

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Office of Dispute Resolution
1050 First Street, NE
Washington, DC 20002
Tel: 202-698-3819
Fax: 202-478-2956

OSSE
Office of Dispute Resolution
October 15, 2025

Confidential

Parent on Behalf of Student, ¹ Petitioner, v. District of Columbia Public Schools (Local Education Agency “LEA”) & The Office of the State Superintendent of Education (“OSSE”), State Education Agency) (“SEA”) Respondents. Case # 2025-0111 Date Issued: October 15, 2025	HEARING OFFICER’S DETERMINATION Hearing Dates: August 30, 2025 September 1, 2025 September 9, 2025 Counsel for Each Party listed in Appendix A <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>
--	--

¹ Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

The hearing was conducted, and the decision was written, pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter 5-A30.

BACKGROUND AND PROCEDURAL HISTORY:

The student who is the subject of this due process hearing ("the Student") resides in the District of Columbia with the Student's parent. The District of Columbia Public Schools ("DCPS") serves as the Student's local education agency ("LEA"), and the District of Columbia Office of the State Superintendent of Education ("OSSE") is the Student's State Education Agency ("SEA"). The Student has been determined eligible for special education pursuant to IDEA and attends a DCPS school ("School A").

On June 30, 2025, the Student's parent ("Petitioner") filed a due process complaint ("DPC") claiming that DCPS and OSSE denied the Student a free appropriate public education ("FAPE"). Petitioner alleged that DCPS failed to comprehensively evaluate the Student, failed to provide an appropriate individualized education program ("IEP"), and did not fully implement the Student's IEP. Additionally, Petitioner alleged that DCPS and/or OSSE failed to provide appropriate transportation services for the Student. Petitioner requests as relief an order directing OSSE to provide appropriate and consistent transportation services, directing DCPS to conduct or fund evaluations, amend the Student's IEP to include a dedicated aide or nurse, and for both DCPS and/or OSSE to fund compensatory education for the alleged denial(s) of FAPE.

DCPS's Response to the Complaint:

DCPS filed a response to the complaint on July 7, 2025. In its response, DCPS stated, inter alia, the following:

The Student had an individualized family service plan ("IFSP") under IDEA Part C through February 2023. DCPS engaged in an appropriate and comprehensive evaluation three months before the statutory period alleged in the DPC. In April 2023, DCPS Early Stages conducted a developmental evaluation while the Student was in PreK-3 and just under three years old.

In May 2023, DCPS continued analyzing existing data, and after determining the Student's FAPE, the Student's parent consented to the provision of special education around July 6, 2023. The IEP identified multiple areas of support, including assistive technology, with 25.75 hours of specialized instruction outside of general education, along with related services such as speech-language pathology, physical therapy, and occupational therapy. DCPS amended the Student's IEP in October 2024 and again in March 2025. In addition to the IEP support, DCPS developed a feeding plan. The Student was placed in the Early Learning Support ("ELS") classroom to implement the IEP. The Student's absences have also impacted the Student's progress and access to FAPE. DCPS maintains that this student has not been denied a FAPE.

OSSE's Response to the Complaint:

OSSE filed a response to the complaint on July 18, 2025. In its response, OSSE stated, inter alia, the following:

OSSE denies that transportation has been unreliable, causing the Student to be absent from school. OSSE acknowledges that the Student's August 8, 2024, IEP provided for transportation services for a medically fragile student, and that the Student would require an aide and hand-to-hand assistance, and has limited communication skills. The IEP transportation section did not state that a registered nurse was needed to administer medication to the Student on the bus.

OSSE denies that it failed to implement the Student's transportation services until October 15, 2024. From September 3, 2024, to September 11, 2024, the IEP did not indicate the need for a nurse. On those dates, OSSE sent a bus to pick up the Student, but the Student did not ride it. The Student's parent indicated that the Student needed a nurse on the bus on those dates, and the Student was listed as "Not Going" or "No Show."

The Student's August 8, 2024, IEP was amended on September 12, 2024, and the transportation section indicates that the Student may need Trach and g-tube adjustments while on the bus, that medication may need to be administered while on the bus, that a registered nurse is needed to administer medication, that the Student requires a 1:1 aide, and required the first p.m. drop-off.

The Student's parent submitted a route deviation request on September 11, 2024, requesting no a.m. or p.m. transportation starting September 12, 2024, and continuing until further notice. OSSE sent a bus to pick up the Student from September 26, 2024, to October 3, 2024. On those dates, the Student was a "No Show" on five days and was listed as "Not Going" on one day, October 3, 2024.

The Student's parent made a request, generating a route deviation form ("RDF") requesting no a.m. or p.m. transportation on October 4, 2024. An RDF dated October 10, 2024, indicated that OSSE should resume transportation on October 15, 2024, which OSSE did. From that date forward, the Student rode the bus to school most days.

The Student's IEP was again amended on October 21, 2024, and indicated that the Student still needed feedings at 11:00 a.m. and 3:00 p.m. OSSE admits that the IEP amended on October 21, 2024, indicated that the nurse would start the Student's afternoon feeding and send the Student home on the bus while the feeding was ongoing. OSSE admits that the Student's parent expressed concerns about the safety of continuing the 3:00 p.m. feeding while the Student was riding the bus and that the Student was not always the first p.m. drop off. These concerns were noted in the October 21, 2024, IEP.

The Student's transportation needs are based on the accommodations noted in transportation request forms ("TRFs") submitted by the Student's LEA, DCPS. The most recent TRF submitted by DCPS indicates that the Student requires a registered nurse, but does not indicate a need for the Student to be the first p.m. drop-off.

Resolution Meeting and Pre-Hearing Conference:

Petitioner and DCPS participated in a resolution meeting. The parties did not mutually agree to shorten the 30-day resolution period. The due process complaint (“DPC”) was filed on June 30, 2025. The 45-day period began on June 30, 2025, for the SEA and began on July 30, 2025, for the LEA and ended, and the Hearing Officer’s Determination (“HOD”) was originally due on August 14, 2025, for the SEA and September 13, 2025, for the LEA.

The parties agreed to align the timelines for both the LEA and SEA. The hearing was scheduled to begin on July 31, 2025, and continue through August 1, 2025, but due to a medical emergency involving the Respondent OSSE’s attorney and the availability of all parties to participate, the hearing was rescheduled to September 30, 2025, and October 1, 2025. Petitioner and DCPS consented to the continuance, and the HOD for both the LEA and SEA is now due on October 15, 2025.

The undersigned impartial hearing officer (“IHO”) conducted a pre-hearing conference on July 14, 2025, and issued a pre-hearing order (“PHO”) on July 24, 2025, stating, inter alia, the issues to be adjudicated.

ISSUES: ²

The issues adjudicated are:

1. Did DCPS deny the Student a FAPE by failing to provide the Student an appropriate IEP from July 6, 2023, through present because the IEP(s): (a) did not sufficiently describe and provide for the Student’s medical needs, (b) did not provide for a dedicated aide or dedicated registered nurse, (c) did not sufficiently provide for transportation services to safely transport the Student, (d) was/were not based on comprehensive evaluative data, (e) did not provide for sufficient occupational therapy services, physical therapy services, and speech-language therapy services, (f) did not include appropriate goals to provide sufficient progress, (g) did not sufficiently describe the Student’s least restrictive environment (“LRE”), and (h) did not provide an appropriate placement?
2. Did DCPS and/or OSSE deny the Student a FAPE from August 8, 2024, through the present by failing to provide the Student with appropriate and reliable transportation services as required by the Student’s medical needs and/or IEP?
3. Did DCPS and/or OSSE deny the Student a FAPE from July 6, 2023, through the present by not fully implementing the Student’s IEPs?
4. Did DCPS deny the Student a FAPE by failing to comprehensively evaluate the Student from July 6, 2023, by failing to conduct the following: a comprehensive psychological evaluation, a comprehensive speech-language evaluation, a comprehensive occupational therapy evaluation with sensory profile, a comprehensive physical therapy evaluation, and

² At the outset of the due process hearing, the IHO reviewed the issues to be adjudicated the parties agreed to the issue as stated herein.

an assistive technology assessment?

DUE PROCESS HEARING:

The Due Process Hearing was convened on August 30, 2025, September 1, 2025, and September 9, 2025, via video teleconference on the Microsoft Teams platform.

RELEVANT EVIDENCE CONSIDERED:

The IHO considered the testimony of the witnesses, and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 41 and DCPS's Exhibits 1 through 68 and OSSE Exhibit 1 through 24) that were admitted into the record and are listed in Appendix 2.³ The witnesses testifying on behalf of each party are listed in Appendix B.⁴

SUMMARY OF DECISION:

Respondent DCPS held the burden of persuasion on issue #1 after Petitioner presented a prima facie case. DCPS sustained the burden of persuasion by a preponderance of the evidence on issue #1. Petitioner held the burden of persuasion on all other issues. Petitioner sustained the burden of persuasion on issues #2 and #4 by a preponderance of the evidence. Petitioner did not sustain the burden of persuasion on issue #3. The IHO directed DCPS to conduct evaluations of the Student or grant independent evaluations ("IEE"), convene an IEP meeting to review and revise the Student's IEP. The IHO also granted Petitioner authorization to obtain an IEE to determine appropriate compensatory education.

FINDINGS OF FACT: ⁵

1. The Student resides with Petitioner, the Student's mother, in the District of Columbia. DCPS is the Student's LEA, and OSSE is the Student's SEA. On July 6, 2023, DCPS Early Stages determined the Student's eligibility for special education pursuant to IDEA with a multiple disability ("MD") disability classification, including speech-language

³ Any item disclosed and not admitted or admitted for limited purposes was noted on the record and is noted in Appendix A.

⁴ The Petitioner presented three witnesses: (1) an independent occupational therapist, 2) Petitioner's special education advocate employed by the law firm representing Petitioner, and (3) the Student's mother (Petitioner). DCPS presented four witnesses, all of whom testified as expert witnesses: (1) a DCPS psychologist, (2) a DCPS occupational therapist, (3) DCPS speech-language pathologist, and (4) DCPS LEA representative and director of specialized instruction. OSSE presented one witness: an administrator in the OSSE Division of Student Transportation. The IHO found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the witnesses' testimony that the IHO identified are addressed in the conclusions of law.

⁵ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained. When citing an exhibit submitted by more than one party separately, the IHO may only cite one exhibit.

impairment (“SLI”) and other health impairment (“OHI”). The Student attends School A, a DCPS school, where he/she began attending in October 2024. (Mother’s testimony, Petitioner’s Exhibits 12, 13)

2. OSSE Strong Start early intervention program engaged with the Student in January 2023. The Student’s mother shared that the Student was born prematurely and remained hospitalized until 1.5 years of age due to health challenges, including heart surgery, tracheostomy surgery (“trach”), and a gastrotomy (“g-tube”). (Petitioner’s Exhibit 4)
3. On January 26, 2023, Strong Start conducted the Battelle Developmental Inventory, 2nd Edition (“BDI-2”) and the Assessment Evaluation and Programming System (“AEPS”),⁶ conducted by a physical therapist and speech-language pathologist. The BDI-2 assessed the Student’ cognitive, communication, personal-social, motor, and adaptive functioning. Based on the BDI-2 assessment of cognitive functioning, the Student was determined to have a mild developmental delay of at least 25%. The Student’s receptive communication functioning was assessed with a significant delay below the first percentile, and his/her expressive communication was at least a 50% delay below the first percentile. The Student’s personal and social functioning was determined to be mildly delayed at the second percentile. The Student’s gross motor functioning was significantly delayed at the 3rd percentile, the Student’s fine motor skills were average at the 63rd percentile, and his/her perceptual motor skills were mildly delayed at the 4th percentile. The Student’s adaptive functioning was significantly delayed, below the 1st percentile, requiring consistent supervision for safety precautions due to the Student’s feeding through a g-tube. (Petitioner’s Exhibit 4)
4. Strong Start found the Student eligible for early intervention services on March 7, 2023, and developed an individualized family services plan (“IFSP”) for the Student. Petitioner opted for the Student’s IFSP early intervention services to be extended. (DCPS Exhibit 24)
5. On July 6, 2023, DCPS Early Stages convened an eligibility meeting in which Petitioner participated, along with the DCPS evaluation coordinator, speech-language pathologist, school psychologist, occupational therapist, and physical therapist. The team determined the Student eligible under the MD disability classification and determined that the Student required a “full-time” placement outside general education with occupational, physical, and speech-language therapies to be the most appropriate LRE. The team also noted that the Student was a candidate for assistive technology. During the meeting, the team noted the following strengths and concerns about the Student:

Adaptive:

Strengths: [the Student] is now tasting food according to [her/his] mother; and following routines.

⁶ BDI-2 is a standardized assessment battery for children from birth through 7 years in which administrators use three approaches to obtain information about a child: structured questions in a one-on-one setting, observation of normal activities in a child’s natural environment and a parent interview. AEPS is an evidence-based authentic assessment conducted during everyday routines to indent children at risk for developmental delays, assess the progress of children with disabilities and delays and plan for IFSP meetings. (Petitioner’s Exhibit 4)

Concerns: Hitting [her/himself] when boundaries are placed or when [she/he] needs assistance; chewing and swallowing food; independent toileting; and tolerating toothbrushing; and displaying safety awareness.

Communication:

Strengths: Following directions; responding to [his/her] name; attending when spoken to; and using gestures to request.

Concerns: Identifying a variety of pictures and objects; using words or signs to communicate (greet, label, request, respond, comment).

Cognitive and Social:

Strengths: Playing functionally with toys; interacting with others; greeting others; and indicating [her/his] age with [his/her] fingers.

Concerns: Tolerating frustration.

Fine Motor/Sensory:

Strengths: Using hands and fingers to grasp and pick up objects; releasing objects; scribbling; no over-reactions to touching foods.

Concerns: Stacking blocks and putting shapes into a form board.

Gross Motor

Strengths: Walking; emerging stair skills; climbing on/off furniture; and reportedly running.

Concerns: Not yet having exposure to playground equipment.

(Petitioner's Exhibit 13)

6. DCPS Early Stages developed the Student's initial IEP on July 6, 2023. The IEP included present levels of performance, goals, and baselines in the areas of adaptive/daily living skills, communication/speech and language, health/physical, and motor skills/physical development. The IEP noted the following about assistive technology: [The Student] could benefit from an assistive technology evaluation for communication to determine an alternative method of communication. [She/He] has been receiving speech-language therapy, and little progress has been noted in moving from using a gestural communication system to a verbal, oral, or ASL one. (Petitioner's Exhibit 7)
7. The Student's July 6, 2023, IEP prescribed the following services outside general education: 27.5 hours per week of specialized instruction, and 120 minutes per month each of speech-language pathology ("SLP"), physical therapy ("PT"), and occupational therapy ("OT"). The LRE section of the IEP restates the services that will be provided outside the general education setting. The IEP did not provide for a dedicated aide and provided for transportation services and noted that the Student qualified for transportation as a medically fragile student ("MFS"). (Petitioner's Exhibit 7-14, 17-15, 17-16, 17-17)
8. On July 6, 2023, Petitioner consented to the initial provision of special education services, and on July 7, 2023, determined that the Student was eligible for extended school year ("ESY") services and bus transportation services. On August 7, 2023, DCPS issued a letter of services ("LOS") informing Petitioner that the Student's IEP would be implemented in the ELS classroom at the identified DCPS school for SY 2023-2024. The Student did not attend school during SY 2023-2024 because Petitioner kept the Student at home primarily due to medical concerns. The Student did not begin attending school until SY 2024-2025. (DCPS Exhibits 30, 38, 39, 40)

9. On August 8, 2024, School A conducted an annual IEP review meeting for the Student. Petitioner participated in the meeting. The IEP included updated present levels of performance (“PLOP”) and updated goals with anticipated dates of achievement on August 7, 2025. The IEP maintained the language from the previous IEP regarding an assistive technology evaluation. The IEP also noted the following medical concerns: [the Student] has medical needs, including g-tube feeds at 11:00 a.m. and 3:00 p.m. [The Student] also gets water and medications via g-tube. [She/He] can eat purees via mouth (stage 1 and 2) foods, including sweet potatoes, banana, and needs to eat 2-3 times a day. [The Student] has a trach and speaking valve and will require suction for trach, as needed. (Petitioner’s Exhibit 8, 8-2)
10. The August 8, 2024, IEP’s PLOP for adaptive daily living skills noted the following: “Performance: Since [her/his] initial special education evaluation, [the Student] has made significant developmental gains. [He/She] is becoming more independent, mastering tasks like opening doors and climbing out of [her/his] crib. [The Student] recently began potty training but still needs significant prompting to complete the steps of a toileting routine. Similarly, [she/he] requires assistance with most self-care routines and tasks. [The Student] relies on a g-tube for nutrition and medication and requires ongoing nursing support. [She/He] is scheduled to have [his/her] tracheotomy tube removed in September 2024, and [her/his] family is hopeful that this procedure will go smoothly, enabling [him/her] to stay healthy at school. Beyond [her/his] medical needs, [the Student] is a curious and active child. [He/She] enjoys exploring [her/his] surroundings and is developing a sense of independence. As [he/she] continues to grow and learn, [her/his] mother is excited to see her [child’s] independence improve.” (Petitioner’s Exhibit 8-3)
11. The August 8, 2024, IEP noted the following regarding the Student’s communication: In July 2024, [the Student’s] mother updated the Early Stages team during a parent interview. During that time, she described [his/her] communication skills have emerged slightly, yet [she/he] will continue to benefit from support. She shared that [he/she] can produce /p/ and /b/sounds when wearing [the] Passey Muir valve and will imitate approximate words that [her/his] sister presents, yet [he/she] nods [her/his] head to indicate yes/no and is still emerging in [her/his] ability to identify familiar items to follow directions. Also observed in July 2024 was that [she/he] makes open vocal tract vowel sounds, and [he/she] is scheduled to have [her/his] tracheostomy (Passy-Muir) valve removed in September 2024.” (Petitioner’s Exhibit 8-6)
12. The August 8, 2024, IEP also noted that DCPS Early Stages interviewed the Student’s parent on July 18, 2024, and noted the following regarding the Student’s functional performance: A parent interview was conducted by [Name] Evaluation Coordinator for the purpose of updating the IEP for RTAF. Parent indicated that [the Student’s] play skills now include stacking blocks, pretend play with dolls and teddy bears, imitating/making motor sounds while playing with toy cars. [He/She] now gets g-tube feeding from 11:00 a.m. to 3:00 p.m. [She/He] also gets water and medication via g-tube. [He/She] can eat pureed foods (stage 1 and 2) sweet potatoes, bananas, etc. [He/She] eats 2-3 times per day. She/He’s making some progress with self-feeding using a spoon, but still needs assistance.

[She/He] still needs suction for [his/her] trach as needed. [She/He] wears a passy muir valve daily.” (Petitioner’s Exhibit 8-12)

13. The Student’s August 8, 2024, IEP prescribed the following services outside general education: 26.25 hours per week of specialized instruction, 120 minutes per month each of SLP and OT, and 1 hour per month of PT. The LRE section of the IEP restated the services that will be provided outside the general education setting. The IEP did not provide for a dedicated aide but did include transportation services, noting that the Student qualified for transportation as an MFS. The IEP noted that the Student will be in possession of medication while on the bus, but it did not need to be administered there. It also noted that the Student had a tracheotomy tube, needed a child safety seat, and required an aide/escort/attendant assistance on the bus. There were no ride time constraints noted. The IEP noted that the Student required constant supervision to ensure safety and would likely need feeding through the g-tube twice per day during school hours. The LRE section of the IEP noted that the Student required a structured classroom environment with a small student-to-teacher ratio, with all services outside general education. The IEP did not include ESY services. (Petitioner’s Exhibit 8-16, 8-17, 8-18, 8-19, 8-20)
14. On August 8, 2024, DCPS issued Petitioner a prior written notice (“PWN”) regarding the Student’s August 8, 2024, IEP and noting that the evaluation procedure, assessment, record, and report used as a basis for the IEP as a review of the Student’s early intervention record and a parent interview. (Petitioner’s Exhibit 8-22)
15. On August 14, 2024, DCPS issued a LOS letter to Petitioner informing her that the Student’s IEP would be implemented at School A for SY 2024-2025. (DCPS Exhibit 43)
16. SY 2024-2025 began for DCPS on August 26, 2024, and the first day of school for students at the Student’s grade level was August 29, 2024. OSSE’s Division of Student Transportation (“OSSE-DOT”) is the agency responsible for providing transportation services to the Student. OSSE first provided bus transportation that arrived at the Student’s home to transport the Student to school on September 3, 2024. The bus driver did not transport the Student to School A on September 3, 2024, and noted that the Student required a nurse on the bus due to the Student’s medical concerns. OSSE continued to send the bus to the Student’s home each school day from September 3, 2024, through September 10, 2024, but did not transport the Student to school because there was no nurse on the bus. (Mother’s testimony, Witness 7’s testimony, OSSE Exhibit 23-0204)
17. On September 12, 2024, DCPS amended the Student’s IEP without an IEP meeting to make an adjustment to the Student’s transportation services to include nursing services. The IEP noted that the Student will be in possession of medication while on the bus, that needed to be administered on the bus by a registered nurse, and noted that the Student had a tracheotomy tube and g-tube adjustments as need if pulled out, and needed a child safety seat, and required an aide/escort/attendant assistance on the bus, with the assistant type a one to one aide, and that the Student should be the first p.m. drop off. (Petitioner’s Exhibit 9-1, 9-27, 9-28)

18. After the Student's IEP was amended on September 12, 2024, DCPS submitted a TRF to OSSE that required a nurse to assist the Student on the bus. OSSE began providing a nurse on the bus to monitor the Student and administer medication as needed. The nursing accommodation began showing up on the OSSE trip tickets on September 17, 2025. (Witness 7's testimony, Petitioner's Exhibit 8 & 9, OSSE Exhibit 21).
19. On Thursday, September 11, 2024, OSSE initiated an RDF indicating that it should not provide morning or afternoon bus transportation for the Student until further notice, at the request of either the Student's parent or DCPS. As a result, OSSE did not provide bus transportation for the Student until October 3, 2024. On October 4, 2024, OSSE initiated an RDF indicating that it should not provide morning or afternoon bus transportation for the Student on that day and should resume bus transportation on October 7, 2024. On Thursday, October 10, 2024, OSSE initiated an RDF indicating that it should resume the Student's bus transportation on October 15, 2024. The Student's first day of riding the bus and attending School A was October 15, 2024. (Witness 7's testimony, OSSE Exhibits 9, 10)
20. OSSE initiated an RDF indicating that it should not provide morning and/or afternoon bus transportation at the request of either the Student's parent or DCPS for the following additional school days: January 16, 2025; May 19, 2025; May 21, 2025; May 23, 2025; June 2, 2025; and June 17, 2025. In addition to the dates when OSSE initiated an RDF to pause the Student's bus transportation, there were also additional dates when OSSE made bus transportation available for the Student but did not transport the Student to school. This was either because the Student's parent did not send the Student to school or because the bus staff recorded the Student as a "No Show" when the bus arrived at the Student home to transport the Student. (Witness 7's testimony, OSSE Exhibits 11 through 19, 23: pages 0204-0262, 0275-0278, 0283, 0795-0798, 0731-1220)
21. On October 21, 2024, DCPS amended the Student's IEP, in the special consideration section, to note that the Student receives a g-tube feeding at 2:00 p.m. and to note that the Student's trach had not been removed, specific directions for the g-tube feeding, and the parent's concerns regarding feeding and home arrival time. (Petitioner's Exhibit 10-1)
22. On October 21, 2024, IEP's other classroom aids and services section noted the following: "As observed by ECE ELS teacher [Name] on [the Student's] first day at [School A] on October 15, 2024, [the Student's] trach still needs to be removed. [School A's] current Nurse, [Name] has agreed that when [the Student's] arrives for g-tube feedings at 11:00 a.m. and 3:00 p.m., [he/she] can be hooked up to the machine and return to class. [The Student's] g-tube machine sound should be on to alert staff when the feeding has finished so that [she/he] can return to the Nurse's office and be taken off the machine. When preparing for the 3:00 p.m., [the Student's] will transition with the g-tube and machine onto the school bus for dismissal and return to school with all medical equipment that must be given to Nurse [Name] upon [the Student's] arrival to school for health, safety, and inspection. [the Student's] mother, [Name], has concerns about [the Student's] 3:00 p.m. feeding being unsafe, as OSSE may not be dropping [the Student] off first, as the IEP Ride Time Constraint preference indicates. [Parent] may occasionally indicate that [the Student] is not to receive [her/his] 3:00 pm feeding when she knows that [the Student] is not being

dropped off first. A faculty/staff member must accompany [the Student] when transitioning to and from the Nurse's office and bus.” “NURSING PLAN- [the Student] has a trach and g-tube. Scheduled for sleep study and trach removal in Sept 2024.” The IEP also noted that the Student should be the first PM drop-off. (Petitioner’s Exhibit 10-17, 10-18)

23. The Student’s DCPS attendance report indicates that the Student had 7 unexcused absences on the following dates during the first half of SY 2024-2025: October 17, 2024, October 22, 2024, November 1, 2024, November 22, 2024, November 26, 2024, December 9, 2024, and December 10, 2024. The Student had 6 excused absences on the following dates during the first half of SY 2024-2025: November 7, 2024, November 12, 2024, November 13, 2024, December 18, 2024, December 19, 2024, and December 20, 2024. DCPS issued letters to Petitioner regarding the Student’s significant absences in November 2024, and January 2025. (DCPS Exhibits 6, 7)
24. The Student’s November 14, 2024, IEP progress report indicates that his/her progress on some goals was affected by the delay in the Student starting to attend school. Almost all the goals indicate “just introduced” or “not introduced” for the first grading period. (DCPS Exhibit 44)
25. The Student’s DCPS attendance report indicates that the Student had 12 unexcused absences during the second half of SY 2024-2025, with 9 occurring in January 2025 and 2 in March 2025, and 1 in June 2025. The Student 22 excused absences during the second half of SY 2024-2025, with 2 occurring in January 2025, 7 in February 2025, 3 in March 2025, 1 in April 2025, and 9 in May 2025. The excused absences in May 2025 were related to the Student having a medical procedure to remove his/her trach. (DCPS Exhibit 7)
26. The Student’s DCPS attendance report indicates that the Student had several tardies to School during the second half of SY 2024-2025, with 9 excused tardies occurring in February and March 2025, many of which were the result of the OSSE bus arriving to school late, for instance on February 24, 2025, February 26, 2025, February 27, 2025, March 3, 2025, March 5, 2025, March 6, 2025, and March 7, 2025. (Petitioner’s Exhibit 22)
27. The Student’s January 27, 2025, and April 7, 2025, IEP progress reports noted that the Student was progressing in all of the IEP goals. However, the Student progress was impacted by the significant number of absences that the Student had during SY 2024-2025. Also, as a result of the absences, the Student missed a significant amount of related services that were not required to be made up by the related services providers according to DCPS policy and practice. The Student’s related services are usually provided in a small group setting within the Student’s ELS classroom. (Testimony of Witnesses 3, 4, 5, 6, DCPS Exhibits 45, 49)
28. On March 31, 2025, DCPS amended the Student’s IEP to add extended school year (“ESY”) services. (Petitioner’s Exhibit 11)

29. The Student's trach was removed on May 22, 2025, leaving a wound covered with a bandage that must be cleaned regularly before, during, and after the Student returns from school. Currently, the Student only receives one g-tube feeding at school at 11:00 a.m. The Student's mother blends her/his dinner because he/she can only eat pureed food and need eating assistance. Petitioner receives nursing help at home for the Student through insurance for 16 hours per week, but this help is now provided from 3:00 p.m. to 7:00 a.m. since the Student is attending school during the day. Prior to the trach being removed, the Student required constant supervision to ensure her/his trach tube did not become clogged, which could be life-threatening. (Mother's testimony)
30. On May 30, 2025, DCPS developed a feeding plan for the Student, noting that the Student is dependent for g-tube feeding requirements for the Student. (DCPS Exhibit 52)
31. The Student had access to a low-tech communication board during SY 2024-2025. DCPS has not yet conducted an assistive technology assessment for the Student. However, one part of such an assessment involves staff testing high-tech devices with the Student to find the most suitable device and software. The Student's School A speech-language pathologist requested a high-tech speech generation device for the Student in May 2025. The Student started using that device a few weeks ago—an iPad with software called Touch Chat, which has vocabulary words and pictures. The device has not yet been added to the Student's IEP. (Witness 5's testimony)
32. DCPS determined that the Student's LRE was an educational placement offering 26.25 hours per week of specialized instruction and related services outside the general education setting. DCPS also communicated to Petitioner that the most appropriate educational setting for the Student, where he/she would be with peers who are cognitively appropriate, is the ELS classroom. In this environment, the Student also has access to typically developing peers. The ELS classroom teacher and aide, with a low student-to-teacher ratio, enable the Student to receive instruction and related services while his/her medical conditions are properly monitored. Although the Student has not had a dedicated aide or nurse, the School A nurse provided nursing services to the Student during SY 2024-2025. The Student had to leave the classroom to receive medication and feedings administered by the nurse. However, there were no instances during SY 2024-2025 where the Student's safety was compromised. (Witness 3's testimony, Witness 6's testimony)
33. The BDI-2 was the most appropriate evaluation to administer when the Student was evaluated in January 2023. The BDI-2 was a valid assessment tool that included adaptive and social-emotional functioning. DCPS has not yet conducted a comprehensive psychological evaluation or assessed the Student in the related services areas since the BDI-2 was administered because previous evaluation had sufficient data, and the school-based data was reviewed. Formal related service assessments were not warranted because the related services session observations were sufficient to develop the Student's IEP goals. If a student did not have a comprehensive psychological evaluation in the past three years, one will be conducted unless there is a clear request not to do one. (Witness 3's testimony, Witness 4's testimony)

34. Petitioner's educational advocate compared the Student's August 8, 2024, IEP which required 1 hour per month of PT, 2 hours per month of OT, and 2 hours per month of SLP against the Student's related service tracker logs and opined that between August 26, 2024, through March 31, 2025, the Student received 27% of SLP services, 35% of PT services, and 41% of OT services. Some of the service logs indicate an interruption in service because the Student was required to go to the nurse's office for a medical need. (Witness 2's testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c), Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). DCPS held the burden of persuasion on issue adjudicated once Petitioner presented a prima facie case on that issue.⁷ DCPS held the

⁷ DC Code § 38-2571.03 (6) provides:

(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

(i) 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.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement, provided that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1,

burden of persuasion on issue #1 once Petitioner presented a prima facie case on that issue. Petitioner held the burden of persuasion on the remaining issues. The burden of persuasion shall be met by a preponderance of the evidence. The normal standard is a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Did DCPS deny the Student a FAPE by failing to provide the Student an appropriate IEP from July 6, 2023, through present because the IEP(s): (a) did not sufficiently describe and provide for the Student's medical needs, (b) did not provide for a dedicated aide or dedicated registered nurse, (c) did not sufficiently provide for transportation services to safely transport the Student, (d) was/were not based on comprehensive evaluative data, (e) did not provide for sufficient occupational therapy services, physical therapy services, and speech-language therapy services, (f) did not include appropriate goals to provide sufficient progress, (g) did not sufficiently describe the Student's LRE, and (h) did not provide an appropriate placement.

Conclusion: Respondent sustained the burden of persuasion by a preponderance of the evidence that the Student's July 6, 2023, IEP and subsequent IEPs were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances at the time they were developed.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special education and related services that' are 'provided at public expense, under public supervision ...,' and that 'meet the standards of the State educational agency,' as well as 'conform[] with [each disabled student's] individualized education program.'" *Charles H. v. District of Columbia*, 2021 WL 2946127 (D.D.C. June 16, 2021) (quoting 20 U.S.C. § 1401(9)) (alterations in original). "Special education" is defined as "specially designed instruction, at no cost to parents, [that] meet[s] the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services," on the other hand, are defined as "such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." *Id.* § 1401(26)(A).

"Under [the] IDEA and its implementing regulations, students with disabilities ... are entitled to receive [a] FAPE through an Individualized Education Program (or IEP)." *Charles H.*, 2021 WL 2946127 (quoting 20 U.S.C. § 1401(9)(D)). An IEP is a written document that lays out how the student will obtain measurable annual goals and that mandates specific special education and related services that the student must receive. 20 U.S.C. § 1414(d)(1)(A)(i). It is created for each student by a special "IEP Team," consisting of the child's parents, at least one regular-education teacher, at least one special-education teacher, and other specified educational experts. *Id.* § 1414(d)(1)(B). An IEP is the main tool for ensuring that a student is provided a FAPE. See *Charles H.*, 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for

2016.

determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

The second substantive prong of the *Rowley* inquiry is whether the IEP developed was reasonably calculated to enable Student to make progress appropriate in light of Student's individual circumstances. In *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the "educational benefits" requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated into the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his 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. *Endrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits."

The key inquiry regarding an IEP's substantive adequacy is whether taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP offered was reasonably calculated to enable the specific student's progress...."Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. 988.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34 C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006)

"The IDEA requires that children with disabilities receive education in the regular classroom whenever possible" *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. at 999 (quoting *Rowley*, 458 U.S. at 202)

As stated above, pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably

calculated at that time to enable the student to receive educational benefits.”

The key inquiry regarding an IEP's substantive adequacy is whether taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP offered was reasonably calculated to enable the specific student's progress...."Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. 988.

Petitioner asserted that the IEP(s) were deficient in the following ways:

- (a) did not sufficiently describe and provide for the Student's medical needs,
- (b) did not provide for a dedicated aide or a dedicated registered nurse,
- (c) did not sufficiently provide for transportation services to safely transport the Student,
- (d) was/were not based on comprehensive evaluative data,
- (e) did not provide for sufficient occupational therapy services, physical therapy services, and speech-language therapy services,
- (f) did not include appropriate goals to provide sufficient progress,
- (g) did not sufficiently describe the Student's LRE, and
- (h) did not provide an appropriate placement.

The evidence demonstrates that the Student's IEP clearly detailed the Student's medical conditions in the PLOPs and other areas of the IEP, noting that the Student was medically fragile, had a trach and g-tube, and required a nurse to administer medication and feedings. Although the IEPs did not prescribe for dedicated aide or a dedicated nurse in school, the evidence demonstrates that the ELS classroom teacher and aide, with a low student-to-teacher ratio, enabled the Student to receive instruction and related services while his/her medical conditions are properly monitored. The Student had to leave the classroom to receive medication and feedings administered by the nurse. However, there were no instances during SY 2024-2025 where the Student's safety was compromised.

Both the July 6, 2023, IEP and the August 8, 2024, IEP noted that the Student required transportation services due to being a medically fragile student. Although the IEP did not specifically provide for a registered nurse to be on the bus, the Student did not attend school until SY 2024-2025, and the evidence demonstrates that DCPS made efforts to ensure that the Student's IEP was promptly amended to ensure that the Student had appropriate transportation consistent with the Student's medical needs.

Petitioner also asserted that the Student's IEPs were not based on comprehensive evaluative data and did not provide sufficient related services and goals, and did not sufficiently describe the Student's LRE and provide an appropriate placement.

The evidence demonstrates that DCPS determined that the Student's LRE was an educational placement offering 26.25 hours per week of specialized instruction and related services outside the general education setting. DCPS communicated to Petitioner that the most appropriate educational setting for the Student, where he/she would be with peers who are cognitively appropriate, is the ELS classroom. The ELS classroom teacher and aide, with a low student-to-teacher ratio, enabled

the Student to receive instruction and related services while his/her medical conditions were properly monitored.

Petitioner presented two expert witnesses, neither of whom had assessed, worked with, or observed the Student or conferred with the Student's teachers or related service providers. The occupational therapist testified that she was surprised there were no goals in the Student's IEP regarding self-care, dressing, feeding, and that the goals were based on outdated data from the Student's January 2023 evaluation. She simply opined that there were other goals the Student could have worked on, and she would have preferred that the related services provided to the Student were done individually rather than in a group setting. Additionally, she believed the Student should have been provided more OT services than the IEP prescribed. This simply reflected a professional preference, but did not sufficiently support a conclusion that the services provided by the DCPS to the Student were deficient.

Petitioner's other expert witness also opined that the Student's IEP was based on outdated data and that the Student should have had a dedicated aide or dedicated nurse due to his/her significant medical needs. She also opined that the IEP lacked accommodations; however, this was not a claim made by Petitioner in the DPC nor was it reflected in the issues to be adjudicated, and there was no testimony to support that the lack of accommodations in the IEP in any way harmed the Student. Neither of Petitioner's expert witnesses, nor Petitioner in her testimony, could attest that there had been any instances in which the Student's safety was a risk in the way DCPS delivered the Student's instruction and services that the Student's IEPs mandated.

The DCPS witnesses, on the other hand, credibly testified that the BDI-2 was the most appropriate evaluation to administer when the Student was evaluated in January 2023, the BDI-2 was a valid assessment tool that included adaptive and social-emotional functioning, and that formal related service assessments were not warranted because the related services session observations were sufficient to develop the Student's IEP goals.

The IHO found the DCPS witnesses far more credible based upon their personal interaction with the Student and delivery of services to the Student. Based upon their testimony and the Student's demonstrated progress, despite his/her frequent absences, the IHO concludes that the Student's July 6, 2023, IEP and subsequent IEPs were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances at the time they were developed.

ISSUE 2: Did DCPS and/or OSSE deny the Student a FAPE from August 8, 2024, through the present by failing to provide the Student with appropriate and reliable transportation services as required by the Student's medical needs and/or IEP?

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence that OSSE denied the Student a FAPE due to transportation failures.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special education and related services that' are 'provided at public expense, under public supervision ...;' and that 'meet the standards of the State educational agency;' as well as 'conform[] with [each

disabled student's] individualized education program.' " *Charles H. v. District of Columbia*, 2021 WL 2946127 (D.D.C. June 16, 2021) (quoting 20 U.S.C. § 1401(9)) (alterations in original). "Special education" is defined as "specially designed instruction, at no cost to parents, [that] meet[s] the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services," on the other hand, are defined as "such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." *Id.* § 1401(26)(A).

"Under [the] IDEA and its implementing regulations, students with disabilities ... are entitled to receive [a] FAPE through an Individualized Education Program (or IEP)." *Charles H.*, 2021 WL 2946127 (quoting 20 U.S.C. § 1401(9)(D)). An IEP is a written document that lays out how the student will obtain measurable annual goals and that mandates specific special education and related services that the student must receive. 20 U.S.C. § 1414(d)(1)(A)(i). It is created for each student by a special "IEP Team," consisting of the child's parents, at least one regular-education teacher, at least one special-education teacher, and other specified educational experts. *Id.* § 1414(d)(1)(B). An IEP is the main tool for ensuring that a student is provided a FAPE. See *Charles H.*, 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

For a failure to implement claim, the IDEA is violated only when a school district deviates materially from a student's IEP. See *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016); The IDEA is violated when a school district deviates materially from a student's IEP. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011) (citation omitted). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by that child's IEP. *Holman v. District of Columbia*, No. 14-1836, 2016 WL 355066 (D.D.C. 2016) (citing *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007)). In other words, for the court to find a failure to implement an IEP, the school board or local authorities must have "failed to implement substantial or significant provisions of the IEP." *Wilson*, 770 F. Supp. 2d at 274 (citing *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). There is no requirement that the child suffer educational harm in order to find a violation; rather, the proportion of services mandated compared with those provided is "the crucial measure for purposes of determining whether there has been a material failure to implement" an IEP.

A school district "must ensure that ... special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2). A material failure to implement a student's IEP constitutes a denial of a FAPE. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268 69 (D.D.C. 2013). To meet its burden, the moving party "must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Beckwith v. District of Columbia*, 208 F.Supp.3d 34, 49 (D.D.C. 2016) (quoting *Hous. Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). "Generally, in analyzing whether a student was deprived of an educational benefit, 'courts ... have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.' " *Id.* (quoting *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011)). *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 at 144 (D.D.C. 2018)

Transportation services are a related service designed to assist students with disabilities to attend school. See 34 CFR § 300.34 Related services. (a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

A substantial delay in implementing a student's transportation may constitute an IDEA violation if it interferes with the student's ability to derive an educational benefit. For example, in *Wilson v. District of Columbia*, 56 IDELR 125 (D.D.C. 2011), the District Court noted that the District of Columbia's delay in arranging transportation services caused a 9-year-old boy to miss three weeks of his four-week extended school year program. It ruled that the delay amounted to a material implementation failure and a denial of FAPE.

The Student's IEP now mandates that the Student be provided transportation and a dedicated nurse on the bus when the Student is being transported to and from school. OSSE, the SEA, operates student transportation on behalf of the local education agencies in the District of Columbia. Therefore, OSSE is responsible for implementing the transportation and nursing services required by the Student's IEP during transportation. However, the evidence demonstrates that prior to September 12, 2025, when the Student's IEP was amended, the IEP did not specifically delineate that the Student required a registered nurse on the bus.

The evidence demonstrates that OSSE provided the Student bus transportation starting on September 3, 2024, promptly after the Student's school year began. However, the evidence also demonstrates that the OSSE bus driver for the route that the Student was assigned refused to transport the Student on September 3, 2024, because he or she noted that the Student required a nurse on the bus.

Although the OSSE witness testified that the TRF that OSSE received from DCPS in August 2025 regarding the Student's bus transportation did not indicate that a nurse was required, the IHO notes that OSSE disclosed a document, a portion of which OSSE chose not to introduce into evidence, that contradicted the assertion that DCPS did not inform OSSE that the Student required a nurse on the bus.⁸ This witness, however, testified that based on the facts as he understood them, he inferred that there was no nurse on the bus each time the bus arrived to pick up the Student between September 3, 2024, and September 10, 2024.

Despite the fact that the Student's IEP was not amended until September 12, 2024, the IHO concludes based on this evidence that at least from September 3, 2024, until a RDF was initiated temporarily pausing the Student's bus transportation as of September 12, 2024, OSSE was on notice based upon its own employee, the bus driver, that the Student required a nurse on the bus.

⁸ (OSSE Exhibit 22-202).

Consequently, the Student was without appropriate bus transportation for six school days from September 3, 2024, through September 10, 2024.

Additionally, the evidence shows that the Student had multiple tardies to school during the second half of SY 2024-2025, with nine excused tardies occurring in February and March 2025. Many of these were caused by the OSSE bus arriving late, including on February 24, 2025; February 26, 2025; February 27, 2025; March 3, 2025; March 5, 2025; March 6, 2025; and March 7, 2025.

Based on the fact that the Student missed six days of school because no nurse was assigned to the Student's bus, along with evidence showing that on at least seven school days the Student missed instruction or related services due to tardiness in February and March 2025 caused by the bus arriving late at School A, the IHO concludes that the Student missed a significant amount of instruction and related services because OSSE failed to provide proper and timely transportation. This failure resulted in a denial of FAPE to the Student.

ISSUE 3: Did DCPS and/or OSSE deny the Student a FAPE from July 6, 2023, through the present by not fully implementing the Student's IEPs?

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to fully implement the Student's IEP.

For a failure to implement claim, the IDEA is violated only when a school district deviates materially from a student's IEP. See *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016); The IDEA is violated when a school district deviates materially from a student's IEP. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011) (citation omitted). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by that child's IEP. *Holman v. District of Columbia*, No. 14-1836, 2016 WL 355066 (D.D.C. 2016) (citing *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007)). In other words, for the court to find a failure to implement an IEP, the school board or local authorities must have "failed to implement substantial or significant provisions of the IEP." *Wilson*, 770 F. Supp. 2d at 274 (citing *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). There is no requirement that the child suffer educational harm in order to find a violation; rather, the proportion of services mandated compared with those provided is "the crucial measure for purposes of determining whether there has been a material failure to implement" an IEP.

A school district "must ensure that ... special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2). A material failure to implement a student's IEP constitutes a denial of a FAPE. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268 69 (D.D.C. 2013). To meet its burden, the moving party "must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Beckwith v. District of Columbia*, 208 F.Supp.3d 34, 49 (D.D.C. 2016) (quoting *Hous. Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). "Generally, in analyzing whether a student was deprived of an educational benefit, 'courts ... have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP)

of the specific service that was withheld.' " *Id.* (quoting *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011)). *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 at 144 (D.D.C. 2018)

A district must implement a student's IEP with all required components. 34 CFR 300.323 (c), however, a minor discrepancy between the services provided and the services required under the IEP is not enough to amount to a denial of FAPE. See *T.M. v. District of Columbia*, 64 IDELR 197 (D.D.C. 2014) (The "short gaps" in the student's services did not amount to a material failure to provide related services.).

Schools educating children with disabilities have a duty under the IDEA to "ensure that...special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2); see also *Middleton v. District of Columbia*, 312 F.Supp.3d 113, 144 (D.D.C., 2018). A school's complete, or even *material*, "failure to implement a student's program constitutes the denial of a[FAPE]..." *Banks v. Dist. of Columbia*, 720 F. Supp.2d 83, 88 (D.D.C., 2010); See also *Abney v. Dist. of Columbia*, 849 F.2d 1491, 1496 (D.C.Cir. 1988); See also *Sumter County Sch. Dist. 17 v. Heffernan*, 642 F.3d 478, 484 (4th Cir., 2011) ("...[A] material failure to implement an IEP, or, put another way, a failure to implement a material portion of an IEP, violates the IDEA.").

"A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn ex rel. Van Duyn v. Baker Sch. Distr.* 5J, 502 F.3d 811, 822 (9th Cir. 2007); see also *Wilson v. District of Columbia*, 770 F.Supp.2d 270, 275 (D.D.C., 2011). However, in a failure-to- implement claim this "materiality standard *does not require that the child suffer demonstrable educational harm* in order to prevail". *Wilson*, 770 F.Supp.2d at 275 (citing *Van Duyn*, 502 F.3d at 822). Rather, courts using this standard focus on the "proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld." *Wilson*, 770 F.Supp.2d at 275. 300.350.

A delay in implementation may rise to a denial of FAPE where the student is being denied a significant portion of the services prescribed by the IEP. *Wilson v. District of Columbia*, 56 IDELR 125 (D.D.C. 2011) (The district's delay in arranging transportation services, which caused a 9-year-old to miss three weeks of his four-week extended school year program, amounted to a material implementation failure.). See also *Sarah Z. v. Menlo Park City Sch. Dist.*, 48 IDELR 37 (N.D. Cal. 2007) (A two-week lapse in services did not deprive the student of FAPE.).

The court in *Turner v. District of Columbia*, 61 IDELR 126 (D.D.C 2013) found the school's failure to provide specialized instruction within the general education setting to B.M. for five months resulted in a material failure to implement B.M.'s IEP. The court in *Turner* concluded the materiality standard does not require the plaintiff demonstrate harm to the student from the school's failure to implement the IEP 200 F.3d at 349; see also *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007) ("[A]material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and [those] required by the child's IEP.").

[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail on a failure-to-implement claim. Van Duyn, 502 F.3d at 822 (emphasis added); cf. M.M. ex rel. D.M. v. Sch. Dist. of Greenville Cnty., 303 F.3d 523, 537 n.17 (4th Cir. 2002) (rejecting the argument that parents must show actual developmental regression before their child is entitled to ESY services under the IDEA). Wilson v. District of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C. 2011). Thus, the Court must only determine whether the special education within the general education context mandated by B. M's 2011 IEP was "substantial or significant" or, in other words, whether DCPS' failure to deliver the ordered services was "material."

Petitioner's educational advocate testified that she reviewed the Student related service logs and believed that between August 26, 2024, through March 31, 2025, the Student received 27% of SLP services, 35% of PT services, and 41% of OT services. However, this witness did not compare the Student's absences against the service logs to determine what, if any, services that were missed were the result of the Student's absences.

The evidence demonstrated that the Student had significant absences during both the first and second semesters of SY 2024-2025. As a result of these absences, the Student missed a substantial related services that, according to DCPS policy and practice, were not required to be made up by the related services providers. Witnesses from DCPS who provided services to the Student credibly testified that they consistently provided or attempted to provide the services outlined in the Student's IEPs. The only services they did not provide or attempt to make up were those when the Student was either absent or tardy to school.

The IHO concludes, therefore, that Petitioner presented insufficient evidence that any of the related services that the Student missed were the result of DCPS's failure to provide the services or make them available to the Student. Aside from the missed services already attributed to OSSE in the discussion of issue #2 above, there was no evidence that OSSE was responsible for any other services that the Student missed.

ISSUE #4 Did DCPS deny the Student a FAPE by failing to comprehensively evaluate from July 6, 2023, the Student by failing to conduct the following: a comprehensive psychological evaluation, a comprehensive speech-language evaluation, a comprehensive occupational therapy evaluation with sensory profile, a comprehensive physical therapy evaluation, and an assistive technology assessment?

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to provide the Student an assistive technology evaluation in a timely manner. However, as to the other evaluations that Petitioner alleged DCPS failed to conduct, Petitioner did not sustain the burden of persuasion by a preponderance of the evidence.

The IDEA defines "evaluations" to mean the procedures used to determine whether a child has a disability and the nature and extent of the child's need for special education and related services. Those procedures must comport with the requirements set forth at 34 CFR 300.304 through 300.31. Each district "must conduct a full and individual initial evaluation before providing special education and related services to a child with a disability". 34 CFR 300.301 (a). *See, e.g., Wentzville R-IV Sch. Dist.*, 61 IDELR 116 (SEA MO 2013). Evaluations under the IDEA serves

two purposes: identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and helping IEP teams identify the special education and related services the student requires. 71 Fed. Reg. 46,548 (2006). *See, e.g., A.W. v. Middletown Area Sch. Dist.*, 115 LRP 4105 (M.D. Pa. 01/28/15).

In *Harris v. District of Columbia*, 561 F. Supp.2d 63, 68 (D.D.C. 2008), the court held that failure to conduct an evaluation was more than a mere procedural violation of the IDEA, finding that “failure to act on a request for an independent evaluation is certainly not a mere procedural inadequacy; indeed, such inaction jeopardizes the whole of Congress’ objectives in enacting the IDEA.”

The court further concluded the agency must use a variety of assessment tools in conducting the evaluation. *Id.* In conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability. The public agency also must not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. 34 C.F.R. § 300.304(b). The public agency must also ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. 300.304(c)(4).

The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5A § 3006.7(a).

All areas "related to the suspected disability" should be assessed, including academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5A § 3006.7(f).

Generally, when a child has been evaluated for special education eligibility and the appropriateness of the agency’s evaluation is at issue, the hearing officer must consider whether the agency adequately gathered functional, developmental, and academic information about the child’s needs to determine the content of the IEP in all areas of suspected disability and that the evaluation was sufficiently comprehensive to identify all of the child’s needs. 20 U.S.C. §§ 1412(a)(6)(B), 1414(b)(1–3); 34 C.F.R. §300.304(b)(1–3), (c)(4, 6).

Assistive technology devices or services that are necessary for FAPE must be included in the student's IEP. *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991). Under the FAPE standard articulated by the U.S. Supreme Court in *Endrew F. Douglas County School District RE-1*, 69 IDELR 174 (2017), AT devices and services must be included to the extent that they are necessary in order for the student to make progress appropriate in light of the child's circumstances. A child's

evaluation should provide sufficient information to permit the IEP team to determine whether the student requires technology devices or services to receive FAPE. *Letter to Fisher*, 23 IDELR 565 (OSEP 1995).

Petitioner asserted that the DCPS should have conducted the following evaluations, which were already addressed in the discussion of issue #1 related to the appropriateness of the Student's IEPs: a comprehensive psychological evaluation, a comprehensive speech-language evaluation, a comprehensive occupational therapy evaluation with sensory profile, and a comprehensive physical therapy evaluation. The IHO concluded that, with regard to those evaluations, the evidence did not support a claim that the Student's IEPs were deficient because they were not based on these evaluations.

Neither Petitioner nor any members of the Student's IEP team requested the evaluations or indicated that they were warranted. As the IHO noted, the DCPS witnesses credibly testified that Student's initial evaluation was appropriate, that a psychological evaluation was not yet warranted, and that formal related service evaluations were also not warranted. Based on this evidence, the IHO concludes that the Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS should have conducted any of these evaluations. However, because the Student is nearing the date of his/her triennial evaluation, the IHO directs in the order below that DCPS conduct these evaluations.

Regarding the assistive technology evaluation, the evidence demonstrates that the Student's initial IEP from July 6, 2023, noted the Student would benefit from such an evaluation. When DCPS conducted an annual review of the IEP on August 8, 2024, the IEP maintained the language from the previous IEP regarding an assistive technology evaluation. Despite the fact that the Student's IEP clearly noted that an assistive technology evaluation should be conducted, to date, DCPS has not conducted the assessment. Although the DCPS witness testified that she had initiated obtaining a high-tech assistive technology device in May 2025, and the Student has recently received the device, the evaluation has still not been conducted, and the device has not been added to the Student's IEP.

This witness also testified that in the short time the Student has used the device, it seems he/she is benefiting from it. Although the witnesses testified that the low-tech devices had been used with the Student, there was insufficient explanation for the significant delay in DCPS initiating the Student's trial of a high-tech device, or for the failure to conduct a formal assistive technology evaluation as directed by the Student's IEP.

The Student's initial IEP clearly indicated that the Student would benefit from an assistive technology evaluation, and this was continued into the updated IEP without the evaluation having been conducted. The IHO concludes that DCPS should have conducted the evaluation and trialed a high-tech assistive technology ("AT") device with the Student at the latest when the Student's IEP was updated in August 2024. The failure to do so indicates that the Student's opportunity to use the device was delayed by an entire school year, resulting in a denial of FAPE to the Student.

Remedy:

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.)

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. 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." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his/her loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

When a hearing officer finds denial of FAPE, he has "broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education.... [A]n award of compensatory education 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." *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.)

The Petitioner requested the compensatory education included in her educational advocate's proposal.⁹ However, the IHO did find that the level of services recommended adequately reflected the level of services missed. The Petitioner's educational advocate testified that she did not recall whether the service trackers included the Student's absences or if she accounted for absences in her count of missed services. Therefore, the IHO currently lacks enough evidence to determine what compensatory education is appropriate and would place the Student in the position he/she would have been in but for the FAPE denials. Therefore, the IHO in the order below grants the Petitioner authorization to obtain an evaluation to determine the appropriate compensatory education.

ORDER:¹⁰

1. DCPS shall, within ten (10) business days of the issuance of this order, amend the Student's IEP to include a dedicated DCPS-provided high-tech AT device and appropriate software

⁹ The advocate requested 200 hours of tutoring with specialized instruction, 200 hours of applied behavioral therapy, 20 hours of speech-Language pathology, 20 hours of occupational therapy, 35 hours of physical therapy

¹⁰ Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day-for-day basis.

and provide the Student and Petitioner appropriate training on the use of that device within sixty (60) calendar days of the date of this order.

2. DCPS shall, within forty-five (45) calendar days of the issuance of this order, conduct the following evaluations of the Student: comprehensive psychological, speech-language, occupational therapy, physical therapy, and assistive technology assessment, or provide Petitioner with authorization to obtain any or all of them independently.
3. DCPS shall, within thirty (30) calendar days of the completion and or submission of the evaluations/assessments noted above, convene an IEP meeting to review all recent evaluations, review and revise the Student's IEP as appropriate, including determining whether the Student is in need of a dedicated aide or nurse.
4. OSSE shall, within ten (10) calendar days of the issuance of this order, grant Petitioner authorization to obtain an IEE at the OSSE-prescribed rate to determine the appropriate compensatory education for the denials of FAPE determined in this HOD. If necessary, Petitioner is authorized to seek appropriate compensatory education for the Student from DCPS and OSSE based on this evaluation in a subsequent due process hearing if necessary.
5. All other relief requested by the Petitioner is denied.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ *Coles B. Ruff*

Coles B. Ruff, Esq.
Impartial Hearing Officer
Date: October 15, 2025

Copies to: Counsel for Petitioner
 Counsel for LEA
 ODR hearing.office@dc.gov