

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, NE, 3rd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
September 24, 2025

PARENT, on behalf of STUDENT, ¹)	Date Issued: September 24, 2025
)	
Petitioner,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2025-0106
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Dates:
Respondent.)	September 16, 17 and 19, 2025
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner parent under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the parent seeks compensatory education and other relief from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied Student a free appropriate public education (FAPE) by, *inter alia*, not comprehensively evaluating the child and not offering appropriate IEP's and educational placements since the 2023-2024 school year.

Petitioner's Due Process Complaint, filed on June 24, 2025, named DCPS as Respondent. The undersigned hearing officer was appointed on June 25, 2025. The

¹ Personal identification information is provided in Appendix A.

parties met for a Resolution Session Meeting on July 10, 2025 and did not resolve the issues in dispute. On July 30, 2025, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, set the hearing date and address other matters. On August 29, 2025, I granted Petitioner's continuance motion to extend the final decision due date to October 3, 2025 to accommodate Petitioner's attorney's availability for the due process hearing.

With the parent's consent, the due process hearing was held online and recorded by the hearing officer using the Microsoft Teams videoconference platform. The hearing, which was open to the public, was convened before the undersigned impartial hearing officer on September 16, 17 and 19, 2025. MOTHER appeared online for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL. Petitioner's Counsel and DCPS' Counsel made opening statements.

Petitioner testified and called EDUCATIONAL ADVOCATE as an additional witness. DCPS called as witnesses SCHOOL PSYCHOLOGIST, PHYSICAL THERAPIST, SPECIAL PROGRAMS MANAGER, EARLY STAGES COORDINATOR, DCPS OT, AT SPECIALIST and LEA Representative. Petitioner's Exhibits P-1 through P-19, p-24, P-25, P-27 through P-33, P-36, and P-41 through P-43 were admitted into evidence, including Exhibits P-9, P-27 through P-32, P-41 and P-42 admitted over DCPS' objections. I sustained DCPS' objections to Exhibit P-26. Exhibits P-20 through P-23, P-34, P-35 and P-37 through P-40 were not offered or withdrawn. DCPS' Exhibits R-1

through R-18 were admitted without objection.

At the conclusion of Petitioner's case-in-chief on September 16, 2025, DCPS' Counsel made an oral motion for a directed finding against the Petitioner, which I denied. On September 19, 2025, after the close of all of the evidence, Petitioner's Counsel and DCPS' Counsel made oral closing arguments. There was no request to file written closings.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and 5A DCMR § 3049.1.

ISSUES AND RELIEF SOUGHT

The issues raised by Petitioner against DCPS are as follows:

A. Whether DCPS denied Student a FAPE by failing to timely and comprehensively evaluate the child by failing to conduct/fund and review a Functional Behavior Assessment (FBA) and an Assistive Technology (AT) Evaluation from July 2023, to present;

B. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP, placement and/or location of services (LOS) during the 2023-2024 school year to the present, in that the August 4, 2023 and April 21, 2025 IEPs were not appropriate because the IEPs 1) were not based on comprehensive evaluation data (No AT or FBA), 2) did not provide sufficient behavior interventions for the student (No Behavior Intervention Plan/Behavioral Support Services), 3) did not provide Physical Therapy services, 4) failed to update the student's annual IEP during the 2024-2025 school year, 5) did not provide appropriate classroom accommodations and/or special considerations, 6) failed to provide the student transportation services under the appropriate category of "medically fragile student" and 7) failed to provide appropriate placements/locations of services;

C. Whether DCPS denied the student a FAPE by failing to implement the student's August 4, 2023, IEP during the 2023-2024 and 2024-2025 school years, because the August 4, 2023 IEP was not updated annually as required

until April 21, 2025 and in the interim Student did not attend school.

For relief, Petitioner seeks a compensatory education award for Student and requests that the hearing officer order DCPS to timely conduct and/or fund and review a Functional Behavior Assessment (FBA) and an Assistive Technology (AT) evaluation; to develop an appropriate behavior intervention plan (BIP) for the child; to convene the Multidisciplinary (MDT)/IEP team to review and revise Student's IEP as appropriate, based upon the updated data from the aforementioned evaluations; to reconvene the MDT/IEP team to review and revise the IEP to include how DCPS intends to meet the child's medical concerns and to consider the addition of a dedicated nurse to his/her programming; to provide Student with an appropriate alternate placement and/or location of services with parent participation, and/or fund placement in a nonpublic school that will be able to address the child's medical needs.

FINDINGS OF FACT

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE child, resides with Mother in the District of Columbia.

Testimony of Mother.

2. Student is eligible for special education as a child with an Other Health Impairment disability due to chronic lung disease. Exhibit R-11.

3. Student was delivered at 26 weeks. Student's health concerns include aerophagia, chronic constipation, chronic lung disease of prematurity, chronic

respiratory failure, feeding difficulty, functional incontinence, G-tube dependence, global developmental delay, oral aversion, S/P ligation division of ductus arteriosus, subglottic stenosis and tracheotomy dependence. Exhibit R-16.

4. Mother has never enrolled Student in a DCPS school. Testimony of Mother. Prior to June 2023, Student received Strong Start early intervention services/therapy. The services were discontinued due to the child's progress. Exhibit R-5.

5. On or about July 2023, Student was initially referred to DCPS Early Stages diagnostic center by Mother due to concerns regarding the child's developmental delay and disability when compared to his/her same age peers, as well as speech and motor skills. Early Stages conducted an Educational Assessment, an Occupational Therapy (OT) assessment, a physical therapy (PT) assessment, a Speech-Language assessment and a psychological assessment. Exhibits R-5 through R-9. On August 4, 2023, the Early Stages team determined that Student was eligible for specialized special education services under the DCPS disability category Other Health Impairment due to chronic lung disease. The eligibility team determined that Student's disability adversely affected his/her educational performance in the areas of Adaptive Daily Living, Communication, Cognitive and Fine and Gross Motor Skills. In the Motor Skills/Physical Development section of the Eligibility Report, it was reported that Student had "complex medical needs (tracheotomy, supplemental oxygen, G-tube) requiring specialized support in a school setting." Exhibit R-11.

6. Also, on August 4, 2023, the Early Stages IEP team, with Mother's participation, developed Student's initial IEP. The August 4, 2023 IEP identified Adaptive/Daily Living Skills, Cognitive, Health/Physical and Motor Skills/Physical Development as areas of concern for Student. The IEP provided for the child to receive full-time (27.5 hours per week) of special education outside the general education setting, as well as Speech-Language Pathology and OT related services and PT consultation services. The IEP team determined that Student required a dedicated aide. For Assistive Technology (AT), the IEP reported that initial assistive devices or systems may include visual schedules and photograph or picture aids. Exhibit R-13.

7. On August 21, 2023, DCPS sent the parent a location of services notice and a DCPS enrollment packet for Student. The location was CITY SCHOOL 1 in the Early Learning Support (ELS) classroom. Mother replied back by email on September 7, 2023 that she was not enrolling Student in DCPS that school year. Mother told LEA Representative that she was not enrolling Student due to the child's medical setbacks. Exhibit R-2, Testimony of LEA Representative.

8. Student was hospitalized or in a rehabilitation center a whole lot between August 4, 2023 and August 4, 2024. Mother estimated in her testimony that the child was in a hospital setting for 85% of the time during that year. Testimony of Mother.

9. LEA Representative testified that Mother next reached out to Early Stages in April 2025 regarding services for Student. Mother testified that she stayed in contact with the IEP team during the 2024-2025 school year. Testimony of LEA

Representative, Testimony of Mother. The DCPS special education Contact Logs for Student do not reflect any communications between the parent and DCPS after September 7, 2023 until April 8, 2025. Exhibit R-2. There was no documentation introduced in evidence confirming that Mother contacted DCPS about Student's IEP or enrollment after September 2023 until April 2025. I find that Petitioner did not establish that she or her representatives contacted DCPS regarding an IEP or FAPE for Student between September 7, 2023 and April 2025.

10. In April 2025, the parent or her attorney reached out to DCPS regarding enrolling Student in DCPS schools. An IEP meeting was held by Early Stages on April 21, 2025. Mother and her attorney, ATTORNEY 1, attended. For Special Education and Related Services, the April 21, 2025 IEP provided for Student to receive 25 hours per week of Specialized Instruction outside general education, 4 hours per month of OT services, 2 hours per month of PT services and 4 hours per month of Speech-Language Pathology. Exhibit P-11. Contents for the updated IEP were discussed at the meeting and the parent agreed with the proposed plan. Attorney 1 and Mother stated that they would like for Student to be in a self-contained classroom: medical due to his/her high nursing needs. Early Stages informed the team that medical paperwork and a nursing plan were required in order for Student to enroll in school and that requests could be made once Early Stages received the proper medical paperwork. Exhibit R-14. The family agreed with the program that was offered. Testimony of LEA Representative.

11. On May 1, 2025, DCPS issued a Location of Services notice to the parent informing her that the Medical and Education Support (MES) program at CITY SCHOOL 2 had been chosen to implement Student's IEP and that the parent needed to enroll her child by May 15, 2025. Exhibit P-16. Mother went to City School 2. City School 2 informed Mother and later informed LEA Representative that the MES classroom might not be appropriate for Student because the child was relatively high functioning cognitively. Testimony of LEA Representative.

12. DCPS convened another IEP meeting for Student on May 14, 2025. The Early Stages IEP team decided to place Student again in an ELS program classroom in light of Student's health needs and cognitive functioning. Mother stated that she understood that the MES classroom was a lower-functioning setting and the proposed self-contained ELS classroom was a higher-functioning setting that may be more beneficial for her child. Mother stated she was definitely open to the change, as long as Student received medical support, as she would like her child to make steady progress with his/her overall development. Student's IEP team agreed with the classroom program change from MES to ELS. Exhibit R-14. The parent did not enroll Student in DCPS at that time, because it was near the end of the school year and she wanted to wait to enroll her child for the 2025-2026 school year. Testimony of LEA Representative, Exhibit P-29.

13. At both the 2023 and 2025 IEP team meetings for Student, the IEP teams did not make a decision on whether the child needed nursing services at school, and

nursing services are not provided for on either the August 4, 2023 IEP or the August 21, 2025 IEP. Testimony of LEA Representative. At the May 14, 2025 meeting, Mother was told about possible nursing services options within DCPS for Student, namely, Option 1 – Dedicated Nurse and Option 2 – Needs met by the School Nurse. Exhibit R-14. The parent would not know what nursing services would be available for Student until she enrolled her child in the DCPS school. Testimony of LEA Representative.

14. On August 22, 2025, DCPS issued a Location of Services letter for Student for the ELS classroom at City School 1. Testimony of LEA Representative, Exhibit R-18.

15. On September 4, 2025, Petitioner’s Counsel wrote the LEA representative at City School 1, by email. She wrote that Student required extensive medical care and she attached a medical letter outlining such. Petitioner’s Counsel requested an “LOS meeting to address multiple concerns that the parent has.” The school LEA representative acknowledged counsel’s email and stated she would provide a meeting option. As of the hearing date, the requested meeting had not been scheduled. Exhibit P-36, Testimony of Educational Advocate. The parent has not yet enrolled Student at City School 1 because she is not sure it is an appropriate school for her child. Testimony of Mother.

16. DCPS agrees that because of Student’s medical issues – specifically because he/she has a tracheotomy tube, Student requires dedicated 1:1 nursing services for the school day. DCPS is able to provide that service at City School 1 “on Day 1” when Student enrolls at the school. Testimony of Special Program Manager.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this hearing officer's own legal research, my Conclusions of Law are as follows:

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the parent in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the child's IEP 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. *See* D.C. Code § 38-2571.03(6).

ANALYSIS

In this proceeding, the parent seeks compensatory education for Student and other relief from DCPS on the grounds that DCPS allegedly denied her child a FAPE by not conducting a Functional Behavior Assessment (FBA) or an Assistive Technology (AT) evaluation of Student and failing to provide appropriate IEPs for Student beginning with the initial August 2023 IEP. For the reasons explained below, except for

DCPS' failure to provide for nursing services in Student's IEPs, I find in favor of the school district.

1. Did DCPS deny Student a FAPE by failing to timely and comprehensively evaluate the child by failing to conduct/fund and review a Functional Behavior Assessment and an Assistive Technology Evaluation from July 2023 to the present?

The parent's first claim is that DCPS failed to comprehensively evaluate Student for special education, beginning in summer 2023, because DCPS has not conducted a Functional Behavior Assessment (FBA) or an Assistive Technology (AT) evaluation. DCPS responds that neither of these assessments was required for Student, who has not yet started school. I agree with DCPS.

Regarding special education evaluations, the U.S. District Court for the District of Columbia pronounced in *H.R. v. District of Columbia*, No. 21-CV-01856-TJK-RMM, 2024 WL 1344444 (D.D.C. Mar. 29, 2024), *report and recommendation adopted*, No. CV 21-1856 (TJK), 2024 WL 3580663 (D.D.C. July 30, 2024):

A "local education" or "State" agency—in this case, District of Columbia Public Schools ("DCPS")—performs an "initial evaluation" to determine if a child has a qualifying disability. [12 U.S.C. § 1414(a)(1)]. In conducting the evaluation, DCPS must use "a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information," and the child must be evaluated "in all areas of suspected disability." *Id.* § 1414(b). . . . "This initial evaluation, and any subsequent re-evaluation, forms the basis for identifying the child's needs and the requirements of the child's IEP to meet those needs and support her educational development." *Herrion v. District of Columbia*, No. 18-cv-02827, 2019 WL 5086554, at *1 (D.D.C. Oct. 10, 2019).

H.R., 2024 WL 1344444 at *2. Decisions regarding the areas to be assessed are determined by the suspected needs of the child. U.S. Department of Education,

Assistance to States for the Education of Children with Disabilities, 71 Fed. Reg. 46540, 46643 (August 14, 2006). The decisions of the student’s educators as to what areas to assess are entitled to some deference. *See R.B., ex rel. F.B. v. Napa Valley Unified School Dist.*, 496 F.3d 932, 937 (9th Cir.2007) (Fact-intensive nature of a special education eligibility determination coupled with considerations of judicial economy render more deferential approach appropriate.) *Cf. T.T. v. District of Columbia*, 2007 WL 2111032, 9 (D.D.C. 2007) (DCPS personnel had special education expertise requiring deference.)

“FBA” refers to a systematic set of strategies that are used to determine the underlying function or purpose of a [concerning] behavior so that an effective behavior management plan can be developed. *See Banks v. St. James Par. Sch. Bd.*, No. 2:65-CV-16173, 2017 WL 2554472 (E.D.La. Jan. 30, 2017). Petitioner’s expert, Educational Advocate, opined that an FBA of Student should have been conducted beginning with the child’s summer 2023 initial evaluation because, during the July 2023 speech and language evaluation, the child was reported to stand on a chair and to throw blocks. DCPS’ expert, LEA Representative, opined, to the contrary that there were not behavior concerns for Student and that standing on a chair or throwing blocks was not a behavior concern for a child of Student’s preschool age. In her testimony, Mother did not report any behavior issues for her child. Educational Advocate has never met or assessed the child and I found her opinion as to the need for an FBA unpersuasive. I conclude that Petitioner did not establish that Student had behavior concerns which would have

warranted conducting an FBA before the child started school. Moreover, as DCPS' counsel noted in closing argument, U.S. Magistrate Judge Zia Faruqui held in a 2024 decision that the IDEA does not require the IEP team to conduct an FBA to meet its initial evaluation obligations. *See Harris v. District of Columbia*, No. 24-CV-1929-CRC-ZMF, 2025 WL 2167248, at *7 (D.D.C. July 31, 2025) (citing 20 U.S.C. § 1414(a)(2)(A)).

Educational Advocate also opined that Student's evaluation should have included an Assistive Technology (AT) assessment. The August 4, 2023 initial IEP stated that "Initial assistive devices or systems may include visual schedules and photographs or picture aids." The April 21, 2025 IEP stated that given delays in Student's communication development, in addition to the tracheotomy, the IEP team may consider the use of technology devices and services.

DCPS' expert, AT Specialist, opined that Student did not need an AT assessment before enrolling in school, but that once Student enrolled in school, the IEP team could then collect data on Student's performance, get an AT consult if needed and try out AT equipment for the child. AT Specialist explained that the best practice is to first collect data on a child in the educational environment and then determine if there is a need for an AT assessment. I found AT Specialist's opinion more persuasive. Not only is she a specialist on DCPS' AT team, but she teaches a university level course on technology for the special education population. For her part, Educational Advocate did not qualify as an AT expert. I conclude that Petitioner did not meet her burden of persuasion that the

suspected needs of Student warranted conducting an FBA or an AT assessment, at least before the child started attending school.

2. Did DCPS deny the Student a FAPE by failing to provide an appropriate IEP, placement and/or location of services during the 2023-2024 school year to the present, in that the August 4, 2023 and April 21, 2025 IEPs were not appropriate because the IEPs 1) were not based on comprehensive evaluation data (No AT or FBA), 2) did not provide sufficient behavior interventions for the student (No Behavior Intervention Plan/Behavior Support Services), 3) did not provide Physical Therapy services, 4) failed to update Student's annual IEP during the 2024-2025 school year, 5) did not provide appropriate classroom accommodations and/or special considerations, 6) failed to provide transportation services under the appropriate category of "medically fragile student" and 7) failed to provide an appropriate placements/locations of services?

3. Did DCPS deny Student a FAPE by failing to implement the child's August 4, 2023 IEP during the 2023-2024 and 2024-2025 school years, because the August 4, 2023 IEP was not updated annually as required until April 21, 2025 and, in the interim, Student did not attend school.

Petitioner contends that DCPS' proposed April 4, 2023 and April 21, 2025 IEPs for Student were inappropriate for multiple reasons, which I will consider in turn. In *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 (D.D.C. 2018), U.S. District Judge Rudolph Contreras explained how a court or a hearing officer must assess an IEP:

In reviewing a challenge under the IDEA, courts conduct a two-part inquiry: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (footnotes omitted).

Middleton at 128.

With regard to procedural compliance, Petitioner's complaint that DCPS did not update Student's initial IEP for the 2024-2025 school year (Issue 3) is mischaracterized as claim for failure to implement the August 4, 2023 IEP. It is actually a procedural compliance claim. *See, e.g., Eley v. District of Columbia*, No. CIV.A. 11-309 BAH, 2012 WL 3656471, at *3 (D.D.C. Aug. 24, 2012) (Hearing officer allows that failing to review and update the IEP at least annually did constitute a procedural violation of the IDEA.) Here though, there was no procedural violation. On September 7, 2023, following development of Student's initial IEP on August 4, 2023, the parent gave written notice to DCPS that she was not enrolling Student in DCPS that school year due to the child's medical setbacks. This was a lawful choice, because under District of Columbia law, children are not required to attend school until the school year in which the child is – or will become – age five by September 30 of the school year. *See* DC Code § 38-202(a). In fall 2023, the child had not reached the mandatory enrollment age and the parent was not required to place Student in school for the 2023-2024 school year.

I find that the parent's decision in September 2023 not to enroll Student in DCPS was tantamount to withdrawing her consent for the provision of special education and related services to her child proposed in the August 4, 2023 IEP. When a parent revokes consent for the continued provision of special education and related services, the local education agency is not required to convene an IEP team meeting or develop, review or revise the child's IEP. *See* 34 C.F.R. § 300.300(b). *Cf., e.g., Tracy v. Beaufort Cnty. Bd of Ed.*, 335 F. Supp. 2d 675, 691 (D.S.C. 2004) (“The Tracys unilaterally

withdrew [their child] from the School District in June of 1999, and they did not seek any review of the October 1998 IEP. Thus, the School District was under no obligation to review or modify [the child's] IEP for the 1999–2000 school year.”)

In this case, the parent decided, unilaterally, not to enroll Student in DCPS for the 2023-2024 school year and so informed DCPS in writing. There was no probative evidence at the hearing that her decision was based on any disagreement with the August 4, 2023 DCPS IEP. I conclude, therefore, that DCPS was not required to convene an IEP meeting to review the August 4, 2023 IEP before the parent reached out to Early Stages again in April 2025 to request special education for her child.

Turning to the second prong of the *Rowley* inquiry, were DCPS' August 4, 2023 and April 21, 2025 IEPs appropriate for Student. In *A.D. v. Dist. of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570, (D.D.C. Mar. 8, 2022), U.S. District Judge Beryl Howell explained the IDEA's IEP requirement:

A “free and appropriate public education,” or “FAPE,” is delivered by local education authorities through a uniquely tailored “‘individualized education program,’ “ or “IEP.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 993-994 (2017); *see also* 20 U.S.C. §§ 1401(9)(D), 1412(a)(1). To be IDEA-compliant, an IEP must reflect “careful consideration of the child's individual circumstances” and be “reasonably calculated to enable the child to receive educational benefits,” *Andrew F.*, 137 S. Ct. at 994, 996 (cleaned up), “even as it stops short of requiring public schools to provide the best possible education for the individual child,” *Z.B. v. District of Columbia*, 888 F.3d 515, 519 (D.C. Cir. 2018). . . . An IEP failing to satisfy these statutory directives may be remedied through an IDEA claim to the extent the IEP “denies the child an appropriate education.” *Z.B.*, 888 F.3d at 519.

A.D., 2022 WL 683570 at *1. “[A]n IEP's adequacy thus ‘turns on the unique

circumstances of the child for whom it was created,’ and a reviewing court should defer to school authorities when they ‘offer a cogent and responsive explanation’ showing that an IEP ‘is reasonably calculated to enable the child to make progress appropriate in light of [her] circumstances.’” *A.D.* at *7, quoting *Andrew F.*, *supra*, 137 S. Ct. at 1001-02.

After the IEP is developed, the school district must provide the child with an appropriate educational placement that comports with the IEP. *See* 34 C.F.R. § 300.116(b)(2); *Hinson ex rel. N.H. v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 99 (D.D.C. 2008).

“reasonably calculated to enable [Student] to make progress appropriate in light of the child’s circumstances”? *See Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017).

Through the testimony of her expert witness, Educational Advocate, Petitioner made a *prima facie* showing that the 2023 and 2025 IEPs for Student were inadequate. Therefore the burden of persuasion as to the IEPs’ appropriateness falls on DCPS.

Comprehensiveness of evaluation data.

Petitioner alleges that the 2023 and 2025 IEPs were inadequate because Early Stages’ evaluations of the child did not include FBA or AT assessments. I have addressed Petitioner’s inadequate evaluation claim in Issue 1 above and determined that the parent did not meet her burden of persuasion that DCPS’ initial evaluation of her child was not sufficiently comprehensive. I likewise find that DCPS has established that Early Stages’ not conducting AT or FBA assessments in its evaluations of the child did not make the IEPs inappropriate.

Need for Behavior Intervention Plan or Behavioral Support Services.

Educational Advocate opined that Student's 2023 and 2025 IEPs should have provided a Behavior Intervention Plan (BIP) or Behavior Support Services because the Early Stages Speech Language Pathologist reported that during her June 2023 observation of Student, the child attempted to stand up on a chair and also threw blocks. This is a slender reed on which to base a need for IEP behavior support services. The Speech-Language Pathologist also reported that the child accepted redirection from adults to sit and to stop throwing things and that in general, Student did not exhibit aggressive or self-injurious behaviors. In her testimony, Mother did not suggest that Student had behavior challenges that required supportive services to assist him/her to benefit from special education. *See* 34 C.F.R. § 300.34(a) (Definition of "Related Services"). DCPS' expert, School Psychologist, testified that for the August 4, 2023 IEP, based upon the data, he did not determine that Student's behavior was an area of need. DCPS' expert, LEA Representative likewise opined that there were not behavior concerns for Student. I note that for her part, Educational Advocate never assessed Student or even met the child. Deferring to the expertise of DCPS' educators, I conclude that DCPS met its burden of persuasion that Student did not require a BIP or Behavioral Support Services in order to make appropriate IEP progress in school.

Physical Therapy Services

DCPS' expert, Physical Therapist, testified that at the initial August 4 2023 IEP meeting, she recommended only consultation services for Student for safety awareness

and that Student should practice gross motor skills by participating in activities such as swimming and soccer. She did not recommend direct physical therapy (PT) services at the time. At the April 21, 2025 IEP meeting, based on updated information, she recommended direct PT services and the new IEP provided for Student to receive 2 hours per month of PT services. Petitioner presented no competent evidence that the provisions for consultation PT services in the 2023 IEP and for direct PT services in the 2025 IEP were inappropriate. I conclude that DCPS met its burden of persuasion that the PT services offered Student in the respective IEPs were appropriate.

IEP Update 2024-2025 School Year

DCPS did not convene Student's IEP team to revise his/her August 4, 2023 IEP for the 2024-2025 school year. As explained above in this decision, I concluded that because the parent notified DCPS in writing that she would not enroll Student in school for the 2023-2024 school year, DCPS was not required to convene an IEP meeting to review the 2023 IEP before the parent reached out to Early Stages again in April 2025.

Classroom Accommodations and/or Special Considerations

DCPS expert, LEA Representative, opined in her testimony that both the August 2023 and April 2024 IEPs were appropriate for Student. There was no evidence that there was disagreement at either meeting about the appropriateness of the classroom accommodations or special considerations provisions in either IEP. While Petitioner's expert, Educational Advocate, testified that both IEPs should have provided for Student to have a dedicated nurse, she did not otherwise opine about the alleged

inappropriateness of the classroom accommodations or special considerations sections of the respective IEPs. I find that DCPS met its burden of persuasion that the classroom accommodations and special considerations sections of both IEPs were appropriate.

Nursing Services

Educational Advocate opined in her testimony that both DCPS IEPs were inadequate because they did not provide for a dedicated nurse as an IEP accommodation for Student. However, DCPS contends that the failure to provide a school nurse for Student in his/her IEPs should not be considered, because the claim was not set out as an issue for decision in the July 30 2025 prehearing order. I disagree. Even though Petitioner did not set out her dedicated nurse claim as an express issue in this case, she sufficiently raised the concern in her due process complaint to put DCPS on notice.

The Second Circuit Court of Appeals wrote in *C.F. ex rel. R.F. v. New York City Dep't of Educ.*, 746 F.3d 68, 77–78 (2d Cir. 2014),

[P]arents must file a due process complaint in order to allege deficiencies in an IEP. After the filing of such a complaint, the Department has a 30–day resolution period in which to remedy any deficiencies. The Department cannot be expected to resolve problems of which it is unaware. Accordingly, the parents must state all of the alleged deficiencies in the IEP in their initial due process complaint in order for the resolution period to function. The IDEA further provides that the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [complaint], unless the other party agrees otherwise. . . .

We hold that the waiver rule is not to be mechanically applied. The key to the due process procedures is fair notice and preventing parents from “sandbag[ging] the school district” by raising claims after the

expiration of the resolution period. We note that the IDEA itself contemplates some flexibility. The statute does not require that alleged deficiencies be detailed in any formulaic manner, and the waiver rule limits only what may be raised at the due process hearing,

Id. 746 F.3d at 77–78 (Citations and internal quotations omitted.)

Here DCPS was not sandbagged. While I agree with DCPS that the Petitioner should have specifically identified the omission of nursing services, as a related service in the child’s IEPs, as an IEP inappropriateness issue for consideration by the hearing officer, the Petitioner did flag the nursing services omission in her June 24, 2025 due process complaint. In her complaint, the Petitioner alleges that the August 8, 2023 IEP was inappropriate because, *inter alia* the IEP accommodations did not outline “the student’s needs as a medically fragile student that requires constant adult supervision/nurse support.” Regarding the April 21, 2025 IEP, the Petitioner alleged that DCPS failed to provide transportation under an appropriate category of “medically fragile student” despite the fact that the student is under the care of a nurse and requires an oxygen tank.” Allowing for some “flexibility” in pleading, as the Second Circuit promoted in the *R.F.* decision, I find that the parent’s due process complaint adequately put DCPS on notice of her claim that the August 8, 2023 and April 21, 2025 IEPs were inappropriate because neither IEP provided for the Student’s need for nursing services at school. I decline to bar Petitioner from raising the nursing services claim in this administrative proceeding.

Turning to the substance of the claim, the IDEA requires that school nurse services must be provided as a Related Service on a child’s IEP, if such services are

designed to enable a child with a disability to benefit from special education and receive FAPE as described in the child's IEP. *See* 34 C.F.R. §§ 300.34(a), 300.34(c)(13). At the due process hearing, DCPS' witnesses confirmed Student's need for a full-time dedicated nurse. DCPS' expert, Special Programs Manager, testified that for children like Student, who have a tracheotomy tube, DCPS would *always* provide a 1:1 nurse for the entire school day. I find that DCPS failed to provide a cogent and responsive explanation for not providing for nursing services in the August 2023 and April 2025 IEPs and this omission was a denial of FAPE.

Special Education Transportation

Petitioner claims that the August 4, 2023 IEP was inappropriate because, the IEP states that Student requires special education transportation under the "Accessing Special Programs" (ASP) category when he/she should have qualified under the "Medically Fragile Student" (MFS) category. While Petitioner is correct that the IEP team should have selected the MFS category for Student's transport by the Office of the State Superintendent of Education (OSSE) (as did the April 21, 2025 IEP team), this appears to have been a scrivener's error. The parent did not enroll Student in school for the 2023-2024 school year and there was no evidence of harm to the child from the IEP team's selecting the wrong transportation category. I find that this error did not rise to the denial of FAPE.

Appropriateness of IEP placements/locations of services

Lastly, Petitioner alleges that neither the August 4, 2023 IEP nor the April 21, 2025 IEP offered Student appropriate placements or locations of services. Under the August 4, 2023 IEP, Student's educational placement was full-time (27.5 hours per week) of special education outside the general education setting. The proposed service location was the self-contained Early Learning Support (ELS) classroom at City School 1. Student's educational placement in the April 21, 2025 IEP was 25 hours per week of Specialized Instruction outside general education. At the April 21, 2025 IEP team meeting, the parent's representative requested a Medical and Education Support (MES) setting for Student and DCPS initially identified the MES program at City School 2 for the child's LOS. However, when the parent visited City School 2, she was informed that the MES program might not be appropriate because Student was more cognitively advanced than the other children in the program. On May 14, 2025, Student's IEP team reconvened and, with the parent's agreement, changed Student's service location back to the ELS program at City School 1. On or about August 20, 2025, DCPS issued a LOS notice identifying the ELS program at City School 1 as the 2025-2026 school year location of services for Student.

DCPS' expert, LEA Representative opined that the April 21, 2025 IEP, with the location of services change to the City School 2 ELS program, was appropriate for Student for the 2025-2026 school year. There was no creditable evidence to the contrary. I conclude that DCPS met its burden of persuasion that Student's full-time educational placement outside of general education, as provided in both IEPs, was

appropriate and that the ELS classroom City School 1 was a suitable location of services for Student.

Compensatory Education

In this decision, I have found that DCPS denied Student a FAPE by not specifying that the child would have a dedicated nurse as a related service in either the August 4, 2023 IEP or the April 21, 2025 IEP. For relief, the parent seeks a compensatory education award. When a hearing officer finds a denial of FAPE he has “broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education. . . . [A]n award of compensatory education must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.)

In her compensatory education plan (Exhibit P-42), Petitioner’s expert, Educational Advocate, recommended that Student be awarded *inter alia*, 380 hours of compensatory education services including 200 hours of tutoring and 180 hours related services for PT, OT, Speech and Language and Behavioral Support. Educational Advocate’s recommendation does not correspond to the limited denials of FAPE established in this case.

Mother decided, unilaterally, not to enroll Student in a DCPS school for the 2023-2024 school year due to the child’s medical setbacks. Mother estimated in her

testimony that the child was in a hospital setting for 85% of the time during that year. Because the parent did not place Student in school that year, it does not appear that Student suffered educational harm resulting from DCPS' failure to specify that Student would have a dedicated nurse in the August 4, 2023 IEP. *Cf. J.T. v. District of Columbia*, No. 21-CV-3002 (RBW/GMH), 2023 WL 9215177, at *17 (D.D.C. Jan. 4, 2023), *report and recommendation adopted*, No. CV 21-3002 (RBW), 2023 WL 8369938 (D.D.C. Dec. 4, 2023), *appeal dismissed*, No. 24-7003, 2024 WL 3033764 (D.C. Cir. June 14, 2024) (Plaintiff not entitled to compensatory education remedy because she failed to put forward evidence of educational harm.)

As of the due process hearing date, Mother had not enrolled Student at City School 2 for the 2025-2026 school year, because she wanted to meet with City School 2 staff to see if the school's program was appropriate for Student. Mother told Educational Advocate that she wanted to be sure that Student would be safe and would have a full-time nurse at school. At the due process hearing, Special Programs Manager testified that Student would definitely have a dedicated nurse at City School 2. But there was no evidence that prior to the hearing, this information was provided to the parent. "One of the purposes of the IEP is to ensure that the services provided are formalized in a written document that can be assessed by parents and challenged if necessary." *N.S. ex rel. Stein v. District of Columbia*, 709 F. Supp. 2d 57, 73 (D.D.C. 2010). A parent cannot be penalized for "refusing to rely on a hope" that appropriate nursing services would be available for her child. *Id.*

I conclude that as a result of DCPS' failure to specify in the April 21, 2025 IEP that Student would have a dedicated nurse as a related service, the parent was justified in not enrolling her child in City School 2 for the start of the 2025-2026 school year. As a result, Student has missed close to 25 school days this school year. In her compensatory education plan, Educational Advocate proposed, *inter alia*, that Student be awarded approximately ½ hour of tutoring for each day of school that she calculated Student had missed due to DCPS' alleged denials of FAPE. Roughly following that formula, in my discretion as the hearing officer, I will award Student 15 hours of compensatory education tutoring for the days of school missed this school year attributable, in part, to DCPS failure to specify in the April 21, 2025 IEP that Student would be provided dedicated nursing services at school.

ORDER

1. As compensatory education for the denial of FAPE found in this decision, DCPS shall promptly issue funding authorization to the parent for Student to receive 15 hours of 1:1 independent educational tutoring by an instructor experienced with working with students with disabilities. If transportation is needed for the child to meet with the tutor, DCPS shall fund the parent's transportation costs in accordance with OSSE regulations.
2. DCPS shall ensure that dedicated nursing services are immediately provided for Student upon the child's enrollment in and attendance at a DCPS school.
3. Within 15 school days of the date of this order, DCPS shall convene Student's IEP team to review the child's IEP and revise the IEP as appropriate, to include, at minimum, provision in the IEP for Student to have dedicated nursing services at school as a related service.
4. All other relief requested by the Petitioner herein is denied.

September 24, 2025

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

cc: Counsel of Record
Office of Dispute Resolution