

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

**Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
September 02, 2025

Confidential

Parent on behalf of Student,¹)	Case Nos. 2025-0095
)	
Petitioner)	Hearing Dates: August 18 and 22, 2025
)	
v.)	Conducted by Video Conference
)	
District of Columbia Public Schools,)	Date Issued: September 2, 2025
)	
Respondent)	Terry Michael Banks,
)	Hearing Officer

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioner is the parent of an X-year-old student (“Student”) who last attended School B. On June 5, 2025, Petitioner filed a due process complaint notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) denied Student a free appropriate public education (“FAPE”) by failing to provide appropriate Individualized Education Programs (“IEPs”) and placements, failing to implement IEPs, and failing to provide full access to Student’s educational records. On June 23, 2025, DCPS filed *District of Columbia Public Schools’ Response to Petitioner’s Administrative Due Process Complaint* (“*Response*”), denying that it had denied Student a FAPE in any way.

SUBJECT MATTER JURISDICTION

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

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

PROCEDURAL HISTORY

On June 5, 2025, Petitioner filed her *Complaint* alleging that DCPS (1) failed to provide an appropriate IEP and placement for the 2023-24 school year, (2) failed to provide an appropriate IEP and placement for the 2024-25 school year, (3) failed to implement Student's IEP by failing to provide a dedicated aide consistently, failing timely to introduce IEP goals to Student, (4) failing to provide Petitioner full access to Student's educational records that were requested on February 5, 2025. For relief, Petitioner requests, *inter alia*, (1) an order requiring DCPS to add a dedicated aide and additional BSS to Student's IEP, (2) an order requiring DCPS to convene a multidisciplinary team ("MDT") meeting to discuss Student's behavioral supports, (3) compensatory education services and transportation, (4) an order requiring DCPS to pay compensatory education providers timely, and (5) attorney fees and costs.

On June 23, 2025, DCPS filed its *Response* to the *Complaint* denying that it had denied Student a FAPE. DCPS asserted, *inter alia*, that (1) The IEP developed by School A for the 2023-2024 school year was appropriate based on the data available at the time the IEP was drafted. (2) On or about May 21, 2024, DCPS issued a Prior Written Notice ("PWN") to inform Petitioner that based on the data collected, the IEP team determined that Student's needs would be appropriately addressed in a Behavior Education Support ("BES") Program. (3) On or about January 16, 2025, students' annual IEP team convened an annual review meeting and developed an updated IEP with Petitioner's and Student's participation. The IEP developed on January 16, 2025, provided 20 hours of specialized instruction outside of the general education setting, one hour of OT services outside of general education, and one hour of BSS outside of general education setting. The IEP indicated that Student did not require support of a dedicated aide. (4) During the 2024-2025 school year, Student's IEP was appropriately implemented. (5) DCPS has not failed to provide petitioner access to Student's education records. DCPS responded to Petitioner's record request with records that are in the agency's possession. The records that were not provided are either unavailable or not in the agency's possession.

The parties conducted a resolution meeting on June 23, 2025 that did not result in a settlement. A prehearing conference in this case took place by video conference on July 8, 2025 and the *Prehearing Order* was issued that day.

The due process hearing was conducted on August 18 and 22, 2025 by video conference facilities. The hearing was open to the public at Petitioner's request. Petitioner filed Five-day Disclosures on August 11, 2025, containing a witness list of five witnesses and 33 documents. DCPS did not file objections to Petitioner's disclosures. Petitioner's Exhibits P1-P22, page 1 of P23, pages 1 and 2 of P24, and P25-P33 were admitted into evidence.

Respondent also filed Disclosures dated August 11, 2025 containing a witness list of three witnesses and 38 documents. Petitioner filed objections to DCPS' disclosures on August 14, 2025. Petitioner objected to R5-R8 on grounds of authenticity and foundation. Respondent's Exhibits R1-R38 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A, Witness B, Student, and Petitioner. Witness A was admitted as an expert in special education and Witness B was admitted as an

expert in psychology. Respondent presented as witnesses in chronological order: Witness C, Witness D, and Witness E. Witness C and Witness D were admitted as experts in special education, and Witness E was admitted as an expert in school psychology. At the conclusion of testimony, the parties' counsel provided oral closing arguments. The hearing officer authorized the parties to file authorities on which they rely by the close of business on August 27, 2025. Neither party filed a post-hearing submission.

ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP and placement on January 22, 2024 for the 2023-24 school year. Specifically, Petitioner asserts that the IEP was inappropriate for failing to (a) provide a dedicated aide, (b) provide sufficient behavior support services ("BSS"), (c) include Emotional Disturbance ("ED") and Specific Learning Disability ("SLD") as additional disability classifications, and (d) provide support to address frustration associated with his/her challenges in completing grade level work. The placement was inappropriate because Student required a setting in a Behavior and Education Support ("BES") classroom instead of a Specific Learning Support ("SLS") classroom.
2. Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP and placement for the 2024-25 school year. After withdrawing from DCPS at the end of the year and enrolling in a public school in Georgia, Student re-enrolled in DCPS several weeks into the 2024-25 with an IEP developed by the Georgia school on August 14, 2024. DCPS developed an updated IEP on January 16, 2025 that it amended on April 4, 2025, but the IEP failed to (a) provide a dedicated aide, (b) provide schoolwork that is at her/his functional level, (c) provide a proactive procedure in the IEP or behavior intervention plan ("BIP") to provide her/him the opportunity to communicate her/his frustration, (c) provide BSS goals to address self-esteem, and (d) provide a sufficient amount of BSS.
3. Whether DCPS denied Student a FAPE by failing to implement Student's August 14, 2024, January 16, 2025, and April 4, 2025 IEPs. Specifically, Petitioner asserts that DCPS did not provide all of the occupational therapy ("OT") services to which Student was entitled under the IEPs.²
4. Whether DCPS denied Student a FAPE by failing to provide Petitioner full access to Student's educational records that were requested on February 5, 2025. Petitioner has not received related services tracking reports or IEP Progress

² In his opening statement, Petitioner's counsel withdrew the claim of DCPS' failure to provide prescribed BSS.

Reports for the 2024-25 school year.³

FINDINGS OF FACT⁴

1. Student is an X-year-old student who was in grade D at School B during the 2024-25 school year and was eligible for special education services with a classification of Other Health Impairment (“OHI”).⁵

2. On December 6, 2022, when Student was in grade F at School A, DCPS completed an Occupational Therapy Initial Evaluation to examine concerns with Student’s handwriting, sensory processing, and self-regulation.⁶ Student had a prior diagnosis of Attention Deficit Hyperactivity Disorder (“ADHD”).⁷ Examiner A interviewed Teacher A who reported that Student’s strengths were fine motor skills, self-care skills, bilateral coordination skills, and visual motor integration. Teacher A had concerns for her/his sensory processing, self-regulation, and handwriting. Student needed a lot of one-on-one support to follow classroom routine and expectations. S/he could work independently on preferred activities for approximately 30 minutes at a time but only 10-5 independently 10-15 minutes independently on academic work. Teacher A reported that Student overreacted to challenges from classmates.⁸ Examiner A noted that during testing, Student was initially very responsive and “warmed up” to her easily but became frustrated with questions s/he could not answer and no longer wanted to mark choices independently. Student was able to attend to tasks for 15 minutes and was provided movement breaks. S/he was reported to require minimal to moderate verbal prompting for redirection to task.⁹

On the Beery-Buktenica Developmental Test of Visual-Motor Integration (“VMI”), Student scored in the Average range in Visual-Motor Integration (103) and Visual Perception (94) and in the Low range in Motor Coordination (72) that measures drawing lines within a defined boundary. “Challenges in motor coordination specifically may impact [Student’s] ability to write within the given lines and to put appropriate spacing between letters and words.”¹⁰ On the Bruininks-Oseretsky Test of Motor Proficiency (“BOT-2”), Student was in the Below Average range in Fine Motor Precision, and in the Average range in Fine Motor Integration and Manual Dexterity. “Challenges in fine motor precision may impact [Student’s] ability to complete legible handwriting tasks.”¹¹ The Sensory Processing Measure (“SPM-2”) assesses the ability to organize and interpret information from the environment to produce an appropriate response and interact within the environment. Teacher A and Petitioner were provided questionnaires to complete, but Petitioner did not submit responses. Teacher A’s responses placed Student in the Typical range

³ At the prehearing conference, Petitioner’s counsel reported that DCPS had provided some Progress Reports and service trackers, but he had not yet determined if the request had been fully satisfied.

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

⁵ Petitioner’s Exhibit (“P.”) 16 at page 270. The exhibit number is followed by the digital page number, i.e., P16:270. ⁶ P5:49.

⁷ *Id.* at 50.

⁸ *Id.*

⁹ *Id.* at 51.

¹⁰ *Id.* at 53.

¹¹ *Id.* at 54.

only in Taste and Smell; s/he was in the Severe Difficulties range in Social Participation, Vision, Hearing, Touch, Body Awareness, Balance and Motion, and Planning and Ideas.

In summary, [Student] presents with sensory seeking behaviors that impact [her/his] ability to successfully participate socially with peers as well as attend during classroom activities. [His/her] inability to filter out competing sensory stimuli from the environment can be distracting and may result in decreased overall sustained attention. These reported difficulties impede [her/his] access to [his/her] educational curriculum.¹²

In a handwriting exercise, Student demonstrated 85% accuracy for letter formation, 21% accuracy for line placement, and 25% accuracy for line placement. Student was asked to produce capital letters from memory. Student was unsure what capital letters looked like. S/he produced 23/26 capital letters from memory and 24/26 lowercase letters from memory.¹³ In activities of daily living, Student independently performed self-feeding, grooming, dressing, and toileting at home and school.¹⁴ Examiner A concluded that Student had a number of challenges that impact his/her ability to access the general education curriculum:

[Student] is a sweet young [child] who has challenges in the areas of oculomotor skills, visual perception, motor coordination, sensory processing, social participation, and self-regulation. It is believed these challenges impact [Student's] ability to participate in grade level activities such as reading, handwriting, socializing with peers, attending during academic instruction, and following the classroom routine. Ultimately, these challenges impact [Student's] access to [his/her] general education curriculum.¹⁵

Examiner A deferred to the IEP team the determination of whether and how much OT support Student required.¹⁶

3. On December 22, 2022, DCPS completed a Psychological Evaluation of Student due to teachers' academic concerns in reading, writing, and mathematics as well as behavioral symptoms consistent with ADHD.¹⁷ Despite receiving Tier 3 intervention support since the beginning of the school year, Student was performing below grade level in reading and math and had difficulty writing independently. Student's teachers reported that Student's behaviors impeded his/her academic growth including walking around the room during lesson time and disrupting her/his peers by touching their hair or bodies, by touching things on their desks, or by trying to have conversation with them during academic time. In addition, s/he often made sounds throughout all learning periods.¹⁸ Petitioner reported that Petitioner began having difficulty with teachers and eloping from class as early as grade M at School C. S/he continued to elope in grades H and E at School D, prompting School D to recommend transferring to a public school. Petitioner enrolled

¹² *Id.* at 56-57.

¹³ *Id.* at 59.

¹⁴ *Id.* at 61.

¹⁵ *Id.* at 62.

¹⁶ *Id.* at 63.

¹⁷ P6:65.

¹⁸ *Id.* at 65-66.

Student at School E for grade C, where s/he had conflict with staff and peers, then at School A for grade F. Petitioner discontinued use of medication prescribed for her/his ADHD due to negative side effects.¹⁹

From the beginning of the 2022-23 school year at School A, Student was provided reading intervention five days per week from the school's reading specialist, Teacher B, using the Wilson Reading System. At the start of intervention, Student scored 42% for decoding and 67% for encoding on the Substep 1.1 Pre-Test. Following 8 weeks of intervention, s/he completed the Substep 1.1 Post-Test and scored 100% for decoding and 78% for encoding. According to Teacher B's qualitative notes, Student made great progress with blending and understanding vowel sounds since beginning intervention. Student also received Tier 3 math intervention five days per week with Teacher C, the school's math specialist using the Do the Math curriculum. Student showed skills adding and subtracting within 10 especially when given a ten-frame but had more difficulty identifying the correct function to use in a word problem or completing calculations without the ten-frame. Student was also receiving behavioral support. S/he was on a behavioral contract targeting her/his ability to maintain a safe body, use respectful words and actions, and stay in his/her assigned area with the opportunity to earn rewards throughout the day: breaks, music, or basketball depending on the number of points earned for meeting behavioral expectations. At the time of the evaluation, Student had earned rewards, on average, in 37% of opportunities since intervention began during the last week of September. S/he also received social-emotional support from the school psychologist since October 20th targeting self-regulation and coping skills.²⁰ Student's general education teachers in grade F, Teacher A and Teacher D, reported the following behavioral difficulties to Examiner B:

[Teacher D] and [Teacher A] agree that the more severe disruptive behaviors (eloping from the classroom, hitting her/himself, hitting objects in the room) have decreased since the start of the year. However, these behaviors still occur throughout the week especially in response to academic tasks that [s/he] perceives are difficult to accomplish. [His/her] teachers also expressed how [his/her] behavior contract leads to frustration throughout the day. If [Student] misses a point during a time block on [her/his] behavior contract, [s/he] will become upset which may escalate to more severe behaviors. [Teacher D] and [Teacher A] reported that [s/he] does not connect that there are other opportunities to earn points in the next time block; [s/he] seems to become stuck on losing the one point and cannot reset for the next block of time. [Student] also expresses concern over the notes that are written on the chart as the chart is sent home to [her/ his] mother daily for reflection at home. If [Student] believes [s/he] will receive a negative consequence from either [her/his] teachers or mother, [s/he] will often resort to verbal aggression toward others or physical aggression toward [her/himself] or objects in the classroom/hallway (pushing over chairs, ripping/throwing [her/his] chart/throwing [his/her] pencil)... [His/her] teachers communicated that [Student] thrives with one-on-one attention from adults, however, this is difficult to implement in the classroom consistently which often leads to frustration from [Student] whenever [s/he] is not given that level of attention. Although throughout the year [Student]

¹⁹ P6:67-68.

²⁰ *Id.* at 69-70.

has done well with one-on-one support from [his/her] teachers, [s/he] recently has become frustrated even with one-on-one support when asked to complete academic tasks... In addition, [her/his] teachers have noticed a recent increase in avoidant behavior such as asking for a break or asking to use the bathroom when given an academic task.²¹

On the Wechsler Intelligence Scale for Children (“WISC-V”), Student scored in the Low Average range on the Verbal Comprehension (86) and Visual Spatial (89) indices, in the Low range on the Fluid Reasoning (79) and Working Memory (79) indices, and in the Very Low range on the Processing Speed Index (75) and the Full Scale IQ (76).²² On the Woodcock-Johnson Tests of Achievement (“WJ-IV”), Student scored in the Very Low range on all subtests in Broad Reading (49, <1st percentile), Basic Reading Skills (57, <1st), Broad Mathematics (55, < 1st), and Written Language (53, <1st).²³ Student’s behavior related to her/his ADHD assessed through rating scales on the Conners-4 completed by Petitioner and Student’s English Language Arts (“ELA”) teacher, Teacher D. Both ratings resulted in T-scores in the Very Elevated range in Inattention/Executive Dysfunction, Hyperactivity, Impulsivity, and Emotional Dysregulation. Petitioner’s ratings resulted in scores in the Very Elevated range in Depressed Mood and Anxious Thoughts and Elevated in Peer Interactions. Teacher D’s ratings resulted in a score in the Very Elevated range in Schoolwork and in the Elevated range in Depressed Mood and Peer Interactions.²⁴

When looking at each informant’s responses, [Student] displays the following behaviors consistent with the symptomatic criteria for Attention-Deficit and Hyperactivity Disorder – Inattentive Type as listed in the DSM-5: Is forgetful in daily activities; avoids or dislikes things that take a lot of effort and are not fun; is easily distracted; doesn’t seem to listen to what people are saying to them; doesn’t finish schoolwork, work, or other tasks; has trouble organizing tasks or activities; fails to pay close attention to details; makes careless mistakes in schoolwork or other activities; and has trouble staying focused on work or play for a long time. Additionally, the informants endorsed the following items consistent with the symptomatic criteria for Attention-Deficit and Hyperactivity Disorder – Impulsive/Hyperactive Type: Leaves their seat when they should stay seated; needs to be moving around; talks too much; runs or climbs when they are not supposed to; is unable to be quiet when playing or using free time; has trouble sitting still; acts as if driven by a motor; fidgets or squirms in their seat; is restless; has difficulty waiting for their turn; interrupts other people’s conversations, games, or activities; intrudes on or takes over what others are doing; and blurts out answers before the question has been completed. These behaviors impact [Student’s] ability to perform academically as evident by [his/her] tendency to misplace homework, forget to turn in completed work, have trouble completing schoolwork because of distractions, and turn in work without checking for mistakes.²⁵

²¹ *Id.* at 71-72.

²² *Id.* at 74-75.

²³ *Id.* at 76-77.

²⁴ *Id.* at 78.

²⁵ *Id.* at 78-79.

Student's executive functioning was rated by Teacher C and Teacher D on the Behavior Rating Inventory of Executive Function ("BRIEF-2"). The ratings of both teachers resulted in the Clinically Elevated range on the Behavior Regulation Index, the Emotion Regulation Index, the Cognitive Regulation Index, and the Global Executive Composite.²⁶

Student's grades for the first term of the 2022-23 school year were Below Basic in Reading, Math, and Written Language, and Proficient in Science. On a September 7, 2022 i-Ready Math assessment, Student's score of 355 was at the grade H level, three grades below her/his grade level. On a September 15, 2022 i-Ready Reading assessment, Student's score of 397 was also at the grade H level. On the HMH Reading Inventory, which measures comprehension, Student was performing at least two grade levels below grade level. "These assessments together indicate that [Student] requires significant support to access the 3rd grade ELA and math curriculum at a rate commensurate with [his/her] peers."²⁷

Examiner B described the IDEA criteria for eligibility under the OHI classification and concluded that Student met those criteria. Examiner B did not address any other disability classification.²⁸

4. School A completed a Level 2 Functional Behavior Assessment ("FBA") on December 24, 2022. The Problematic Behaviors were Eloping (3x/day, 8 minutes each), Verbal Aggression (7x/day, 3 minutes each), and Physical Aggression (throwing items, holding the door shut, bumping others – 6x/week, 7 minutes each).²⁹ In small groups, Student's verbal aggression normally consists of negative self-statements. (I hate myself, I'm stupid) and rare negative comments toward the teacher. Student struggles with distractibility; when the teacher turns her attention to the one other student present, Student is not able to sit and wait. S/he will get up and move around the room or interrupt with comments. In less structured time, such as recess, Student struggles to negotiate social situations and conflicts, becoming physically and verbally aggressive and unresponsive to redirection by staff. In the larger classroom environment, Student struggles regularly with distracted behavior: talking out of turn, walking around the room, picking up items that do not belong to her/him. Triggers that can result in eloping, physical aggression, or verbal aggression include: (a) when s/he is provided a consequence, (b) when s/he does not receive a point on her/his behavior chart, (c) when asked to do work s/he perceives as too difficult, (d) when peers tell on him/her for her/his behavior, (e) when embarrassed for being given modified assignments after complaining the task was too difficult, and (f) during activities outside the regular routine.³⁰

5. Sometime after Examiner B's evaluation, during the 2022-23 school year, DCPS found Student eligible for special education services with a disability classification of OHI.³¹

²⁶ *Id.* at 79-80.

²⁷ *Id.* at 80-82.

²⁸ *Id.* at 82-84.

²⁹ P7:89.

³⁰ *Id.* at 90.

³¹ P9:131. Neither party disclosed a copy of Student's Initial IEP.

6. On June 6, 2023, Student's end of year ("EOY") i-Ready Reading assessment, his/her score of 408 reflected a grade H performance level, three grades below his/her grade level.³²

7. On October 10, 2023 School A developed a Level 2 BIP.³³ The targeted behaviors were eloping within the building, verbal aggression, and physical aggression. During the 2023-24 school year, "...[e]loperment includes leaving the classroom door but staying in the vicinity of the classroom and usually [s/he] takes 10-15 minutes to return to work. In other instances, [s/he] can take upwards of 1 hour to calm down after eloping, depending on what triggered [her/him]." Student was reported to elope three times per week for 15 minutes each, to be verbally aggressive once daily for five minutes, and physically aggressive (throwing items, knocking over chairs, pushing, jumping on other students) once weekly for five minutes.³⁴ The functions of the behaviors were as follows:

[Student] is most likely to elope from the classroom when [s/he] [is] blamed for [her/his] behavior, having consequences that [s/he] perceives as unfair, experiencing a breach in a relationship (teacher or student) and feeling [s/he] cannot fix the situation quickly enough, [and] being given feedback publicly. From this perspective, the function is related to "escape." When [Student] is verbally aggressive in the form of making negative self-statements (e.g. I hate myself, I am stupid, or suicidal statements), it is evident that [s/he] has difficulty managing the painful feelings that arise in response to situations where [s/he] feels incompetent (at times with [her/his] classwork) or where [s/he] feels [s/he] cannot control the situation (at times when [s/he] experiences the breach in a relationship)... When [Student] is verbally aggressive in the form of making negative statements towards other (e.g. I hate you), it is hypothesized that these occur when [s/he] feels like the relationship (with teacher or student) is breached and [s/he] is struggling to regulate, communicate, and problem solve. When [Student] escalates physically, the data suggests that the function of the behavior is context specific and cannot be reduced to a single function. The overarching challenge has to do with poor self-regulation when faced with a limit, a disappointment, a relational slight, or the expectation to engage in something perceived as difficult. A few examples highlight the complexity. For example, when [Student] is redirected, pushes past a teacher, the primary motivation seems to gain attention to communicate about [his/her] distress, but without having the skills to do so effectively. When [s/he] gets into a physical altercation on the playground with another child, this could be interpreted as a way of escaping challenging feelings that arise when [s/he] is called out or of seeking attention in an attempt to communicate a message to the peer, but again without having the skills to do so more effectively.³⁵

The replacement behaviors were as follows. For elopement within the classroom, use safe "escape" within the classroom (divided off space, cubby with regulation tools) and have an adult

³² Respondent's Exhibit ("R.") 26 at page 3. The exhibit number is followed by the exhibit page number and digital page number in parentheses, i.e., R26:3 (249).

³³ P12:200.

³⁴ *Id.* at 201.

³⁵ *Id.* at 202.

check in after five minutes to see if s/he needs more time or is ready to return to class. For elopements outside of the classroom, determine an acceptable place for her/him to go that is established by the team and where s/he is not given consequences for "escaping" appropriately. For verbal aggression, teach stop and think strategies – “I feel” statements to reduce reactive responses and to plan for how to express upset more directly and effectively. For physical aggression, use calm down spaces and co-regulate (learn to walk away from conflict).³⁶

8. For the 2022-23 school year, Student earned the following grades: Below Basic in Reading, Writing and Language, Speaking & Listening, and Math, Basic in Social Studies and Science, Proficient (meeting grade level expectations) in Art and Health & Physical Education, and Advanced in Music.³⁷

9. On January 22, 2024, DCPS conducted an IEP Annual Review meeting.³⁸ In Special Considerations, the IEP team indicated that Student’s behavior impedes learning in the classroom. “These behaviors can look like getting up, yelling, work refusal, walking around, etc. [His/her] explosive behaviors have decreased since the start of the school year. [S/he] currently uses a behavior chart that tracks the following behaviors: stay in assigned spot in the classroom, be a respectful listener, safe body with yourself and others.”³⁹ The IEP included Areas of Concern in Mathematics, Reading, Written Expression, Motor Skills/Physical Development (“Motor”), and Emotional, Social, and Behavioral Development (“Behavior”). In Mathematics, the Present Levels of Academic Achievement/Functional Performance (“PLOPs”) reported that Student was in a Specific Learning Supports (“SLS”) classroom.⁴⁰ S/he had mastered all three of her/his math goals: Goal 1 - addition and subtraction of up to 20, Goal 2 - counting numbers less than 120 by ones, writing the next ten numbers that follow in sequence, and Goal 3 - Writing the total number of blocks representing numbers less than 120. S/he “struggles with attention and impulsivity affects her/his learning ability... When... things do not go his/her way, [s/he] walks away from the class or to his/her calm down spot. It requires a lot of re-direction for [her/him] to remain engaged... which leads to disruption of [her/his] learning and frequently to the whole class. This year, there have been a couple of incidents when the class and teachers have been unsafe. When [s/he] cannot control [his/her] frustrations, [s/he] throws things (balls, folders) and tries to kick and or push a teacher or blocks the door when students are asked to leave the classroom.” The PLOP also reported that on the middle of the year (“MOY”) i-Ready assessment, his/her overall score of 411 was at the grade E level, three grades below her/his grade level. The goals were: (a) given two visually represented (e.g., base ten blocks) multi-digit whole numbers within 1,000 written in the form of base-ten numerals, number names, or expanded form, Student will compare the numbers using place value (e.g., comparing the flat, rod, and unit pieces) and writing a symbol (e.g., <, >, or =) to show if they are greater than, less than, or equal to each other, (b) given four addition and/or

³⁶ *Id.* at 203.

³⁷ P9:132.

³⁸ P10:160.

³⁹ *Id.* at 161.

⁴⁰ “The Specific Learning Support (SLS) program is designed to meet the individual needs of students who have been diagnosed with a specific learning disability (SLD) or who demonstrate complex learning needs requiring intensive specialized instruction. Students in the SLS program have IEPs providing for 20+ hours of specialized instruction outside of general education.” *Opportunity Academies: Special Education Programming*: https://dcps.dc.gov/sites/default/files/dc/sites/dcps/page_content/attachments/Opportunity-Academies-and-Special-Education.pdf

subtraction word problems with solutions up to 100, read independently or with teacher support, and provided scaffolds for setting up each problem (e.g. guiding questions, highlighting), Student will solve by using an equation with (75)% accuracy, and (c) when given a multiplication or division equation relating three whole numbers containing an unknown whole number (e.g. " $8 \times ? = 40$ "), Student will write the inverse of the equation {e.g. " $40 \div 8 = ?$ " (sic) and then correctly calculate the unknown number (e.g. " $40 \div 8 = 5$ ").⁴¹

In Reading, the PLOP reported that Student was making “sufficient progress on all three goals. “(1) In reading VC and CVC words in which [s/he] verbally sounds out blended each phoneme, [s/he] read 8-10 words correctly in 4 progress monitoring assessments. (2) [S/he] continued to work on blending and reading CCVC and CVCC words and scored 4-6 on 3 given assessments. (3) On 4 given assessments in this second quarter, [Student] has improved as [s/he] reads at a rate between 24-31 wcpm with 96% accuracy.” On the MOY i-Ready assessment, Student scored at a grade H level, four grades below grade level. The behavior report from the Mathematics PLOP was repeated. The goals were: (a) when given a list of ten short or long vowel regularly spelled one-syllable words (i.e. CVC or CVCe), Student will read each word aloud by sounding out each letter with tracking supports and/or direct teacher support, (b) given a list of twenty single, closed-syllable nonsense words with the CVC pattern, Student will read aloud (16 out of 20) words, within (40) seconds, with 80% accuracy, and (c) after an interactive read-aloud of an independent-level literary text, given one "who" or "what" question about the text and three illustrated supporting textual details, Student will point to the answer to the question.⁴² In Written Expression, the PLOP reported that Student was making “sufficient” progress in writing and reiterated the behavior report from the Mathematics PLOP. The goal was: given two sentences that contain one punctuation error, one capitalization error, and one spelling error, Student will correct the errors, and (b) given a read-aloud of an opinion writing prompt with an illustration and an opinion writing graphic organizer with sentence starters, Student will use the sentence starters to write an opinion about the topic and one reason supporting the opinion, within the graphic organizer.⁴³

In Motor, the PLOP reported that Student is independent in self-care activities. S/he demonstrate adequate fine motor skills to access the school environment. S/he presents some challenges with visual tracking and scanning but has demonstrated her/his ability to identify stimuli moving in his/her peripherals with accuracy. In Sensory Processing, s/he has demonstrated improvements in her/his ability to identify her/his feelings and zones. The goals were: (a) when dysregulated, Student will independently select a strategy or tool to support his/her learning, before returning to the whole group using the visual menu and no more than three verbal prompts from an adult, and (b) S/he will demonstrate improved oculomotor/visual perceptual skills by visually scanning in an organized left to right pattern while reading 2-3 consecutive sentences with adaptations.⁴⁴ In Behavior, the PLOP reported that Student moved from the general education environment to the self-contained Specific Learning Supports (“SLS”) classroom partway through the 2022-23 school year.” [Student’s emotional and behavioral challenges often interrupt [his/her] learning and affect [his/her] relationships. Current challenges include that [Student] struggles with

⁴¹ p9:162-65.

⁴² *Id.* at 166-69.

⁴³ *Id.* at 170-72.

⁴⁴ *Id.* at 173-76.

impulsivity, and that [s/he] can become very dysregulated when triggered.” On a Strengths and Difficulties Questionnaire (“SDQ”), Student’s scored in the Very High range in Hyperactivity and Concentration Difficulties, Behavioral Difficulties, and Impact of Any Difficulties on the Child’s Life, in the High range in Overall Stress, and Close to Average in Emotional Distress, Difficulties Getting Along with Other Children, and Helpful Behavior. On January 17, 2024, Student’s teacher, Teacher F, reported:

[Student] is a determined and hardworking young person. She noted that when given an academic task, [s/he] will generally show persistence and try [her/his] best. However, she identified that the biggest challenge for [Student] is being able to remain calm and regulated when [s/he] is triggered. [Teacher F] identified the following as primary triggers: 1. Being redirected from the teacher, particularly if [s/he] does not respond to the redirection right away and is then corrected more than once; 2. Perceiving that an adult is upset with [her/him, has hurt [her/ his] feelings, or does not understand [his/her] perspective; 3. Making a mistake with [her/his] work or perceiving that [s/he] cannot do the work; and 4. Being upset by a peers’ behavior (in particular, feeling left out or coming into conflict during unstructured time like recess).⁴⁵

The goals were: (a) In counseling sessions, Student will accurately identify feelings and appropriate coping strategies when presented with real or imagined situations, and (b) When triggered, and with the support of practice and pre-teaching of strategies, Student will be able to make use of classroom-based supports for de-escalation (e.g. use of a calm down spot, teacher support and redirection) rather than to elope from the classroom in 75% of triggering situations that occur.⁴⁶

The Services page of the IEP did not provide the prescribed services other than to indicate that Student did not require a dedicated aide.⁴⁷ However, the Least Restrictive Environment section indicated that Student would be inside general education 7.5 hours per week and outside general education zero hours per week, in a 37.5 hours per week schedule.⁴⁸ Since the IEP indicated that Student was in a self-contained SLS, classroom, s/he was receiving 20 hours per week of specialized instruction outside general education, but the amount of occupational therapy services and BSS could not be discerned from the IEP due to an apparent software glitch that omitted the services from the IEP. However, related service trackers reveal that Student was prescribed one hour per month of OT services and four hours per month of BSS.⁴⁹

10. On May 21, 2024, DCPS issued a PWN indicating that after a meeting with Petitioner on May 1, 2024, “Based on [Student’s] behavior data collected, the team decided that [Student’s] present level of needs will best be addressed in BES program”⁵⁰

⁴⁵ *Id.* at 177-78.

⁴⁶ *Id.* at 177-82.

⁴⁷ *Id.* at 183.

⁴⁸ *Id.* at 184.

⁴⁹ P22:362. *See* paragraph 14, *infra*.

⁵⁰ R13:1 (86).

11. On May 29, 2024, Student's score of 425 on an EOY i-Ready Reading assessment reflected a grade E functioning level, three grades below her/his grade level, and a one grade level improvement from her/his BOY score of 411.⁵¹

12. On June 17, 2024, DCPS issued Student's IEP Progress Report for the final reporting period of the 2023-24 school year. Student was reported to be Progressing on all three Mathematics goals: "[Student] is making positive strides in identifying numbers using place value and understanding, symbols of less than, greater than, or equal to up to 500. [S/he] demonstrated 70% accuracy during the 4 times [s/he] was observed, showing great progress in this area... [Student] has shown steady progress in identifying key details on what operation (addition/subtraction) to use in solving word problems. [S/he] achieved an accuracy score of 60% in this area.... [Student] has made significant progress in using the multiplication chart to solve equations. [His/her] accuracy rate of 70% indicates a strong understanding of the concept."⁵² In Reading, the Report addressed only the third of three goals; Student was reported to be Progressing on that goal: "[Student]'s comprehension skills when [reading texts in [her/his] independent, instructional, and grade-level texts when read aloud are commendable. [S/he] scored an accuracy between 70-100% accuracy."⁵³ In Written Expression, the Report addressed only the second of the two goals, on which Student was reported to be Progressing: "With graphic organizer and teacher prompts, [Student] continues to work on writing [her/his] opinion and consistently shows 1-2 details on 3 trials. It is observed that [Student] gets stuck, struggles to continue to work, and requires teacher prompts to keep going."⁵⁴ In Motor, Student was reported to be Progressing on both goals: "[Student] continues to require support in the area of self-regulation for example during times of frustration. [S/he] benefits from clear instructions of expectations, rewards, positive reinforcements, verbal reminders and movement and rest breaks in order to help with assignment and task completion, as well as self-regulation... [Student] has participated in visual scanning, visual motor, visual discrimination tabletop activities in order to help [her/him] integrate and improve [her/his] visual perceptual skills and abilities for reading and writing tasks. [S/he] can copy 1 to 2 sentences from near point models at a tabletop, but benefits from verbal and visual aids/cues to attend to task and improve overall accuracy."⁵⁵ In Behavior, Student was reported to be Progressing on the first goal but had made No Progress on the second: "[Student] is progressing in [his/her] ability to identify [his/her] feelings when presented with situations. [S/he] generally copes by taking space which [s/he] can identify a positive strategy. [S/he] continues to regularly struggle with blaming others for [his/her] behavior or directing [his/her] frustration/anger at others. This makes it difficult for [her/him] to look at [her/his] own choices and options for coping, and in that way, progress is limited... [Student] inconsistently makes use of classroom-based supports for de-escalation. More often, [s/he] continues to leave the classroom when upset. While [s/he] will sometimes seek support from related service providers, and administration, [s/he] is not able to regularly manage [his/her] feelings in the context of the classroom."⁵⁶

⁵¹ R26:5 (251).

⁵² R14:1-2 (88-89).

⁵³ *Id.* at 2-3 (89-90).

⁵⁴ *Id.* at 3 (90).

⁵⁵ *Id.* at 3-4 (90-91).

⁵⁶ *Id.* at 4 (91).

13. For the 2023-24 school year, Student earned the following grades: Below Basic in Reading, Writing and Language, Speaking & Listening, and Math, Basic in Social Studies, Proficient in Science, Art, and Health & Physical Education, and Advanced in Music.⁵⁷

14. During the 2023-24 school year, Student's IEP entitled her/him to ten hours of OT services. S/he was provided 2.33 hours, a deficit of 7.67 hours.⁵⁸ During February 2024, Student received 235 minutes of BSS and was absent for one scheduled session. During March 2024, Student received 195 minutes of BSS and Student was absent for two scheduled sessions. During April 2024, Student received 265 minutes of BSS and was absent for one scheduled session. During May 2024, Student received 210 minutes of BSS and Student was absent for one scheduled session. Through June 14, 2024, Student received 105 minutes of BSS and Student was absent for two scheduled sessions.⁵⁹

15. On September 6, 2024, Student's score of 409 on a beginning of the year ("BOY") i-Ready Math assessment reflected a grade E functioning level, four grades below her/his grade level.⁶⁰ On September 12, 2024, her/his i-Ready Reading score of 492 reflected a grade C performance level, three grades below grade level.⁶¹

16. On December 16, 2024, when Student was in grade D at School B, Witness E, the School Psychologist at School B, completed a Psychological Evaluation of Student at Petitioner's request due to concerns of inattention, executive functioning, emotional/behavioral dysregulation, and academic achievement, particularly reading skills, and to determine if Specific Learning Disability ("SLD") was a more appropriate disability classification.⁶² Teacher E, Student's special education teacher, and Behavior Technician A reported that Student's physical aggression prevents her/him from maintaining friendships:

[His/her] behavioral outbursts seem to be used to distract from learning, to push others away, and to avoid things [s/he] doesn't want to do. [Student's] emotional dysregulation interrupts [her/his] learning time. [S/he] has many triggers which are often unpredictable. [S/he] can quickly become verbally/physically aggressive when triggered. [Teacher E] is concerned that [Student] will seriously harm someone... Frequent physical altercations with peers and verbal insults to [his/her] peers have made many of [her/his] peers scared and avoidant of [Student]. [His/her] anger can be explosive, which is a concern. [Student] struggles to take responsibility for [her/his] behavior or the way [her/his] behavior impacts other people... [Behavior Technician A] also reported concerns with [Student's] relationships/interests with girls and women. [Student] seems to have a hostility towards females and will physically attack same-age girls and adult women. When [s/he] had a physical altercation with a female peer, [her/his] primary concern was about how girls and women have "privileges" when it comes to violence. [S/he]

⁵⁷ P9:132.

⁵⁸ P23:362-72; P28:446; R33:1-25 (401-425).

⁵⁹ P22:364-67.

⁶⁰ R25:1 (245).

⁶¹ R27:1 (253).

⁶² P9:128.

expressed that [s/he] feels that females can be violent towards males, but males cannot be violent towards females.⁶³

On the WISC-V, Student scored in the Average range on Verbal Comprehension (95), Visual Spatial (92), and Processing Speed (92), in the Low Average range in Fluid Reasoning (85) and Full-Scale IQ (84), and in the Low range in Working Memory (74).⁶⁴ On the WJ-IV, Student scored in the Very Low range in Broad Reading (48), Broad Mathematics (62), and Broad Writing (67).⁶⁵ At the end of the first term of the 2024-25 school year, Student had earned the following grades: Below Basic in Reading, Math, Writing, and Science, Basic in Social Studies and Music, and Proficient in Art, World Languages, and Physical Education.⁶⁶ Witness E reported that Student had been involved in 94 behavioral incidents during the school year including, but not limited to, twenty-one involving behaviors that disrupted or interfered with classroom teaching and learning, thirteen involving communication with staff and peers that was not polite, courteous, or respectful, thirteen Tier 1 behaviors, four assaults/physical attacks on student or staff, three inappropriate or disruptive physical contact between students, three instances of lying to or giving misleading information to school staff, three verbal, written, or physical threats to persons or property, two instances of bullying, or using humiliating, or intimidating language or behavior including Internet bullying, two instances of engaging in reckless behavior that may cause harm to self or others, two occasions of fighting where there was no injury and no weapons, two refusals to comply with reasonable staff instructions, or classroom or school rules, one occasion of directing profanity or obscene/offensive gestures toward staff, one fight which created a substantial risk of or resulted in minor injury, one instance of obscene, seriously offensive, or abusive language or gestures, and one instance of sexual harassment. These behavioral violations led to four teacher/student or administrator/student conferences, 78 verbal redirections or reprimands, seven “other school-based consequences,” two off-site suspensions of 1-3 days, and four temporary removals from the classroom.⁶⁷

Witness E administered the Conners-4 with rating scales submitted by Petitioner, Teacher E and Behavior Technician A. Both teachers reflected T-scores in the Very Elevated range in Inattention/Executive Dysfunction, Emotional Dysregulation, Schoolwork, and ADHD Inattentive. Petitioner and Teacher E both rated Student Very Elevated in Depressed Mood and Peer Interactions. All three submitted ratings reflecting T-scores in the Very Elevated range in Oppositional Defiant Disorder and Conduct Disorder.⁶⁸ “Based on the information provided by all raters, [Student] is meeting diagnostic criteria for ADHD combined type, Oppositional Defiant Disorder, and Conduct Disorder.”⁶⁹ Student’s social-emotional functioning was assessed through rating scales submitted by Teacher E, Behavior Technician A, and Behavior Aide A. The assessed domains were Self-Regulation, Social Competence, Empathy, and Responsibility. Teacher E’s total score placed Student in the High Risk range, Behavior Technician A’s in the Average range, and Behavior Aide A’s in the At-Risk range.⁷⁰ Student’s behavior was also assessed through

⁶³ *Id.* at 136.

⁶⁴ *Id.* at 140-41.

⁶⁵ *Id.* at 142-44.

⁶⁶ *Id.* at 144.

⁶⁷ *Id.* at 145-46.

⁶⁸ *Id.* at 146.

⁶⁹ *Id.* at 147.

⁷⁰ *Id.* at 148.

ratings scales on the Behavior Assessment System for Children (“BASC-3”) submitted by Petitioner, Teacher E, Behavior Technician A, and Behavior Aide A. All three staff members’ ratings were in the Very Elevated range in Externalizing Behaviors (Hyperactivity, Aggression, and Conduct Problems), Internalizing Behaviors (Anxiety, Depression, and Somatization), while Petitioner’s ratings were in the Elevated range in these domains. All four rated Student Very Elevated in Behavioral Symptoms (Atypicality, Withdrawal, Attention Problems, and Learning Problems). None of the raters had concerns with Student’s Adaptive Skills.

Witness E administered the Emotional Disturbance Decision Tree (“EDDT”) to assess the presence of an emotional disturbance. Rating scales were submitted to the same four individuals. Petitioner’s total score (79) placed Student in the High Clinical range, while all three teachers scores were in the Very High Clinical range (>100, 87, and >100, respectively).⁷¹ Witness E then asked Principal, Witness C (Assistant Principal), Social Worker A, Behavior Technician A, and Behavioral Aide A to consider if Student’s behavior was more aligned with an emotional disturbance or a social maladjustment in a number of Behavior Areas: School Behavior, Attitude Toward School, School Attendance, Educational Performance, Peer Relations and Friendships, Perceptions of Peers, Social Skills, Interpersonal Relationships, Interpersonal Dynamics, Locus of Disorder, Aggression, Anxiety, Affective Reactions, Conscience, Sense of Reality, Developmental Appropriateness, Risk Taking, and Substance Abuse. Witness E also opined on this inquiry. Emotional disturbance was endorsed only by Behavioral Aide in Social Skills, Teacher E and Behavior Technician A in Aggression, Social Worker A and Witness E in Affective Reactions, and Teacher E, Behavior Technician A, and Behavioral Aide A in Developmental Appropriateness. In all other categories, and for all other responses, the individuals indicated that the behaviors were more aligned with a social maladjustment.⁷²

Witness E concluded that Student continued to meet the criteria for ADHD-Combined Presentation.⁷³ She also concluded that s/he meets the criteria for a specific learning disability:

[Student] meets criteria for a specific learning disability. [Student] is a student that has access to high quality instruction in all academic areas within the behavior and education support (BES) special education classroom. [Student] participates in benchmarking testing, classroom-based assessments, and special education which is documented and provided to [his/her] mother throughout the school year. [Student] receives an IEP Progress Report for each term of the academic year. [S/he] is not achieving adequately based upon state-approved grade level standards in reading, writing, and mathematics. [S/he] also displays a significant deficit between [his/her] academic achievement and cognitive ability.⁷⁴

Witness E concluded that Student’s “presentation more thoroughly aligns with the criteria for social maladjustment” and that “This data listed supports the recommendations that [Student] should not be found eligible for special education services as a student with an emotional

⁷¹ *Id.* at 149.

⁷² *Id.* at 150-52.

⁷³ *Id.* at 152-54.

⁷⁴ *Id.* at 154-55.

disability.”⁷⁵ She recommended that the IEP team continue to qualify Student as a student with an OHI. “The team should provide notes and documentation that [s/he] also meets criteria for a specific learning disability; however, this is not the primary disability which impacts [her/his] academic growth.”⁷⁶

17. For the 2024-25 school year, Petitioner decided to have Student attend public school in Georgia with the hope that there would be improved services. Student was living with an aunt in Georgia.⁷⁷ On August 14, 2024, School F conducted an Initial IEP meeting for Student. The IEP team prescribed the following special education program for Student:

(1) small group resource setting for social skills instruction 60 minutes a week; (2) small group resource setting for ELA instruction for 90 minutes each day; (3) small group resource setting for math instruction for 60 minutes each day; (4) general education classroom supportive instruction for 60 minutes each day with paraprofessional support for science and social studies; (5) supportive instruction for 90 minutes each day with paraprofessional support for Specials, recess, and lunch. These are the services that will be provided when school is in session.⁷⁸

The IEP team also prescribed one hour per month of OT services.⁷⁹ However, Student was involved in “one or two” incidents at school in Georgia and was homesick, so Petitioner returned Student to the District and enrolled her/him at School B.⁸⁰

18. When Petitioner enrolled at School B for grade D, s/he was placed in a Behavior & Education Support (“BES”) classroom.⁸¹ Student was one of two students in the BES classroom; along with the teacher, there was a teacher’s assistant and a behavior technician in the classroom.⁸² On September 13, 2024, DCPS issued an IEP Amendment to reflect the changed environment.⁸³ The amended IEP clarified the services Student would receive: 20 hours per week of specialized instruction outside general education, two hours per month of OT services and one hour per month of BSS, both outside general education, and 15 minutes per month OT consultation services, and a number of Other Classroom Aids and Services.⁸⁴

⁷⁵ *Id.* at 155-56

⁷⁶ *Id.* at 156.

⁷⁷ Testimony of Petitioner.

⁷⁸ P14:234

⁷⁹ *Id.* at 235.

⁸⁰ Testimony of Petitioner.

⁸¹ Testimony of Witness C. “The Behavior & Education Support program is designed to meet the individual needs of students with emotional/behavioral disabilities or who exhibit behaviors that significantly interfere with learning despite multiple interventions. Students in the BES program have IEPs providing for 20+ hours of specialized instruction outside of general education and current Functional Behavioral Assessments (FBAs) and Behavior Intervention Plans (BIPs)” *Opportunity Academies: Special Education Programming*: https://dcps.dc.gov/sites/default/files/dc/sites/dcps/page_content/attachments/Opportunity-Academies-and-Special-Education.pdf

⁸² Testimony of Witness C.

⁸³ R15:1 (92).

⁸⁴ *Id.* at 25 (116).

19. On January 14, 2025, School B developed a BIP. The target behaviors remained eloping, verbal aggression, and physical aggression.⁸⁵ The BIP was developed by Social Worker A, who reported that she had never observed elopement or physical aggression by Student. It was reported to her that in the BES classroom, with only two students in the room,

... [v]erbal aggression occurs and includes negative statements and comments aimed at the teacher, [Behavioral Technician A], and [Behavior Aide A]. The statements are often personal in nature (“This is why your husband divorced you,” “This is why your kids hate you”) and often the statements are sexual or sexually threatening in nature (“I’m going to tell another student to bang you,” “I’m going to have him twerk all up on you.”) When [Student] is assigned work that [s/he] perceives as too difficult or undesirable, despite a teacher’s calm demeanor and encouragement to keep trying, [Student] often still becomes dysregulated and resorts to verbal aggression... [Student] struggles with regular and persistent distraction; when the teacher turns her attention to the one other student present, s/he is not able to sit and wait for a few minutes and instead will get up and move around the room or interrupt with comments. Even when working one on one, he’ll get distracted every few seconds or minutes and will interrupt with something on [his/her] mind often unrelated to the content being discussed.

In the context of less structured social time (e.g. recess), [Student] struggles every day of the week to negotiate social situations and social conflicts (e.g. how to problem solve about an issue on the basketball court). [S/he] can become physically and verbally escalated at these times and has trouble responding to staff redirection to take a break and problem solve.

In the context of the larger [grade D] general education classroom, (Specials) [Student] struggles regularly with distracted behavior (talking out of turn, walking around the room, picking up items that do not belong to [him/her], yelling out, distracting other students). Triggers that can result in physical escalation, or verbal aggression, eloping include: - when [s/he] is provided a consequence - when [s/he] is asked to do work that [s/he] perceives to be too difficult (e.g. like having to complete math problems) - When [s/he] is capable of doing the assigned task but does not feel like doing the assigned task. - when peers report [his/her] behaviors to staff. - when directions are given to the large group, and [s/he] feels [she] cannot do the work AND when [s/he] is provided modified work and likely feels embarrassment/shame that [s/he] is being asked to do differentiated work. - when there is an activity outside of the regular structure and especially one that is less structured (e.g. creating an art project or participating in a class celebration.)⁸⁶

Physical aggression (including but not limited to throwing items, holding the door shut, bumping/hitting people, destroying teachers/peers personal property, threatening staff/peers with physical objects like screw drivers, staplers, plastic knives, scissors) occurred three times per day for 35 minutes, verbal aggression occurred four times per day for 60 minutes, and elopement

⁸⁵ P15:247

⁸⁶ *Id.* at 248.

occurred twice a day for twenty minutes.⁸⁷ The replacement behaviors were as follows: for physical aggression, “Student will use calm down space. Student will take a walk with a staff member. Have a check in with a preferred adult.” For verbal aggression, “Check in with a preferred adult. Taking a walk with a preferred adult. Deep breathing. Counting.” For eloping, “Safe eloping to a trusted adult in a safe space.”⁸⁸

20. On January 25, 2025, DCPS issued Student’s IEP Progress Report for the first reporting period of the school year, ending on November 4, 2024. In Mathematics. Student was reported to be Progressing on the first goal and had made No Progress on the second goal. The third goal was reportedly “Just Introduced,” but the Progress Report in June 2024 indicated that s/he was Progressing on that goal at School A. “[Student] is making progress comparing two numbers and identifying if the numbers are greater than, less than, or equal to each other. When prompted with questions such as “In which place should you first look to compare?” [Student] will often notice [her/his] own errors and self-correct... [Student] becomes frustrated with teacher support and will shut down. Target behaviors, such as eloping and pushing chairs, emerge when [Student] is frustrated with the word problems. S/he often refuses to try word problems, even with one-on-one support, including reading the word problem aloud and scaffolds for setting up the problem...[Student] is just beginning to work with the concept of multiplication by looking at groups of objects. [S/he] is able to solve single digit multiplication problems such as 2x3 by counting up while pointing to drawings or objects. [Student] is still learning how to count by 2s, 5s, and 10s consistently, and the concept of number doubles (7 + 7, 4 + 4) has been introduced.”⁸⁹

In Reading, Student was reported to be Progressing on the first two goals while making No Progress on the third. “[Student] is making progress reading regularly spelled one syllable words. [S/he continues to struggle with the short i and short e sounds which are adding to [her/his] errors. [S/he] is currently reading an average of 6 out of 10 words correct... [Student] is currently reading 11 nonsense words with the CVC pattern correctly in 40 seconds, using the Dibels assessment. [S/he] is showing progress in [her/his] accuracy in reading the words... [Student] shows [her/his] greatest frustrations in reading when there is a text involved. This is where [Student] exhibits negative self-talk (I’m so stupid, I can’t read, I get so confused). When listening to and reading an independent level text, all through the Wilson Reading Intervention program, [Student] is not able to correctly answer “who” or “what” questions or supporting textual details. With additional teacher scaffolding, for example the teacher will read the short sentence that has the answer to the question, [Student] will be able to answer the question about the text with additional encouragement and prompts. [Student] often exhibits target behaviors such as eloping, throwing classroom items and inappropriate language used towards the teachers during literary text work.”⁹⁰

In Written Expression, Student was reported to be Progressing on the first goal while the second goal was “Not Introduced.” However, in the June 2024 Progress Report, Student was reported to have been Progressing at School A. “When prompted to look specifically for punctuation and capitalization errors, [Student] will find the errors in a sentence. [Student] will not yet find the errors without teacher scaffolding. [Student] does not yet identify spelling errors

⁸⁷ *Id.* at 249.

⁸⁸ *Id.* at 250.

⁸⁹ R18:1-2 (167-68).

⁹⁰ *Id.* at 2-3 (168--69).

in a sentence... [Student] has been working on a Narrative Fiction writing piece and has not yet been introduced to the opinion writing prompt.”⁹¹ In Motor, both goals were reported to have been Just Introduced. In Behavior, the first goal was Just Introduced and Student had made No Progress on the second. “Although [Student] can identify [his/her] feelings, [s/he] struggles with expressing them in a safe way. [Student] is triggered very easily and often expresses [her/his] frustration and anger in unsafe and inappropriate ways...[Student] continues to struggle with de-escalation. [Student] becomes triggered emotionally and is often unable to regulate in a safe way in the classroom and other areas on school campus.”⁹²

21. On January 16, 2025, DCPS conducted an IEP Annual Review meeting.⁹³ The Special Consideration section reported that Student’s behavior impedes learning in the classroom:

[Student] has difficulty maintaining a safe body, and [s/he] has become physically and verbally aggressive with peers and staff. [S/he] frequently elopes. [Student] struggles daily to regulate [her/himself]; once [s/he] becomes dysregulated it takes an extended period to assist [her/him] in becoming calm. This is time that severely disrupts [Student’s] ability to access education, and it also affects [his/her] peer relationships negatively.⁹⁴

In Behavior, the PLOP reported that Behavior Technician A conducted an SDQ on December 12, 2024. Student’s scores were Very High for Overall Stress, Behavioral Difficulties, Hyperactivity and Concentration Difficulties, and Impact of Any Difficulties on the Child’s Life, Slightly Raised for Emotional Distress and Difficulties Getting Along with Other Children, and Low for Kind and Helpful Behavior. The Diagnostic Predictions were High Risk for Any Disorder and Behavior Disorder, Medium Risk for Hyperactivity or Concentration Disorder, and Low Risk for Emotional Disorder. Student was reported to struggle with impulsivity, becomes very dysregulated when triggered even by seemingly small things, and s/he often becomes verbally and physically aggressive and unsafe. According to Behavior Technician A,

[Student] exhibits at least one form of violence (verbal, physical) nearly every school day, and that this behavior can last from 15-45 minutes. [Behavior Technician A] shared that the verbal and physical violence that [Student] exhibits is very destructive. [S/he] may be physically destructive to the environment [s/he] is in. The damage [s/he] does to [his/her] image in front of [her/his] peers and to the relationships [s/he] has in the school community are also significantly damaged by [her/his] displays of violence. Because the BES classroom is the site of the majority of [Student’s] verbal and physical violence, the BES classroom staff are those most likely to experience such behavior. Recess (and other unstructured times like lunch) is another time when [Student] exhibits verbal and physical violence. When this happens during recess, [Student’s] peers are the people who experience this behavior with [her/him]. Due to [Student’s] physical and verbal aggression with peers, it has been deemed by [School B] administration, that [Student] is not

⁹¹ *Id.* at 3-4 (169-70).

⁹² *Id.* at 4 (170).

⁹³ R17:1 (128).

⁹⁴ *Id.* at 2 (129).

able to engage in recess with the [grade D] student body; alternative times for recess have been established for [Student] that include a member of the [School B] staff.⁹⁵

Teacher E, Student's special education teacher, opined that Student's physical and verbal aggression is designed to avoid completing academic work. The Behavior goals from the previous IEP were repeated.⁹⁶ In Mathematics, the PLOP reported that Student was performing on a grade E level, four grades below her/his grade level on the beginning of the year ("BOY") i-Ready assessment. Student can add a two-digit number and a one-digit number and find different number pairs with the same sum for sums to ten. S/he is able to subtract two-digit numbers without regrouping, and s/he is able to read, write and identify numbers in decimal notation in relation to money. S/he is still approaching [her/his] goal of solving addition and subtraction word problems up to 100. Student is able to solve single digit multiplication problems such as 2×3 by counting up while pointing to drawings or objects. Student is still learning how to count by 2s, 5s, and 10s consistently. The goals were: (a) given 25 or fewer objects arranged in a rectangular array (e.g., 4 rows, 3 columns), Student will write an equation to express the total as a sum of equal addends (e.g., $3 + 3 + 3 + 3 = 12$) by counting the objects (e.g., skip counting, counting all, counting on), for (4 out of 5) arrays, (b) given a two-step word problem involving any of the four operations, Student will calculate the solution by writing an equation to represent the scenario, and (c) given a hundred number written in base ten numerals (e.g., 500 ones, 5 hundreds, 50 tens), Student will convert the number to the identified base ten numeral (e.g., 500 ones = hundreds) by using a place-value strategy (e.g., drawings, base-ten blocks, place-value chart).⁹⁷

In Reading, the PLOP reported that Student performed at a grade C level on the BOY i-Ready assessment, three grades below grade level. On a mid-year Dibels assessment, s/he had increased her/his reading speed of grade E (four grades below grade level) words from 24 to 54 words per minute since October. The goals were: (a) given a written grade-level sentence containing one bolded unknown word and an exemplar, Student will write the meaning of each word and underline the context clue in the sentence that supports the meaning, for (8 out of 10) words, (b) after reading a grade-level literary story, Student will recount the story by writing the central message and two supporting details from the story, and (c) given a word list of twenty one-syllable words with vowel digraphs {e.g., read, soil, rain}, Student will read 16 out of 20 words aloud by accurately decoding the words.⁹⁸ In Written Expression, the PLOP reported that Student understands writing mechanics but does not consistently use correct capitalization and punctuation. S/he can transcribe a ten-word sentence after the sentence is read to her/him multiple times but with errors in writing mechanics and spelling. Student has been resistant to write a fictional narrative, even while using a human scribe and graphic organizers. The goals were: (a) given an informational writing prompt and a writing checklist, Student will write an informational text to address the prompt including an introduction sentence, two body paragraphs each with three supporting sentences with a detail, a fact or a definition, and a concluding sentence, and (b) given a spoken grade-level two-syllable word that follows a pattern {e.g., c-le, VCe, vowel teams, closed, open) and an example sentence containing the word, Student will spell the word correctly by

⁹⁵ *Id.* at 9-10 (136-37).

⁹⁶ *Id.* at 4-11 (131-38).

⁹⁷ *Id.* at 12-14 (139-41).

⁹⁸ *Id.* at 15-17 (142-44)

applying a two syllable spelling pattern.⁹⁹ In Motor, the PLOP reported that Student has made improvements with reading, but it can take him/her significant time to get started with his/her reading. S/he presents with avoidant behaviors when it comes to reading and requires varying levels of encouragement depending on the day. From teacher's report and OT observation, Student continues to require support for self-regulation during times of frustration and requires clear instructions of expectations, rewards, positive reinforcements, verbal reminders and movement and rest breaks to help with task completion and self-regulation. S/he also continues to elope. The goals were: (a) For increased visual perceptual skills, Student will utilize a strategy (i.e. writing out important details, using sticky notes, highlighting) to support with understanding important information within the text (who, what, where) in at least 3 opportunities with minimal verbal cues, (b) during OT push-in sessions, s/he will select and use a strategy or tool (i.e. taking a break, deep breathing) to support learning, before returning to educational activity using the visual menu and no more than moderate verbal prompts from an adult.¹⁰⁰

The IEP team prescribed 20 hours per week of specialized instruction outside general education and one hour each of OT services and BSS outside general education. In Other Classroom Aids and Services, the team provided that Student benefits from one-on-one support when s/he is outside of the self-contained classroom. "During transition to [her/his] special classes either the classroom aide or behavior tech supports [her/him], because transition periods are unstructured, and the school team has identified this is the area where [s/he] requires a lot of support."¹⁰¹ The team prescribed extended year services ("ESY") for the summer of 2025.¹⁰²

22. On February 5, 2025, Petitioner's counsel sent a letter to DCPS requesting "the entirety" of Student's educational records.¹⁰³ At the prehearing conference on July 8, 2025, Petitioner's counsel reported that DCPS has provided some received some Progress Reports and service trackers, but he had not yet determined if the request had been fully satisfied.¹⁰⁴

23. On April 4, 2025, DCPS issued an amended IEP reiterating that Student would receive ESY.¹⁰⁵

24. June 16, 2025, DCPS issued Student's IEP Progress Report for the final reporting period of the 2024-25 school year.¹⁰⁶ In Behavior, Student was reported to be Progressing on the first goal but had made No Progress on the second. "[Student] has made slight improvements in accurately identifying [her/his] feelings, and coping strategies when [s/he] is calm, however [s/he] is still challenged when [s/he] needs to access appropriate coping strategies in times of imagined stressful/ negative situations. [Student] struggles with keeping a safe body and being verbally aggressive with peers and staff... [Student] can recite [his/her] coping strategies when [s/he] is not in a triggering situation; however, when [s/he] is under stress or a negative situation, [s/he] is not able to put them into practice. [Student] continues to make unsafe choices and have an unsafe

⁹⁹ *Id.* at 18-19 (145-46).

¹⁰⁰ *Id.* at 20-22 (147-49).

¹⁰¹ *Id.* at 23 (150).

¹⁰² *Id.* at 28 (155).

¹⁰³ P26-438.

¹⁰⁴ P4:40.

¹⁰⁵ P16:268.

¹⁰⁶ R21:1 (179).

body. [Student] typically refuses to be supported by staff when [s/he] is escalated and often elopes from the classroom. [Student] uses language that is harmful and disrespectful to peers and staff.”¹⁰⁷ In Mathematics, Student was reported to have Mastered the first goal, made No Progress on the second, and was Progressing on the third. “[Student] has shown great progress in understanding the connection between repeated addition and multiplication. [S/he] can use a rectangular array to show multiplication problems. [S/he] uses the strategy of counting all when determining the total, often using tally marks to keep count, which sometimes has room for error when solving for the total... Math word problems continue to be an area of growth for [Student]. When given teacher support and cues, such as highlighting, underlining key words or drawing a picture, [Student] is unable to determine what operation to use to solve the problem... [Student] should continue to work on place value. [S/he] has made progress being able to count by tens and hundreds and [s/he] can often convert a number to the identified base ten numeral, but not consistently (e.g. 500 ones = 5 hundreds).”¹⁰⁸

In Reading, Student was reported to have made No Progress on the first goal, was Progressing on the second, and the third was Not Introduced. “[Student] has been less engaged in listening to text read aloud over this past quarter. If [s/he] doesn't find the text particularly interesting it is hard to keep [her/his] attention to the story, whether it is read aloud or read with support. [S/he] should continue to practice the skill of finding context clues to determine unknown words when working with written sentences... [Student] has continued to work on the Wilson Reading program over the past quarter, where [s/he] has practiced recounting stories with the central message and supporting details. While [Student] is making progress, [s/he] still struggles with comprehending what [s/he] is reading aloud or to [her/himself]... [Student] has not made as much progress in the Wilson Reading program as past quarters, so we did not get to the lessons with the vowel digraphs. This is something that I hope [Student] can work on during ESY this summer.”¹⁰⁹

In Written Expression, Student was reported to have made No Progress on the first goal but was Progressing on the second. “[Student] had minimal participation in the informational text writing lesson that connected to our Inventions Unit. We were glad that [s/he] was able to make a poster to show [her/his] invention, but [s/he] did not get to the writing piece that supported the invention... [Student] is mostly still reading CVC words, with some irregular digraphs introduced. [S/he] still makes errors with the vowels "i" and "e", which interferes with [his/her] progress moving forward.”¹¹⁰ In Motor, Student was reported to have made No Progress on either goal. “[Student] does not use these strategies when reading. Often [s/he] is able to read the Wilson reading program with the supports given to [him/her] by [her/him] by [her/his] teacher. Depending on the day, [Student's] behaviors can play a role on whether the reading is completed... [Student] can struggle with using strategies during times of emotional dysregulation. Depending on the sessions [Student] will participate, but other times [s/he] did present with struggles participating. Due to OT push-in being 60 minutes per month, this part of the progress report may not be an accurate representation of the use of regulation strategies in the classroom.”¹¹¹

¹⁰⁷ *Id.* at 1-2 (179-80).

¹⁰⁸ *Id.* at 2 (180).

¹⁰⁹ *Id.* at 2-3 (180-81).

¹¹⁰ *Id.* at 3-4 (181-82).

¹¹¹ *Id.* at 4 (182).

33. During the 2024-25 school year, Student was involved in 128 behavioral incidents including, but not limited to: 24 involved behaviors that disrupted or interfered with classroom teaching and learning, 17 documented patterns of persistent Tier 1 behaviors,¹¹² 14 communications with staff and peers that is not polite, courteous, or respectful, nine assaults/physical attacks on students or staff, eight off-task behaviors that demonstrate disengagement from classroom learning, four instances of engaging in reckless behavior that may cause harm to self or others, four instances of fighting where there is no injury and no weapon, four inappropriate or disruptive physical contacts between students, four verbal, written, or physical threats to persons or property (including intimidating postures), three instances of bullying, or using humiliating, intimidating language, or behavior including internet bullying, three instances of leaving the classroom without permission, three instances of lying to or giving misleading information to school staff, two instances of communicating slurs, two instances of directing profanity or obscene/offensive gestures toward peers; two instances of directing profanity or obscene/offensive gestures toward staff; two documented patterns of persistent Tier 3 behaviors;¹¹³ two instances of obscene, seriously offensive, or abusive language or gestures; two instances of refusal to comply with reasonable staff instructions, or classroom school rules; one instance of Tier 2 behaviors;¹¹⁴ one instance of fighting which created substantial risk of or results in minor injury; one instance of inciting others to violence or disruption, one incident of sexual harassment, and one instance of using an article that is not normally considered a weapon to intimidate or threaten another individual.¹¹⁵

34. During the 2024-25 school year, Student was entitled to ten hours of OT services. Student was provided 4.5 hours of services and was absent for two hours of scheduled services, a deficit of 2.5 hours.¹¹⁶ In Student's January 2025 Progress Report, it was reported that there was an OT "staffing gap."¹¹⁷ During October 2024, Student received 120 minutes of BSS. During November 2024, Student received 120 minutes of BSS. During December 2024, Student received 90 minutes of BSS, and student was absent for a 30-minute scheduled session. During January 2025, Student received 155 minutes of BSS, and Student was absent for 70 minutes of scheduled sessions. During February 2025, Student received 125 minutes of BSS, and Student was absent for 40 minutes of scheduled sessions. During March 2025, Student received 205 minutes of BSS, and Student was absent for 70 minutes of scheduled sessions. During April 2025, Student received 35

¹¹² Tier I behaviors are those behaviors that are insubordinate or cause minor disruptions to the academic environment but do not involve damage to school property or harm to self or others. Tier I behaviors result in classroom-level disciplinary responses that may be elevated to administrative response if they are not successfully abated by the teacher or the appropriate school-level committee. 5-B DCMR § 2502.1

¹¹³ Tier III behaviors are those behaviors not specifically enumerated in any other tier in this chapter that cause significant disruption to the academic environment or cause harm to self or others. In addition to lesser consequences, Tier III behaviors may result in either on-site or off-site suspension. 5-B DCMR § 2502.3.

¹¹⁴ Tier II behaviors are those behaviors not specifically enumerated in any other tier in this chapter that cause disruption to the academic environment, involve damage to school property, or may cause minor harm to self or others. Tier II behaviors result in school-based and administrative disciplinary responses. 5-B DCMR § 2502.2.

¹¹⁵ P21:342-57.

¹¹⁶ P23:362-72; P28:446; R33:8-10 (408-410)(Student was absent for a 30-minute session on January 23, 2025); *Id.* at 11-15 (411-15)(Student was absent for a 30-minute session on February 20, 2025); *Id.* at 16-19 (416-19)(Student received one hour of services in March 2025); *Id.* at 20-21 (420-21)(Student was absent for two scheduled 30-minute sessions in April 2025; R33:22-25 (422-25)(Student received one hour of services in May 2025).

¹¹⁷ P17:310.

minutes of BSS, and Student was absent for 35 minutes of scheduled sessions. During May and June 2025, the amount of direct BSS provided Student was not specified.¹¹⁸

35. Witness A was Petitioner's educational advocate and expert in special education. She attended Student's January 22, 2025 IEP meeting. Witness A opined that the IEP team should have placed Student in a BES classroom in January 2024 rather than an SLS due to her/his behavioral issues. She also opined that at the January 2025 IEP meeting, a dedicated aide should have been prescribed for Student because of the frequency and intensity of his/her behaviors. She noted that in an email on January 24, 2025, School B informed Petitioner that Student would have "a one-on-one aide when [s/he] is outside the BES classroom,"¹¹⁹ but this was rescinded later that day.¹²⁰ Witness A opined that the January 22, 2024 IEP was inappropriate because (a) it did not provide a dedicated aide, (b) it provided insufficient BSS (particularly to address her/his frustration), and (c) it did not provide additional disability classifications of emotional disturbance ("ED") and SLD. She opined that the January 16, 2025 IEP was inappropriate because it (a) it did not provide a dedicated aide, (b) provided insufficient BSS (c) it did not provide instruction at Student's functional level, and (d) there were no proactive procedures in the BIP.

Witness A completed the Compensatory Education Proposal in Petitioner's Exhibit P33. She opined that Student was harmed by not having been placed in a BES classroom and not having been provided with an appropriate BIP. "[S/he] lost a whole year by not having strategies to deal with [hiss/her] behavior. [S/he] would have been more successful in 2024-25 had s/he had these strategies introduced in 2023-24. Witness A proposed as compensatory education services: 200 hours of tutoring, 60 hours of counseling, 40 hours of OT services, and placement in a therapeutic setting.¹²¹ In response to my questions, Witness A could not explain why Student was entitled to tutoring, counseling services (the allegation of the failure to provide BSS was withdrawn), and placement in a therapeutic setting for the alleged denials of FAPE.¹²²

36. Witness B was Petitioner's expert witness in psychology and is an employee of Petitioner's law firm. Witness B developed and authenticated Petitioner's Exhibit 28, which documented the OT services DCPS failed to provide Student. Witness B opined that ED is an additional classification to which Student is entitled. When asked what difference an additional behavioral classification would make, Witness B replied, "Children with more disabilities get more services." She also opined that some of the goals in Student's 2025 IEP were unattainable. When asked what her/his Written Expressive goal should have been, she replied, "Write three sentences with sentence starters and a list of words to pull from." Witness B also opined that the Mathematics problem solving goal was unattainable. She opined further that Student required four hours of BSS and a dedicated aide. As for the 2024 IEP, Witness B opined that Student required four hours of BSS, a dedicated aide, s/he and should have been placed in a BES classroom instead of an SLS classroom. When asked why Student needed additional BSS while in a BES classroom, she replied, "to practice skills weekly with a behavioral specialist." When asked where Student would be academically but for the denials of FAPE, Witness B opined that Student would be performing at

¹¹⁸ P22:362-64.

¹¹⁹ P23:374.

¹²⁰ P24:427.

¹²¹ P33:493.

¹²² Testimony of Witness A.

a grade F level. Witness B contributed to the development of the Compensatory Education Proposal in Petitioner’s Exhibit P33. When asked why 200 hours of tutoring was appropriate, she replied that Student was unable to focus on academics due to her/his behavior, s/he prefers to work one-on-one, so s/he needs five hours of tutoring per week for 40 weeks. When asked why 60 hours of counseling were appropriate, she replied that Student has not received a sufficient amount of counseling. When asked why 40 hours of OT services were appropriate, she replied that Student did not receive all of his/her services. On cross-examination, Witness B conceded that she has never observed Student in class, had interacted with Student for less than two hours, was unaware of the student/teacher ratio in Student’s SLS class at School A, was unaware that Student was one of only one of two Students in his/her BES classroom at School B (she testified that there were 2-5 students in the class), and Student’s maladaptive behaviors did not decrease once s/he was assigned to a BES classroom.¹²³

37. Petitioner testified that Student began exhibiting behavioral challenges “at School D in grade C or grade F.”¹²⁴ She enrolled Student in School A for the 2022-23 and 2023-24 school years. School A staff called her “almost every day” about Student’s behavior: elopement every day, altercations with classmates, and throwing things. She did not believe the SLS class at School A was appropriate because “they didn’t have the tools to help [her/him] academically.” She decided to enroll him/her in public school in Georgia to get better services. However, Student was involved in “one or two” incidents there and was homesick, so she brought her/him back to the District and enrolled her/him at School B. Petitioner opined that Student required a dedicated aide because “[S/he] needs constant reminders and guidance throughout the day.” On cross-examination, Petitioner testified that Student’s SLS class at School A had five students and two professionals. She accepted the recommendation of the school staff that the SLS classroom was appropriate for Student: a small class size with a focus on learning. She never expressed the need for a dedicated aide at School A because she was unaware of what it was. She also never expressed a concern about Student’s disability classification. Petitioner conceded that Student’s behavior did not improve in the BES classroom at School B.¹²⁵

38. Witness C was the Assistant Principal and LEA Representative at School B. She described Student as very charismatic, funny, extremely vocal, able to sustain conversations with adults, and very athletic. School B placed Student in a BES classroom when Petitioner enrolled him/her after his/her return from Georgia in September 2024. Student’s IEP from School A was implemented to allow School B to collect data about Student; the January 2024 IEP was amended on September 13, 2024 to ensure that Student received transportation, for which all BES students qualified. Student’s i-Ready materials were sent to Petitioner and were also available to her on the Clever Portal online. Witness C testified that the Behavior goals on the January 2024 IEP were appropriate, but the reasons therefor were not elicited. She opined that no dedicated aide was needed at School B because the student to professional ratio in the classroom was 2:3 and because Student did not have pervasive needs such as adaptive deficits; s/he was capable of caring for his/her daily needs and could advocate for her/himself. The class included a teacher, a behavior technician, and a behavioral aide. On November 6, 2024, Witness C sent Petitioner’s attorney three

¹²³ Testimony of Witness B.

¹²⁴ Petitioner enrolled Student at School A for grade F. School D is a public charter school.

¹²⁵ Testimony of Petitioner.

IEPs, IEP Progress Reports, and Report Cards.¹²⁶ Progress Reports, Report Cards, and attendance records are available to parents online on the Aspen portal. Witness C testified that LEAs are not required to make-up related services if a student is absent, but they are required to make-up services when providers are unavailable for scheduled services. On cross-examination, Witness C conceded that Petitioner benefits from one-on-one support when s/he is outside the self-contained classroom, which is consistent with the Other Classroom Aids and Services in the January 2025 IEP and her/his BIP. She testified that Behavioral Aide A accompanies the two students to “specials” classes: Science, Social Studies, Art, Music, and Physical Education. Behavior Technician A was present during lunch. Witness C testified that she sent Petitioner’s Exhibit 22, Related Services Trackers, to Attorney A on June 18, 2025 and acknowledged that the response to him was not timely. On redirect examination, Witness C opined that Student did not need a dedicated aide in classroom with two students and three professionals. “[S/he’s] not going to respond well to that.”¹²⁷

39. Witness D was the Assistant Principal at School A. He also managed the school’s special education program when Student attended School A. He described his role with Student as a mentor. He testified that Petitioner had no concerns about the BIP developed at School A. Witness D conceded that the failure to have listed services on the services page of the January 2024 IEP was an error he could not explain. He opined that Student did not need a dedicated aide in the SLS classroom; s/he did not need one to access the curriculum, to assist with activities of daily living, and was not a flight risk. When asked why Student was placed in an SLS classroom instead of a BES classroom, Witness D stated that “before sending any student to behavior program, particularly a [race/gender], we wanted to exhaust all options first,” particularly the BIP that was developed in October 2023. Petitioner expressed no concerns about the SLS placement. The interaction with Petitioner was positive; it was contentious only when Student was charged with something. Witness D could not recall when, during the 2022-23 school year, Student was moved to an SLS classroom. That classroom had 7-8 students, a teacher, and a teacher’s assistant, but no behavior technician. On cross-examination, Witness D conceded that as of the time of the BIP review on January 22, 2024, elopements had not decreased, his/her aggression persisted, and Student had destroyed “calm-down” kits. He also conceded that as of January 2024, Student’s behavior caused her/him to miss learning time throughout the day, and Student exhibited impulsivity daily. By April 2024, Student was not showing progress tempering her/his aggression, was still physical with others and not accessing coping skills and continued to elope from the classroom when agitated. Thus, at a meeting on May 1, 2024, the IEP team determined that Student’s needs required placement in a BES classroom. “We had provided additional support, modified [his/her] BIP, but there was still eloping and aggression that we could not contain.” Petitioner agreed: “If [s/he] has to go, [s/he] has to go.” In response to my questions, Witness D testified that Petitioner agreed with the School A’s original decision to place Student in general education with academic and behavioral support. According to Witness D, Petitioner was grateful for any increased level of support. She also supported the move to the SLS classroom later in the school year and did not request additional support during the 2024-25 school year.¹²⁸

¹²⁶ Citing R23:1 (222).

¹²⁷ Testimony of Witness C.

¹²⁸ Testimony of Witness D.

40. Witness E was the School Psychologist at School B. She testified that she conducted the Psychological Evaluation in December 2024 because Petitioner requested an early triennial reevaluation and was concerned about dyslexia. After a discussion with Social Worker A, the two agreed that Student was socially maladjusted, leading Witness E to conclude that OHI was the appropriate classification. Multiple Disabilities (“MD”) was not an appropriate classification because “the classifications must be so interwoven that they cannot be distinguished. I felt [his/her] impulsivity, aggressiveness, inattention, and hyperactivity were more pronounced.” Witness E opined that the level of BSS was appropriate because Student gets the support s/he needs in a BES environment. On redirect examination, Witness E admitted to a reluctance to classify a young student ED: “Overall, this is a disability classification that can have negative ramifications. It’s not in the best interest of the student. That’s an intense label to put on an [X]-year-old. We try to set [him/her] up for success. [His/her] behaviors were goal-oriented: [s/he] could get out of doing non-preferred activities.” As for an SLD classification, Witness E testified that Student met the standard, but it was not his/her primary disability. Petitioner did not disagree with the OHI classification at the January 2025 IEP meeting, but she did disagree with the failure to prescribe a dedicated aide.¹²⁹

CONCLUSIONS OF LAW

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

Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.¹³⁰

The issues in this case include the alleged failure of DCPS to provide appropriate IEPs and placements. Under District of Columbia law, DCPS bears the burden of persuasion as to these issues. Petitioner bears the burden as to all other issues.¹³¹

¹²⁹ Testimony of Witness E.

¹³⁰ D.C. Code § 38-2571.03(6)(A)(i).

¹³¹ *Schaffer v. Weast*, 546 U.S. 49 (2005).

Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP and placement on January 22, 2024 for the 2023-24 school year. Specifically, Petitioner asserts that the IEP was inappropriate for failing to (a) provide a dedicated aide, (b) provide sufficient behavior support services (“BSS”), (c) include Emotional Disturbance (“ED”) and Specific Learning Disability (“SLD”) as additional disability classifications, and (d) provide support to address frustration associated with his/her challenges in completing grade level work. The placement was inappropriate because Student required a setting in a Behavior and Education Support (“BES”) classroom instead of a Specific Learning Support (“SLS”) classroom.

The Supreme Court’s first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act (“EHA”), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.¹³² The Court noted that the EHA did not require that states “maximize the potential of handicapped children ‘commensurate with the opportunity provided to other children.’”¹³³ Rather, the Court ruled that “Implicit in the congressional purpose of providing access to a ‘free appropriate public education’ is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child...¹³⁴ Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”¹³⁵

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.¹³⁶ The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”¹³⁷ The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities

¹³² 458 U.S. 176, 187 (1982).

¹³³ *Id.* at 189-90, 200

¹³⁴ *Id.* at 200.

¹³⁵ *Id.* at 203-04.

¹³⁶ *Andrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

¹³⁷ *Id.* at 997.

who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.¹³⁸

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

When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly... awaiting the time when they were old enough to drop out...” The IDEA demands more. The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.¹³⁹

Petitioner testified that Student began exhibiting behavioral problems at School D in grade C.¹⁴⁰ Petitioner did not disclose any records from School D. She enrolled Student in School A in the fall of 2022 for grade F but disclosed no academic or behavior records from School A for the 2022-23 school year. The first IEP disclosed by Petitioner, the first IEP at issue in this matter, was developed on January 22, 2024. However, it indicates that a prior IEP was issued by School A on January 31, 2023. From the Behavior PLOP in the January 2024 IEP, we know only that Student was moved from a general education classroom to a self-contained SLS classroom for 20 hours per week “partway through the 2022-23 school year.” I will address each of the alleged deficiencies in that IEP individually.

Failure to provide a dedicated aide

The Special Considerations section of the IEP reported that while Student's behavior impeded his/her learning and that of his/her classmates, it had improved since the beginning of the school year: “These behaviors can look like getting up, yelling, work refusal, walking around, etc. [His/her] explosive behaviors have decreased since the start of the school year...” Petitioner testified that the staff called her “almost every day” about Student eloping from the classroom, throwing things, or getting into altercations with classmates. However, no behavior records were disclosed to substantiate these allegations. Witness A, Petitioner's educational advocate, opined that a dedicated aide was necessary because of the frequency and intensity of Student's behavioral incidents. Witness B, Petitioner's psychological expert, opined that Student needed a dedicated aide but gave no reason for her opinion and conceded that she had never observed Student in a classroom and had interacted with him/her for less than two hours. Witness D, the Assistant Principal at School A, opined that Student did not need a dedicated aide in the SLS classroom to access the curriculum or to assist with activities of daily living, and s/he was not a flight risk. In my experience, dedicated aides are not assigned to prevent students from eloping or from committing acts of verbal or physical aggression. Rather, they are normally assigned to children with physical and/or cognitive delays in large general education environments to assist the children accessing the curriculum and navigating the school environment. Typically, the children need

¹³⁸ *Id.* at 1000-01 (citations omitted).

¹³⁹ 137 S.Ct. at 1000-01.

¹⁴⁰ Student actually attended School D for grades H and E during school years 2019-20 and 2020-21. P10:177.

assistance handling activities of daily living. I conclude that Petitioner has failed to make a *prima facie* case that Student required a dedicated aide as of January 2024.

Failure to provide sufficient BSS

While an apparent software glitch failed to populate the services on the services page of the IEP, a review of the related services trackers reveals that Student received four hours per month of BSS after the IEP was developed in January 2024, for the remainder of the 2023-24 school year, the maximum amount of any single related service DCPS prescribes on an IEP. I conclude that Petitioner has failed to make a *prima facie* case that DCPS failed to provide sufficient BSS on the January 2024 IEP.

Failure to include ED and SLD as additional disability classifications

Witness E was the School Psychologist at School B, conducted the December 2024 Psychological Evaluation, and was the mental health support contact for Student's BES class at School B. ED was not an appropriate classification for Student, because she and Social Worker A agreed that Student's behaviors were more accurately attributed to a social maladjustment rather than an emotional disturbance.¹⁴¹ Moreover, "the classifications must be so interwoven that they cannot be distinguished. I felt [his/her] impulsivity, aggressiveness, inattention, and hyperactivity were more pronounced." While she conceded that Student met the standard for an SLD classification, she did not believe assigning multiple disability classifications was appropriate because SLD but was not his/her primary disability. Thus, she opined that OHI was the appropriate disability classification for Student.

More importantly, although Witness B opined that "children with more disabilities get more services," services are based on a child's needs, not his/her primary disability classification. Here, Petitioner was not classified ED or with a learning disability, but the IEP included Areas of Concern and goals in Mathematics, Reading, Written Expression, and Behavior. To address the academic concerns, Student was prescribed twenty hours of specialized instruction outside general education. To address Student's behavioral issues, s/he was prescribed four hours per month of BSS, the maximum amount DCPS ever prescribes on an IEP (to limit the deprivation of academic instruction).

Failure to provide support to address frustration associated with her/his challenges in completing grade level work.

The assertion that the IEP did not address Student's frustration is groundless. First, the BIP developed on October 10, 2023 essentially characterizes Student's frustration as the reason for most of her/his classroom disruptions. "The overarching challenge has to do with poor self-regulation when faced with a limit, a disappointment, a relational slight, *or the expectation to engage in something perceived as difficult.*" The BIP prescribed a number of replacement behaviors to address Student's challenges: For elopement within the classroom, the use of a safe "escape"

¹⁴¹ See 34 C.F.R. § 300.8(c)(4)(ii) (The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.)

within the classroom, for elopements outside of the classroom, to determine an acceptable place for her/him to go that is established by the team and where s/he is not given consequences for "escaping" appropriately, for verbal aggression, to teach stop and think strategies, and for physical aggression, to use calm down spaces and co-regulate (learn to walk away from conflict). Moreover, the Behavior goals in the IEP were also designed to deescalate Student's frustration level: (a) In counseling sessions, Student will accurately identify feelings and appropriate coping strategies when presented with real or imagined situations, and (b) when triggered, and with the support of practice and pre-teaching of strategies, Student will be able to make use of classroom-based supports for de-escalation (e.g. use of a calm down spot, teacher support and redirection) rather than to elope from the classroom in 75% of triggering situations that occur.

The placement was inappropriate because Student required a setting in a BES classroom instead of an SLS classroom.

Student arrived at School A without an IEP. School A developed an IEP during the 2022-23 school year that left him/her in the general education environment. At some point during that school year, Student was transferred to an SLS classroom. The issue is whether, by January 2024, the record required Student's placement in a classroom designed primarily for students with behavioral issues rather than learning disabilities. As discussed above, the IEP team believed in January 2024 that Student's behaviors had improved since the beginning of the year and decided to maintain the primary focus on her/his learning disabilities. Moreover, Witness D, the Assistant Principal, testified that "before sending any student to a behavior program, particularly a [race/gender], we wanted to exhaust all options first," particularly implementation of the BIP that was developed in October 2023. Petitioner expressed no concerns about the SLS placement. I believe that placing Student in the SLS classroom at School A was a reasonable decision under the facts known to the IEP team at the time. However, by May 1, 2024, Student's behavior had deteriorated to the point that the team determined that Student's behavior required placement in a BES classroom and issued a PWN to that effect.

For all of these reasons, I conclude that DCPS has met its burden of proving that the IEP it developed on January 22, 2024 was reasonably calculated to enable Student to make progress consistent with her/his unique circumstances.

Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP and placement for the 2024-25 school year. After withdrawing from DCPS at the end of the year and enrolling in a public school in Georgia, Student re-enrolled in DCPS several weeks into the 2024-25 with an IEP developed by the Georgia school on August 14, 2024. DCPS developed an updated IEP on January 16, 2025 that it amended on April 4, 2025, but the IEP failed to (a) provide a dedicated aide, (b) provide schoolwork that is at her/his functional level, (c) provide a proactive procedure in the IEP or behavior intervention plan (“BIP”) to provide her/him the opportunity to communicate her/his frustration, (c) provide BSS goals to address self-esteem, and (d) a sufficient amount of BSS.

When Student enrolled in School B upon returning from his/her brief placement in a public school in Georgia, s/he was placed in a BES classroom as indicated in the May 21, 2025 PWN.

Failure to provide a dedicated aide

For all of the same reasons that I found a dedicated aide unnecessary on the January 2024 IEP, one was similarly unnecessary for the January 2025 IEP. Moreover, Student’s placement in a BES classroom makes the suggested need for a dedicated aide even more inappropriate. Dedicated aides are assigned to assist disabled students to access the curriculum. In Student’s BES classroom, s/he was one of only two students, and the staff included a teacher, a behavioral technician, and a behavioral aide. The student to staff ratio of 2:3 is the most restrictive I have seen in a DCPS classroom since I began in this role in 2003. There is simply no need for a dedicated aide when the staff outnumbers the students and when, as the record indicates, one of the staff members accompanies the two students to specials classes, lunch, and recess.

Failure to provide schoolwork that is at his/her functional level

In support of this claim, Witness B, Petitioner’s psychology expert, opined that some of the goals in Student’s 2025 IEP were unattainable. When asked what her/his Written Expressive goal should have been, she replied, “Write three sentences with sentence starters and a list of words to pull from.” She also opined that the Mathematics problem solving goal was unattainable. While Witness B was admitted as an expert in psychology, she is not licensed as a special educator in the District, and there is nothing in her resume indicating expertise in the curriculum for elementary school students in the District. The Mathematics goals on Student’s IEP were as follows:

(a) given 25 or fewer objects arranged in a rectangular array (e.g., 4 rows, 3 columns), Student will write an equation to express the total as a sum of equal addends (e.g., $3 + 3 + 3 + 3 = 12$) by counting the objects (e.g., skip counting, counting all, counting on), for (4 out of 5) arrays, (b) given a two-step word problem involving any of the four operations, Student will calculate the solution by writing an equation to represent the scenario, and (c) given a hundred number written in base ten numerals (e.g., 500 ones, 5 hundreds, 50 tens), Student will convert the number to the identified base ten numeral (e.g., 500 ones = __ hundreds) by using a place-value strategy (e.g., drawings, base-ten blocks, place-value chart).

The Written Expression goals were as follows:

(a) given an informational writing prompt and a writing checklist, Student will write an informational text to address the prompt including an introduction sentence, two body paragraphs each with three supporting sentences with a detail, a fact or a definition, and a concluding sentence, and (b) given a spoken grade-level two-syllable word that follows a pattern (e.g., c-le, VCe, vowel teams, closed, open) and an example sentence containing the word, Student will spell the word correctly by applying a two syllable spelling pattern.

Like Witness B, I am also not an expert on the grade level standards in the District. However, on their face, these goals do not appear to be clearly unattainable for a student in grade D, even one who is performing several grades below grade level. Additionally, there was no specific testimony as to any other of the Mathematics goals, no specific testimony about any of the Written Expression goals, and no testimony at all about the Reading, Motor, or Behavior goals. Because I am inclined to give deference to the special education experts on the school staff in this area, and because only one specific goal was alleged to be unattainable, I conclude that Petitioner has failed to make a *prima facie* case that the IEP is inappropriate because the goals are unattainable.

Failure to provide a proactive procedure in the IEP or behavior intervention plan (“BIP”) to provide her/him the opportunity to communicate her/his frustration

As was discussed for the October 2023 BIP, Student’s January 2025 BIP was also focused on behaviors triggered by his/her frustration:

When [Student] is assigned work that [s/he] perceives as too difficult or undesirable, despite a teacher’s calm demeanor and encouragement to keep trying, [Student] often still becomes dysregulated and resorts to verbal aggression... [Student] struggles with regular and persistent distraction; when the teacher turns her attention to the one other student present, s/he is not able to sit and wait for a few minutes and instead will get up and move around the room or interrupt with comments. Even when working one on one, he’ll get distracted every few seconds or minutes and will interrupt with something on [her/his] mind often unrelated to the content being discussed.

Like the 2023 BIP, the 2025 BIP provided replacement behaviors to address Student’s frustration. For physical aggression, “Student will use calm down space. Student will take a walk with a staff member. Have a check in with a preferred adult.” For verbal aggression, “Check in with a preferred adult. Taking a walk with a preferred adult. Deep breathing. Counting.” For eloping, “Safe eloping to a trusted adult in a safe space.” The behavior goals from the previous IEP, described in the previous Issue Presented, were repeated in the January 2025 IEP. I conclude that Petitioner has failed to make a *prima facie* case that the 2025 BIP and IEP did not provide Student an opportunity to communicate her/his frustration.

Failure to provide BSS goals to address self-esteem

Petitioner offered no persuasive testimony on this issue.

Failure to provide a sufficient amount of BSS.

Upon Student's placement in a BES classroom in School B, School B updated her/his IEP in September 2024 upon his/her return from Georgia. School B reduced her/his BSS from four hours per month to one hour per month. Nevertheless, as documented in paragraph 34 above, throughout the 2024-25 school year, Social Worker A regularly provided Student two or more hours of BSS each month.

The BES program is designed to support students with emotional/behavioral disabilities or who exhibit behaviors that significantly interfere with learning despite multiple interventions. Student's BES classroom had more staff members than students: one special education teacher, Behavior Technician A, and Behavioral Aide A. One of the behavioral specialists accompanied the two BES students to all "specials" classes (Social Studies, Science, Art, Music, and Health & Physical Education), lunch, and recess, where the classes were larger and there was interaction with non-disabled peers. Thus, Student was supported by a behavior specialist throughout each school day.

Petitioners' experts criticized the January 2024 IEP for its failure to place Student in a BES classroom. Once s/he was placed in that classroom, they maintained their contention that Student required more BSS. Witness A, Petitioner's educational advocate, opined that Student required more BSS on his/her January 2025 IEP but offered no reason why. Witness B, Petitioner's expert in psychology, opined that Student required four hours of BSS. When asked why Student needed additional BSS while in a BES classroom, she replied, "to practice skills weekly with a behavioral specialist."

DCPS failure to prescribe the maximum amount of BSS to students in BES does not constitute a denial of FAPE. Student was one of only two students in the class, with a teacher certified to manage students with her/his behavioral challenges and two behavioral specialists. Moreover, the service trackers reveal that Social Worker A did, in fact, provide Student BSS on a weekly basis throughout the 2024-25 school year except for February, as suggested by Witness B.¹⁴² Unfortunately, Student's behaviors did not abate when s/he was receiving four hours per month of BSS in a small SLS classroom environment during the latter half of the 2023-24 school year, and they did not abate despite immersion in a behaviorally supported environment throughout the day during the 2024-25 school year. However, I conclude that the behavioral supports provided in the BIP, IEP, and the BES classroom were reasonably calculated to enable Student to make progress.

¹⁴² See P22:362-64.

Whether DCPS denied Student a FAPE by failing to implement Student's August 14, 2024, January 16, 2025, and April 4, 2025 IEPs. Specifically, Petitioner asserts that DCPS did not provide all of the OT services to which Student was entitled under the IEPs.

An LEA is culpable for failing to implement a child's IEP if the services provided materially deviate from the services prescribed in the IEP.¹⁴³ A material deviation requires more than a minor discrepancy or a "de minimis failure to implement all elements of [the student's] IEP."¹⁴⁴ It is "...[t]he proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement."¹⁴⁵

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

If a student is regularly or chronically missing services, it is best practice for the service provider to collaborate with the parent on attendance support and service implementation. The occasional missed related service session may be unavoidable; however, the LEA must always consider the impact of the missed session on the student's progress and performance and ensure the continued provision of FAPE. If the IEP team determines that missed services constitutes a denial of FAPE, it should consider the need for compensatory services. LEAs are encouraged to develop and make available a related services policy that details internal procedures for missed services.¹⁴⁶

Here, as documented in paragraph 14 above, Student was not provided 7.67 of the ten hours to which s/he was entitled during the 2023-24 school year, a deprivation of 76.7%. And as documented in paragraph 34 above, during the 2024-25 school year, Student was not provided 2.5 of the ten hours to which s/he was entitled during the 2024-25 school year, a deprivation of 25.0%. I conclude that Petitioner has met her burden proving that DCPS denied Student a FAPE by failing to provide Student 9.92 hours of OT services during the 2023-24 and 2024-25 school years.

¹⁴³ *Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 144 (D.D.C. 2018); *Van Duyn ex rel. Van Duyn v. Baker School District 5J*, 502 F.3d 811, 822 (9th Cir. 2007).

¹⁴⁴ *Johnson v. District of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013), quoting *Catalan ex rel. E.C. v. District of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). See *J.B. ex rel. Belt v. District of Columbia, Report and Recommendation*, Case No. 17-cv-1298, 2018 WL 10399853 at 17 (D.D.C. May 8, 2018)(a deviation of less than 10% of the school day was deemed *de minimus*).

¹⁴⁵ *Turner v. District of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), citing *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).Fe

¹⁴⁶

https://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/OSSE%20Special%20Education%20Process%20Handbook%20%28Sept%202023%29.pdf at 23.

Whether DCPS denied Student a FAPE by failing to provide Petitioner full access to Student’s educational records that were requested on February 5, 2025. Petitioner has not received related services tracking reports or IEP Progress Reports for the 2024-25 school year.

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

- (a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to inspect and review all education records with respect to—
 - (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.
- (b) Parent participation in meetings.
 - (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—
 - (i) The identification, evaluation, and educational placement of the child; and
 - (ii) The provision of FAPE to the child.
 - (2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.¹⁴⁷

and

- (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request *without unnecessary delay and before any meeting regarding an IEP*, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.
- (b) The right to inspect and review education records under this section includes—
 - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
 - (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and the right to have a representative of the parent inspect and review the records.¹⁴⁸

Under the District’s regulations, a parents’ requests for a student’s records must be honored as soon as possible, but in no case more than forty-five days.¹⁴⁹

¹⁴⁷ 34 C.F.R. §300.501.

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

¹⁴⁹ 5-E DCMR § 2600.6.

Petitioner's counsel made a written request for "the entirety" of Student's educational records on February 5, 2025. At the prehearing conference on July 8, 2025, Petitioner's counsel reported that DCPS had provided some Progress Reports and service trackers, but he had not yet determined if the records request had been fully satisfied.

The failure to provide educational records to a parent is a procedural violation. A hearing officer's determination of whether a child was denied a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit.¹⁵⁰ In other words, an IDEA claim is viable only if procedural violations affected the child's substantive rights.¹⁵¹

As Petitioner's counsel requested Student's educational records on February 5, 2025, District regulations required compliance with the request no later than March 22, 2025. From Witness C's testimony, DCPS did not provide related services Service Trackers until June 18, 2025. Additionally, the emails in DCPS' disclosures purporting to respond to the records request did not list the attachments; thus, it was not apparent which specific records were sent as attachments on the dates of those emails. However, testimony also revealed that report cards, progress reports, and attendance records are available to parents online on DCPS' Aspen platform, and standardized test results are available online on the Clever Portal. Moreover, Petitioner's counsel did not address the records request in his closing argument, suggesting that he had access to all of the records he needed to prepare for this hearing. Therefore, while DCPS committed a procedural violation of the requirement to provide all records within forty-five days, its failure to do so did not impede Student's right to a FAPE, significantly impede Petitioner's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, or cause a deprivation of educational benefit. Therefore, I conclude that DCPS' procedural violation did not constitute a denial of FAPE.

RELIEF

For relief, Petitioner requests, *inter alia*, (1) an order requiring DCPS to add a dedicated aide and additional BSS to Student's IEP, (2) an order requiring DCPS to convene a multidisciplinary team ("MDT") meeting to discuss Student's behavioral supports, (3) compensatory education services and transportation, (4) an order requiring DCPS to pay compensatory education providers timely, and (5) attorney fees and costs.

Near the end of the hearing, I stated to the parties that in light of Student's consistently poor grades and below grade level results on standardized tests, it would be unlikely that I would find his/her IEPs appropriate. However, I have found that none of the deficiencies in the IEPs cited

¹⁵⁰ 34 C.F.R. 300.513(a).

¹⁵¹ *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015); *Brown v. District of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), quoting *N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

by Petitioner, individually or collectively, rendered the IEPs were inappropriate. Petitioner’s team did not allege that DCPS failed to provide a sufficient amount of specialized instruction to meet Student’s academic needs. Had they done so, I would have ruled in DCPS’ favor on that issue as well. Both IEPs provided specialized instruction in self-contained classrooms for all of Students’ core curriculum: Mathematics, Reading, and Written Expression, the areas in which s/he has failed to approach grade level performance. Student does well in his/her “specials” classes (Social Studies, Science, Art, Music, and Health and Physical Education),¹⁵² so restricting his/her interaction with non-disabled peers altogether would not appear to be indicated.

The January 2024 IEP was appropriate because it constituted a logical escalation of interventions implemented by School A once Student enrolled there: Tier 3 interventions in Math and Reading, then IEP support in the general education environment, then support in a self-contained SLS classroom. One could argue that his/her lack of academic progress under the 2024 IEP alone indicated that the 2025 IEP was inappropriate. However, *the issue is not whether Student made progress on the IEP, but whether the IEP was reasonably calculated to enable him/her to make progress.* The months of October 2024 to January 2025 did not provide a fair test of the BES classroom, which Petitioner’s team adamantly believed to be the solution to Student’s behavioral challenges. Therefore, it was reasonable to prescribe an IEP reassigning Student to a BES classroom again in January 2025. Both IEPs provided maximum support in the core subjects, and I believe that the self-contained BES classroom was the next logical escalation of interventions. Moreover, the only reason to find the January 2025 IEP inappropriate, in hindsight,¹⁵³ would be to order a more restrictive setting. But short of a residential setting, the BES setting at School B was as restrictive as the evidence warranted, considering Student’s considerably better performance in specials with non-disabled peers. No evidence was adduced that a therapeutic setting in a private day school or a residential setting would produce any better results than the extremely intimate setting Student was afforded in the BES classroom at School B.

I speculated during the hearing that a residential placement might be appropriate due to the fact that Student’s placement in the BES classroom had no apparent effect on her/his maladaptive behaviors. However, after a thorough review of the record, there is no documentation that Student has ever been suspended for any of his/her transgressions. Petitioner is not seeking a residential placement, offered no evidence of the need for a residential placement, and adduced no testimony about any particular residential facility that would be appropriate for Student. This is significant because the parent must give consent for special education services.¹⁵⁴ Despite the frequency of Student’s behaviors, it is not apparent that the behaviors require a residential placement to ensure Student’s safety or that of the staff or other students. Although Student was involved in 128 behavioral incidents during the 2024-25 school year, only a fraction involved potential harm to her/himself or others: nine assaults/physical attacks on students or staff, four instances of engaging in reckless behavior that may cause harm to self or others, four instances of fighting where there

¹⁵² See paragraph 13 above.

¹⁵³ “... “[n]either the statute nor reason countenance ‘Monday Morning Quarterbacking,’ so “events post-dating” a decision by the school are relevant only insofar as they ‘shed light on whether the’ decision ‘was objectively reasonable’ at the time it was made.” *H.S. v. District of Columbia*, Case No. 1:23-cv-2982-RCL, 2025 WL 1019300 at 8 (D.D.C. Apr. 4, 2025).

¹⁵⁴ 34 C.F.R. § 300.300(b)(4)(i). The maladaptive behaviors in this case mirror those in Case No. 2021-0026 (ODR Aug. 23, 2021) where I ordered a residential placement. In that case, however, the parents requested a residential placement and adduced evidence of the need for such a placement.

is no injury and no weapon, four inappropriate or disruptive physical contacts between students, four verbal, written, or physical threats to persons or property (including intimidating postures), three instances of bullying, or using humiliating, intimidating language, or behavior including internet bullying, two documented patterns of persistent Tier 3 behaviors; one instance of Tier 2 behaviors; one instance of fighting which created substantial risk of or results in minor injury; and one instance of inciting others to violence or disruption, one incident of sexual harassment, and one instance of using an article that is not normally considered a weapon to intimidate or threaten another individual. Therefore, while there is no objective evidence that Student has made meaningful academic progress over the last two years, the evidence does not support a finding that DCPS' IEPs or placements are responsible for the lack of progress. Instead, by a preponderance of the evidence, when they were drafted, both IEPs were reasonably calculated to enable Student to make academic progress consistent with his/her unique circumstances.

ORDER

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

ORDERED, that within fifteen business days of the issuance of this order, DCPS shall provide Petitioner authorization for ten (10) hours of independent OT services.

APPEAL RIGHTS

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


Terry Michael Banks
Hearing Officer

Date: September 2, 2025

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