an appropriate Behavior Intervention Plan (“BIP”) and/or attendance plan with appropriate behavioral support goals to address the Student’s school refusal behaviors.

Petitioner also contended that, at the IEP meetings of May 17, 2024, and June 3, 2024, DCPS denied a request to place the Student in a therapeutic setting and to provide additional speech and language services.

Petitioner also contended that the IEP of February 3, 2025, denied the Student a FAPE when it failed to: (1) be based on comprehensive evaluative data; (2) provide for instruction outside general education for all academic courses and specials; (3) provide for a placement in an therapeutic environment; (4) provide for at least 120 minutes per month outside general education for related services (occupational therapy, speech-language pathology, and behavior support services) and appropriate goals for each of the related services; and (5) provide for an appropriate BIP and/or attendance plan and appropriate behavioral support goals to address the Student's school refusal behaviors.

2. Did DCPS deny the Student a FAPE by failing to fully and timely afford Petitioner access to the Student's educational records and/or provide such educational records despite numerous requests?

V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a student with Multiple Disabilities (Other Health Impairment, Specific Learning Disability). The Student's cognitive functioning has been measured at the 1st percentile. P-20. The Student has been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and Depressive Disorder with anxious distress. P-20. The Student may sometimes "hear voices." and prefers small-class instruction. The Student has struggled as s/he has gotten older and school has become more difficult. Testimony of Petitioner. The Student is generally calm, pleasant, and likable. Testimony of Witness G. The Student has a strong work ethic when s/he is in school but is shy, including socially. Testimony of Witness D.

The Student does not like attention drawn to him/herself. Testimony of Witness F.

Currently, the Student is embarrassed that s/he has missed so much school. Testimony of Witness D.

2. During the 2021-2022 school year, the Student attended School A, a DCPS public school. During this period, the Student attended school regularly, and his/her behavior was “okay.” Testimony of Petitoiner. The Student needed attention from peers, sometimes used unkind words, benefitted from a space to express his/her feelings and needs, and consistently followed class rules and completed classwork. P-25.

3. The Student’s IEP of March 17, 2022, provided for twenty-six hours of specialized instruction per week outside general education and the following monthly services: 120 minutes of occupational therapy, 180 minutes of speech-language pathology, and 120 minutes of behavior support services. The IEP stated that the Student had adequate oral, functional language skills but difficulty understanding and expressing language that was more complex and specific to the curriculum. The IEP reported that the Student benefitted from a space to express his/her feelings and needs and problems; struggled with change in routine, schedules, and new teachers; and thrived on trusting relationships and feeling accepted by others. The IEP said that the Student consistently followed class rules and completed his/her classwork. The IEP also said that the Student’s inattention and impulsivity impacted his/her regular attendance, participation in the classroom, and timely work completion. The Student required redirection, verbal reinforcements, repetition of directions, verbal prompts and reminders, and other behavioral supports to successfully participate in the general education curriculum. The IEP said that the Student had a BIP. P-25; P-26.

4. For the 2022-2023 school year, the Student attended Public Charter School A. The Student's IEP of March 16, 2023, written by this school, provided for fifteen hours of specialized instruction per week outside general education, a nine-hour decrease from the previous IEP's twenty-six hours per week. The IEP also recommended the following monthly services: 120 minutes of occupational therapy, 120 minutes of speech-language pathology (a decrease of sixty minutes per month from the prior IEP), and 120 minutes of behavior support services. The IEP indicated that the Student remained on the X level in math but had progressed to the early Y level in reading. The IEP indicated that the Student had mastered his/her communication/speech and language goals, although s/he was distracted during speech-language pathology sessions. The IEP said that the Student had a bubbly personality and could be helpful and thoughtful in interactions with adults, but tended to gravitate toward negative peer and adult interactions. The Student received five behavioral referrals during the school year. P-27.

5. For the 2023-2024 school year, the Student changed schools to School B, a DCPS public school. The IEP from Public Charter School A was in effect during the first portion of the 2023-2024 school year. The Student was placed in the Specific Learning Supports ("SLS") program at School B. SLS classes have eight to ten students and involve modified academics and practical lessons, such as how to balance a checkbook. Testimony of Witness D. By October 2023, the Student began having serious issues with attendance, in part because the Student was not sleeping well. The Student's mental health also seemed to be getting worse at the time. The Student also said s/he did not like school. Testimony of Witness E. To address the Student's attendance issues, the school talked to the Student individually, called home often, and

tried to develop different social supports. Testimony of Petitioner. The Student's IEP progress report for the first reporting period of the 2023-2024 school year indicated that the Student was progressing only on his/her math goals. For all other goals, the Student was reported to make no progress, or the goals were not introduced. P-42.

6. A formal measure on social and emotional learning was administered to the Student at approximately this time. The Student scored very low on "sense of belonging," which indicated that s/he was less likely to feel that s/he was a valued member of the school community in school and classroom environments. P-51-2.

7. The parties met on December 20, 2023, and January 18, 2024, to discuss the Student's absences and related issues. P-28; P-29. An observation of the Student was conducted on January 9, 2024. The Student sat upfront alongside peers, got situated and on task, and followed every aspect of the lesson. During the independent work and mastery check, the Student was quiet and focused. S/he prompted the teacher once for support, and went on to complete the assignment. P-51.

8. An eligibility meeting was held for the Student on January 18, 2024, during which the Student was classified as a student with Multiple Disabilities (Other Health Impairment and Specific Learning Disability). R-4.

9. An IEP meeting was held for the Student on February 15, 2024. During the IEP meeting, Petitioner discussed that the Student had issues going to sleep and could be on his/her device until three in the morning. Petitioner shared that she would go at work before the Student would go to school in the morning. The IEP team suggested a bedtime routine for the Student and spoke to Petitioner about setting an alarm for the Student. Testimony of Witness E. School B's IEP of February 15, 2024, like the IEP

from Public Charter School A, provided for fifteen hours of specialized instruction per week outside general education. The IEP also recommended the following monthly services: 120 minutes of occupational therapy, 60 minutes of speech-language pathology (a decrease of sixty minutes per month from the prior IEP), and 120 minutes of behavior support services. The IEP reflected the Student's difficulties in attendance and indicated that the Student was failing math. The IEP said that the Student did not like school but had not indicated a reason beyond the explanation that s/he was "tired of coming." The IEP said that the Student had presented with severe attendance concerns since his/her enrollment at School B, with a total of eighty-three unexcused absences. P-32.

10. On February 20, 2024, Witness C conducted a psychological evaluation of the Student. The Student's performance on the Wechsler Abbreviated Scale of Intelligence-II ("WASI-II") verbal comprehension index yielded a score of 70, in the borderline range. The Student's perceptual reasoning index score was 54, in the extremely low range. The Student's full-scale IQ score was 60, at the 0.4 percentile, in the extremely low range. On the Woodcock-Johnson Tests of Achievement-IV ("WJ-IV"), the Student scored at the 0.1 percentile in broad math, 9th percentile in broad reading, 6th percentile in written language, and 1st percentile in broad achievement. The evaluation determined that the Student had a "very constricted" style of coping, and that daily demands and relationships seemed to generate immense feelings (including anxiety). Witness C indicated that the Student's underdeveloped verbal skills contributed to his/her difficulty in articulating his/her feelings during emotionally overwhelming moments. The evaluator found that the Student became uncontrollable as internal or external stressors increased, and that the Student was impulsive and unpredictable. The

evaluator posited that the Student was probably trying to get rid of his/her feelings of anxiousness by shutting down or acting out, and that the Student might benefit from an incentive-based plan pertaining to attendance. The evaluator stated that the Student's reading comprehension had improved by about a grade level since testing in 2018, but that there was no improvement in math. The Student was diagnosed with Intellectual Disability, Mild (Intellectual Developmental Disorder); Persistent Depressive Disorder with Anxious Distress, Moderate; and ADHD, Combined Presentation, Moderate. P-20; Testimony of Witness C.

11. A Functional Behavior Assessment ("FBA") was written for the Student on March 15, 2024. The FBA indicated that it was completed at the request of Petitioner and was perfunctory in nature. The FBA stated that School B had not been able to adequately assess the Student's target behavior, given his/her class absences. The FBA said that there was no confirmed medical explanation at the time for the Student's behavior. The FBA also reported that, according to Petitioner, the Student's severe anxiety and depression prevented him/her from attending school daily, that the Student had good attendance at School A, and that the Student could stay up all night, hit, or refuse to go to school. R-30.

12. A BIP was written for the Student on March 15, 2024. The BIP recommended the following: that the Student should refrain from using all electronic devices for one to two hours before bedtime; that the Student should receive time to engage in a preferred activity (such as making bracelets or drawing for each day that the Student attended school); that the Student should be given the opportunity to have a social-emotional "check-in" with the school social worker upon his/her arrival at school;

and that the Student should have an identified “calming space” in the classroom for scheduled break time. P-26.

13. In April 2024, Witness A conducted a speech and language evaluation of the Student. Witness A tested the Student on the Clinical Evaluation of Language Fundamentals-5th Edition (“CELF-5”) and Expressive Vocabulary Test-Third Edition (“EVT-3”). On the CELF-5, the Student scored in the low range in receptive language and in the borderline/marginal range in expressive language. The Student showed a relative strength in sentence assembly but was particularly weak with respect to grammar and listening to complex sentences. On the EVT-3, the Student produced “below expected” performance compared to peers, exhibiting issues with complex vocabulary and synonyms. Witness A also administered the Speech and Language and Auditory Processing Checklist, which provides input on the use of speech and language in the classroom setting. School B reported that the Student “sometimes” had poor vocabulary or grammar and could be difficult to understand. The school reported that the Student was “sometimes” able to ask for help/clarification appropriately but “never” interrupted politely. School B also reported that the Student frequently participated in conversations with friends, understood figures of speech, and was a good listener. Witness A stated that the Student’s areas of need in speech and language might impact his/her reading and writing comprehension and expression, social interactions, vocational skills, and language comprehension and expression. P-23; Testimony of Witness A.

14. The Student’s IEP was amended in April, 2024. The amendment included a list of the Student’s diagnoses. The IEP indicated that the Student had an Intellectual Disability, Mild; Persistent Depressive Disorder with anxious distress, Moderate; and

ADHD, Combined Presentation, Moderate. The IEP also reported on the Student's academics per the recent psychological assessment by Witness C, noting that, overall, the Student's Broad Achievement score of 65 fell within the very low range, at the 1st percentile, and that the Student's performance was "slightly comparable to [his/her] cognitive abilities." P-35.

15. Another IEP meeting was held in May 17, 2024. The Student's occupational therapist and speech-language pathologist both indicated that the Student's service mandates should be cut to sixty minutes per month because of non-attendance. Petitioner objected to these proposals. P-36. The meeting ended and was continued on June 3, 2024. Petitioner asked what DCPS was doing to address the Student's nervousness and anxiety about coming to school, noting that the Student was far behind grade level in all academic areas because s/he was not getting the proper supports in a self-contained setting. The IEP team reviewed the Student's psychological evaluation and independent occupational therapy evaluation and agreed to keep the Student's speech mandate the same as in the prior IEP. P-37.

16. For the 2024-2025 school year, the Student continued to attend School B and have the same attendance problems. The Student often did not attend school. R-29. The Student was administered the Strength and Difficulties Questionnaire ("SDQ") at the beginning of the school year to assess his/her social and emotional functioning. Based on self-assessment, the Student showed clinical significance across all areas of social emotional functioning. The biggest areas of concern were noted to be overall stress, emotional distress, and hyperactivity/concentration. P-38-8. An IEP progress report for first reporting period of the 2024-2025 school year indicated that the Student had made

progress on all academic goals, communication/speech and language, and motor skills/physical development. Emotional, social and behavioral goals were “just introduced” because of attendance issues. R-12. An IEP progress report for the second reporting period of the 2024-2025 school year again indicated that the Student had made progress on all goals. R-13.

17. An IEP meeting was held for the Student on February 3, 2025. The ensuing IEP, written by DCPS, provided for twenty hours of specialized instruction per week outside general education, an increase of five hours per week from the previous IEP. The IEP also recommended the following monthly services: ninety minutes of occupational therapy, sixty minutes of speech-language pathology, and sixty minutes of behavior support services. The IEP reflected the Student’s difficulties with attendance. The Student’s math grades were reported to have improved, with the teacher commenting that additional support had helped. The Student had a class average of 52.93% in English and 65.26% in history. The Student had been absent for fifty days, with seven tardies. P-38. The Student’s communication/speech and language goals were not changed during this IEP meeting because the therapist did not see the Student consistently. Testimony of Witness E. The IEP was amended on March 26, 2025, to provide extended school year (“ESY”) services for the Student, including transportation. P-39.

18. The IEP progress report for the third reporting period of the 2024-2025 school year indicated that the Student had progressed in math, reading, written expression, emotional, social and behavioral development, communication/speech and language, and motor skills/physical development. R-16. The IEP progress report for the fourth reporting period of the 2024-2025 school year indicated that the Student had

progressed in math, reading, and written expression, but did not progress in emotional, social and behavioral development, communication/speech and language, or motor skills/physical development. R-17. School staff felt that the Student was not making the progress that the school had hoped for. Testimony of Witness D.

19. Petitioner wrote a letter of dissent on May 22, 2025, noting that Petitioner's counsel had not been invited to the February 2025 IEP meeting. P-53. The Student was absent 115 days during the 2024-2025 school year. R-29-4.

20. The Student has continued at School B during the 2025-2026 school year. The Student has attended school much more often during the 2025-2026 school year. Testimony of Witness D. The Student has also performed better academically during the current school year. Testimony of Witness G. The Student has a close friend at the school and takes classes with him/her. "They are in their own bubble." Testimony of Witness E.

21. A records request was sent to Respondent on February 26, 2025. DCPS responded to this records request on March 10, 2025. Another records request was sent to Respondent on April 25, 2025. DCPS responded to this request on April 29, 2025. A third records request was sent to Respondent on May 1, 2025. DCPS responded to this request on May 8, 2025. Testimony of Witness G; R-23; R-24; R-25.

VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed in 2014. The law states that "(w)here there is a dispute about the appropriateness of the child's individual educational program or placement, 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 establishes “a *prima facie* case.” D.C. Code Sect. 38-2571.03(6)(A)(i). In this case, the burden of persuasion is on DCPS on Issue #1, provided that Petitioner presents a *prima facie* case. On Issue #2, the burden of persuasion is on Petitioner.

1. Did DCPS deny the Student a FAPE by failing to provide an appropriate IEP, placement, and/or location of services during the 2023-2024 and 2024-2025 school years, including through the February 15, 2024, IEP (and all amendments), the meetings on May 17, 2024, and June 3, 2024, and the February 3, 2025, IEP (and all amendments)?

School B IEP of February 15, 2024

The IEP is the “centerpiece” of IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). In Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), the Court held that an IEP must be reasonably calculated “in light of the child’s circumstances.” Id. at 999-1000. The Court also held that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, which “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001-1002.

The Endrew F. decision reaffirmed much of the Court’s holding in Board of Education v. Rowley, 458 U.S. 176 (1982). In particular, the Court affirmed that if a child is fully integrated into a regular classroom, receives passing marks, and advances from grade to grade through the general curriculum, then the student’s IEP will ordinarily satisfy the IDEA standard. However, a footnote in Endrew F. warns that this “guidance should not be interpreted as an inflexible rule” and that Endrew F. should not be read to

hold that every child advancing from one grade to the next “is automatically receiving an appropriate education.” *Id.* at 1001 n.2 (citation omitted).

Petitioner contended that the IEP of February 15, 2024, and corresponding placement at School B denied the Student a FAPE because the IEP failed to: (1) be based on comprehensive evaluative data; (2) provide sufficient support so that the Student could be placed in a setting outside general education for all academic courses, specials, and transitions; (3) provide for a placement in an therapeutic environment; (4) provide appropriate speech and language services of at least 120 minutes per month outside general education, with appropriate goals; and (5) provide an appropriate BIP and/or attendance plan with appropriate behavioral support goals to address the Student’s school refusal behaviors.

If a child’s behavior impedes the child’s learning or that of others, an IEP team must consider positive behavioral interventions, supports, and other strategies to address that behavior. 34 CFR 300.324(a)(2)(i). Courts find that a student may be denied a FAPE if his or her educational plan does not contain sufficient interventions to adequately address attendance issues. Middleton v. District of Columbia, 312 F. Supp. 3d 113, 146 (D.D.C. 2018).

In Cundiff-Enoch v. District of Columbia, No. 22-CV-3713-RBW-ZMF, 2024 WL 396451, at *11 (D.D.C. Feb. 2, 2024), report and recommendation adopted sub nom. Cundiff-Enoch as next friend of Enoch v. District of Columbia, No. CV 22-3713 (RBW), 2024 WL 2279459 (D.D.C. Mar. 28, 2024), the school provided a student who was prone to absences because of a disability with a variety of interventions, including daily attendance trackers, daily text messages, weekend check-ins, instructions about excused

absences, and more. The school addressed attendance in the student's IEP, including a goal that the student "check in with the special education coordinator to obtain and utilize an attendance tracker and daily class sign in sheet in order to monitor [the student's] daily classroom attendance along with providing the daily sign in sheet to parent for monitoring purposes." The court found that DCPS did not deny the Student a FAPE despite the student's severe attendance issues. See also Presely v. Friendship Pub. Charter Sch., No. CIV.A. 12-0131 BAH, 2013 WL 589181, at *8 (D.D.C. Feb. 7, 2013), report and recommendation adopted, No. CV12131BAHDAR, 2013 WL 12108062 (D.D.C. Mar. 8, 2013) (no FAPE denial where school district provided, among other things, for a psychologist to call to confirm the student's school arrival, mentorship by the vice principal, Saturday school for tutoring, lunch rewards, hand-to-hand transportation, and morning wake-up calls).

Here, DCPS did create an FBA and a BIP for the Student, and the BIP did mention the Student's attendance issues. The BIP recommended the following: that the Student should refrain from using all electronics for one to two hours before bedtime; that the Student should receive time to engage in a preferred activity, like making bracelets or drawing, for each day that the Student attended school; that the Student should be given the opportunity to do a social emotional check-in with the school social worker upon arrival at school; and that the Student should have an identified calming space in the classroom for scheduled break time.

DCPS's BIP was partially reliant on the actions of Petitioner. Still, the BIP was reasonably calculated and a fair response to the Student's issues with absences. The Student did not have a history of such severe attendance problems, which appeared to be

fixable since a main issue was that the Student was staying up very late and not getting enough sleep before school. This BIP was designed to fix that problem. Taking the IEP and the BIP together, and in light of the Student's relative earlier success at School A and Public Charter School A, this Hearing Officer finds that this BIP was enough of a plan, at that time, to address the Student's behaviors.

This Hearing Officer also agrees that DCPS's proposed program for the Student was reasonably calculated in terms of specialized instruction hours. Petitioner contended that the Student needed specialized instruction in all academic classes, specials, and transitions, and that the Student was functioning at a very low level in most academic areas. Petitioner compared School B with School A, also a DCPS public school, arguing that the Student needed at least the twenty-six hours of specialized instruction per week outside general education that School A provided. Petitioner also argued that the Student needed a "therapeutic setting."

But in the Student's last IEP at Public Charter School A, s/he received fifteen hours of specialized instruction per week, and though the Student also had attendance issues at Public Charter School A, Petitioner's witnesses did not clearly argue that Public Charter School A was inappropriate for the Student. The record also contains no clear, persuasive evidence that the Student did poorly in any "specials" classroom at Public Charter School A or School B (for the first part of the 2024-2024 school year) because a special education teacher was not present or because the class was too large.

Nor can it be said that the school district's IEP was based on insufficient data. While Petitioner is right that the Student's evaluations should probably have been conducted prior to the IEP meeting, there is nothing in the record to indicate that it was

vital for these evaluations to be conducted earlier, since the team knew that the Student was functioning at a low level, and an FBA and a BIP were being written to address his/her attendance issues. Petitioner and her witnesses did not clearly explain how the lack of evaluations in February 2024 had any material impact on the Student's academic progress, except to suggest that the IEP team needed to understand the genesis of the Student's attendance issues, which the BIP was trying to address.

This Hearing Officer also does not agree with Petitioner that the reduction in the Student's speech-language pathology mandate to sixty minutes per month from 120 minutes per month denied the Student a FAPE. Petitioner pointed out that the Student had originally received 180 minutes per month of speech-language pathology services, and that the school district did not clearly articulate a reason for reducing those services, except that the Student was not attending school. But Petitioner did not clearly explain how the extra sixty minutes of speech-language services per month would have helped the Student in the classroom. An IDEA claim is only viable if the violations affect a student's substantive rights. Lesesne ex rel. B.F. v. District of Columbia, 447 F.3d 828, 834 (D.C. Cir. 2006). Petitioner also did not consider that the Student had mastered his/her communication/speech and language goals, according to the March 2023 IEP, or that some of the Student's communication/speech and language needs, as articulated by Witness A (such as reading comprehension), would typically be addressed by a teacher in the classroom.

Nor does any testimony or evidence clearly show that the Student's communication/speech and language goals were inadequate in this IEP. Petitioner argued that the Student did not master these goals, but an IEP must be assessed on the day of the

IEP meeting, not after the fact. S.S. ex rel. Shank v. Howard Road Academy, 585 F. Supp. 2d 56, 66 (D.D.C. 2008) (warning against “Monday morning quarterbacking,” i.e., reviewing IEPs based on prospective evidence).

As a result of the foregoing, this Hearing Officer finds that DCPS did not deny the Student a FAPE through the February 2024 IEP and placement at School B.

School B IEP Meetings of May 17, 2024, and June 3, 2024

Notwithstanding the interventions recommended in the BIP, by the time of the IEP meetings in May and June 2024, the Student’s excessive absences had continued. At the IEP meeting on May 17, 2024, the Student’s occupational therapist said that the Student had been absent approximately 135 times. Petitioner raised this issue at the IEP meeting on June 3, 2024, which was a continuation of the May 2024 meeting. Petitioner wanted to know what else could be done to address the Student’s issues with attendance.

The record contains no clear evidence that DCPS or the IEP team took any decisive action. The team left the Student’s FBA and BIP as they were and actually sought to reduce the Student’s services because s/he was not attending. The IEP did not change, despite the Student’s persistent non-attendance. Even with an FBA and BIP in place, when the FBA and/or BIP are clearly not effective, it is incumbent on the school district to change the FBA/BIP or modify the IEP in order to provide a student with a FAPE. In Middleton, for instance, DCPS addressed the student’s attendance issues through an FBA and BIP but did not provide a plan that could realistically get the student to attend. The court found that “these and DCPS’s few other interventions were insufficient under the circumstances.” Middleton v. District of Columbia, 312 F. Supp. 3d 113, 146–47 (D.D.C. 2018).

Furthermore, though not raised as a point by DCPS, this is not a case where the Student can be characterized as a student with a “social maladjustment” or as a student who did not want to go to any school under any circumstances. Garris v. District of Columbia, 210 F. Supp. 3d 187, 191–92 (D.D.C. 2016)(where the student's difficulties with attendance did not stem from difficulties in class but, at least in part, from a disinterest in education). To the contrary, testimony indicated that the Student is generally calm, pleasant, and likable, has a strong work ethic in school, and is embarrassed that s/he has missed so much school.

DCPS suggested that the Student was at fault for his/her non-attendance but did not clearly rebut the contention of Petitioner’s expert, Witness C, whose report indicated that the Student’s fear of failure and disabilities were the reason s/he had issues going to school. Witness C connected the Student’s ADHD and specific learning disability to his/her poor attendance. Witness C indicated that the Student’s underdeveloped verbal skills contributed to his/her difficulty in articulating his/her feelings during emotionally overwhelming moments, that the Student became uncontrollable as internal or external stressors increased, that the Student was impulsive and unpredictable, and that the Student was probably trying to get rid of his/her feelings of anxiousness by shutting down or acting out. Moreover, DCPS did not rebut Petitioner’s contention to the effect that the Student’s disabilities caused his/her attendance issues. Indeed, DCPS’s IEP of March 17, 2022, said that the Student’s “inattention and impulsivity impact [his/her] regular attendance.” Indep. Sch. Dist. No. 284 v. A.C., by & through her Parent, C.C., 258 F.3d 769, 776 (8th Cir. 2001) (holding that the student’s truancy resulted from a genuine case of emotional disturbance rather than a purely moral failing); H.M. ex rel. J.M. v. Weakley

Cnty. Bd. of Educ., No. 13-1060, 2015 WL 1179615, at *11 (W.D. Tenn. Mar. 13, 2015) (even a frequently truant student’s “social maladjustment” did not excuse a school district’s failure to provide the student with IDEA services to address severe depression).

DCPS also argued that, since the filing date of the Complaint, the Student’s attendance has improved during the 2025-2026 school year. While this is certainly an important development that the IEP team must assess at the Student’s next IEP meeting, a school district’s decisions about an IEP must be judged at the time of the meeting on which the IEP is based, as noted earlier in another context. Based on the evidence available at the IEP meetings in May and June 2024, the DCPS IEP teams had no reason to believe that the Student, with the same program, would start attending school regularly during the 2024-2025 school year.

In fact, the Student did not attend school regularly during the entirety of the 2024-2025 school year. The record indicates that the Student was absent from school on 115 days during the 2024-2025 school year, with seven tardies.

While DCPS’s refusal to change the Student’s speech mandate did not deny the Student a FAPE, for the reasons expressed in the prior section, and while the IEP team did have enough data about the Student, through the comprehensive evaluations conducted earlier in 2024, DCPS denied the Student a FAPE when it failed to update the Student’s IEP and/or BIP in May-June 2024.

IEP of February 2025

Likewise, the February 2025 IEP failed to address the Student’s attendance needs. Given the Student’s poor attendance record during the 2024-2025 school year, s/he needed a new, credible intervention at this point with respect to attendance. This IEP

contains nothing new, not even an attendance goal, to address the Student's attendance issues. The Student's FBA and BIP were also not updated to address his/her continuing issues with non-attendance. DCPS did add five hours to the Student's specialized instruction mandate, bringing the total to twenty hours of specialized instruction per week outside general education. But as already stated, nothing in the record suggests that the extra five hours would have helped the Student attend.

Petitioner again argued that the Student's specialized instruction mandate in the IEP was deficient. However, the IEP provided the Student with specialized instruction in all academic classes, and Petitioner's expert witnesses, Witness B and Witness C, did not clearly explain why the Student needed specialized instruction in "specials." Petitioner again argued that the Student needed additional speech in this IEP, but, again, nothing in the record suggests that sixty minutes more of speech-language pathology per month would have made any meaningful difference in the Student's attendance. Petitioner also argued that the Student should have received more occupational therapy services and behavior support services, but again, the record does not suggest that these additional services would have made a difference in the Student's attendance. No occupational therapist was called to support this claim, and there is nothing in the record to suggest that more counseling would have materially changed the Student's program or attitude toward school. Moreover, this Hearing Officer does not find that this IEP was based on insufficient evaluative data, since the Student was thoroughly evaluated in 2024, including through a comprehensive independent psychological evaluation and a comprehensive speech evaluation.

Still, DCPS denied the Student a FAPE by failing to address his/her attendance issues in the February 2025 IEP or a corresponding BIP.

2. Did DCPS deny the Student a FAPE by failing to fully and timely afford Petitioner access to the Student’s educational records and/or provide such educational records despite numerous requests?

The IDEA regulations provide: “(t)he parent of a child with a disability must be afforded, in accordance with the procedures of Sects. 300.613 through 300.621, an opportunity to ‘examine,’ or ‘inspect and review’ all education records with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.” 20 USC 1415(b)(1); 34 CFR 300.501(a); 5-A DCMR 2600.1. The term “education records” means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 USC 1232(g); 34 CFR 300.611-300.625).

Petitioner did not mention this issue during closing arguments. The record indicates that the school district promptly provided Petitioner with records in April 2025 and May 2025. Petitioner provided no persuasive facts to show that the Student was denied a FAPE because of the failure to provide educational records. Simms v. District of Columbia, No. 17-CV-970 (JDB/GMH), 2018 WL 4761625, at *23 (D.D.C. July 26, 2018), report and recommendation adopted, No. CV 17-970 (JDB) (GMH), 2018 WL 5044245 (D.D.C. Sept. 28, 2018) (“Plaintiff has not explained how, precisely, the other missing evidence—progress reports, additional report cards, counseling tracking forms, and the like—were necessary to her preparation for the due process hearing.”). This claim must be dismissed.

RELIEF

Petitioner seeks for the Student: (1) compensatory education; (2) smaller class sizes for all the Student's classes; (3) an increase in speech-language pathology services to 120 minutes per month; (4) an increase in behavior support services to 120 minutes per month; and (5) an increase in occupational therapy services to 120 minutes per month.

When a student is denied a FAPE, the statute directs the Court to “grant such relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985). The Supreme Court has indicated that due process decision-makers have as much discretion as that of courts in IDEA cases. Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 243 n.11 (2009).

Hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a “qualitative, fact-intensive” inquiry used to craft an award “tailored to the unique needs of the disabled student”). A Petitioner need not “have a perfect case” to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011).

Petitioner seeks relief corresponding to FAPE denial from February 15, 2024, to August 26, 2025. Petitioner seeks 720 hours of tutoring (ten hours per week for seventy-

two weeks), plus thirty-six hours of counseling, fourteen hours of speech services, and four hours of occupational therapy.

The finding here is that the Student was denied a FAPE when the school district failed to change his/her IEP and BIP prior to the 2024-2025 school year. Relief should therefore correspond to the approximately forty weeks during the 2024-2025 school year when the Student did not have a functioning BIP or an IEP that sufficiently addressed his/her attendance issues. It is also notable that the Student has been functioning well in school during the current school year. Too much tutoring after school and on weekends might well overwhelm the Student, who has a history of being school-resistant. As a result, the requested tutoring award will be reduced to 300 hours to compensate for the period of FAPE denial during the 2024-2025 school year.

The remaining requests for relief, including thirty-six hours of counseling, fourteen hours of speech services, and four hours of occupational therapy, do not correspond to the findings of FAPE denial. Nor do the requests for smaller class sizes for all the Student's classes, an increase in speech-language pathology services to 120 minutes per month, an increase in behavior support services to 120 minutes per month, or an increase in occupational therapy services to 120 minutes per month. These requests must therefore be denied.

VII. Order

As a result of the foregoing:

1. Respondent shall pay for 300 hours of compensatory tutoring for the Student, to be provided by a certified special education teacher, at the usual and customary rate in the community;

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2. All other requests for relief are denied.

Dated: October 15, 2025

Michael Lazan
Impartial Hearing Officer

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

VIII. Notice of Appeal Rights

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

Dated: October 15, 2025

Michael Lazan
Impartial Hearing Officer