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OSSE
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Confidential

Parent on Behalf of Student, [1] Petitioner, v. District of Columbia Public Schools "DCPS" (Local Education Agency "LEA") Respondent. Case # 2026-0029 Date Issued: May 19, 2026	HEARING OFFICER'S DETERMINATION Hearing Dates: May 4, 2026 May 5, 2026 Counsel for Each Party listed in Appendix A Hearing Officer: Coles B. Ruff, Esq.

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

JURISDICTION:

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

BACKGROUND AND PROCEDURAL HISTORY:

The student who is the subject of this due process hearing ("the Student") has been found eligible for special education and related services pursuant to the IDEA, with a disability classification of intellectual disability ("ID"). The Student and the Student's parent ("Petitioner") are residents of the District of Columbia. DCPS is the Student's local education agency ("LEA").

During SY 2024-2025, the Student attended a DCPS school ("School A") pursuant to an individualized education program ("IEP") developed in 2024. In June 2025, DCPS reviewed and revised the Student's IEP, proposed placing the Student in a more restrictive environment ("MRE"), and proposed placement in a self-contained special education program at another DCPS school. Petitioner disagreed and requested additional evaluations, which DCPS conducted and reviewed during SY 2025-2026. DCPS continued to assert that the Student required an MRE. Petitioner did not agree and filed this due process complaint ("DPC") against the District of Columbia Public Schools ("DCPS") on February 20, 2026.

Petitioner's February 26, 2026, DPC alleges that DCPS denied the Student a free appropriate public education ("FAPE") and challenges the appropriateness of the Student's ID disability classification and of the evaluation(s) DCPS conducted, as well as DCPS's alleged failure to timely grant Petitioner's request for an independent educational evaluation ("IEE") and to provide due process to defend its evaluation. During the pendency of this litigation, the Student has remained at School A pursuant to stay-put.

Petitioner seeks the following relief: That DCPS be ordered to fund the requested IEE, find the Student eligible under a specific learning disability classification, and convene an IEP meeting to develop an IEP that provides FAPE in the Student's least restrictive environment ("LRE").

LEA Response to the DPC:

DCPS filed a response to the LEA on March 6, 2026, and stated, inter alia, the following:

The Student began attending School A during SY 2023-2024 with instruction outside the general education setting and 2 hours of weekly specialized instruction within the general education setting. Related services included 2 hours of monthly occupational therapy ("OT") outside the general education setting and 1 hour and 30 minutes of monthly speech-language pathology ("SLP") outside the general education setting.

During the November 6, 2024, IEP meeting, the team stated that data would be collected in the upcoming quarter to determine whether the Student had made sufficient academic progress to justify reducing the number of hours of specialized instruction provided outside the general education setting.

On November 6, 2024, DCPS issued a prior written notice ("PWN") to Petitioner proposing to reduce

Student's hours of specialized instruction outside the general education classroom from 8 hours to 5 hours per week. However, the PWN noted that multiple IEP team members disagreed with the decision to decrease Student's hours of specialized instruction. The PWN further stated that the team determined that it would collect data on Student's progress toward IEP goals in the upcoming quarter and reassess the service hours as needed.

On June 3, 2025, DCPS convened an annual IEP meeting, with Petitioner's participation. Student's special education services included 20 hours per week of SLP outside the general education setting. Related services included 2 hours per month of occupational therapy and 1 hour and 30 minutes per month of speech pathology, both provided outside the general education setting.

On July 17, 2025, DCPS issued a PWN to Petitioner proposing to change Student's service location to another DCPS school ("School B") for SY 2025-2026. The letter stated that the student would have an IEP and placement in the 3-5 SLS Program. On the same date, Parent was provided with a Location of Services for the 2025-2026 school year.

On November 25, 2025, and December 1, 2025 (eligibility meeting), DCPS convened IEP meetings, provided Petitioner with evaluation reports, discussed classification and services, and documented parental input in PWNs and team notes. The parent participated in IEP and eligibility meetings. DCPS responded to emails, shared data, and engaged in team decision-making. DCPS maintains that meaningful parent participation was not denied.

On October 31, 2025, DCPS conducted a comprehensive psychoeducational evaluation. The evaluation used several tools and instruments, including, but not limited to, the following: WISC-V, BASC-3, WJ-IV Achievement, classroom observations, and teacher and parent input. Regarding adaptive behavior, the eligibility team relied on qualitative and reported adaptive information. The evaluation was comprehensive and appropriate. DCPS evaluated academic, cognitive, language, behavioral, and classroom functioning. The student's profile—marked by intellectual, academic, and adaptive limitations—supported the team's decision to classify under ID rather than SLD.

DCPS denies that it "unnecessarily delayed" filing a DPC after the IEE request. DCPS maintains that it acted within reasonable timelines and exchanged multiple emails with the parent and counsel during November–December 2025.

DCPS asserts that the Student's IEP for SY 2025-2026 was appropriately developed based on the Student's circumstances and data. Respondent respectfully requests that the IHO deny Petitioner's request for relief, as DCPS did not fail to provide the Student with a free and appropriate public education.

Resolution Meeting and Pre-Hearing Conference:

The parties participated in a resolution meeting on March 16, 2026, but the matter was not resolved. The due process complaint ("DPC") was filed on February 20, 2026. Petitioner and the LEA did not mutually agree to shorten the 30-day resolution period. The 45-day period began on March 22, 2026, and ends on May 6, 2026, the HOD due date for the LEA. Both parties were unavailable for the proposed hearing dates of April 16 and 17, 2026, and agreed to the hearing dates noted above. Petitioner filed a motion to continue and extend the HOD due date by ten calendar days, with the new HOD due date being May 19, 2026.

The undersigned impartial hearing officer ("IHO") conducted pre-hearing conferences ("PHC") regarding Petitioner's DPC on March 19, 2026, and April 7, 2026, and issued a pre-hearing order ("PHO") and a revised PHO on April 15, 2026, outlining, inter alia, the issues to be adjudicated.

ISSUES: [2]

The issues adjudicated are: [3]

1. Did DCPS deny the Student a FAPE by finding the Student eligible as a student with an intellectual disability without any evidence regarding the Student's adaptive skills?

2. Did DCPS deny the Student a FAPE by failing to evaluate the Student in all areas of suspected disability?

3. Did DCPS deny the Student a FAPE by failing to evaluate the Student's cognitive skills with an instrument that did not take into account the Student's known receptive and cognitive deficits?

4. Did DCPS deny the Student a FAPE by failing to provide an IEE or timely due process to defend its evaluation?

DUE PROCESS HEARING:

The Due Process Hearing was held on May 4 and 5, 2026, via videoconference on Microsoft Teams. The parties submitted written closing arguments on May 12, 2026.

RELEVANT EVIDENCE CONSIDERED:

The IHO considered the testimony of witnesses [4] and the documents submitted in each party's

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[2] The IHO restated the issues from the PHO at the outset of the due process hearing, and the parties agreed that these were the issues to be adjudicated.

[3] On April 10, 2026, Petitioner submitted a motion to amend her DPC to withdraw two of the claims and to file those two in a separate DPC. Petitioner filed that DPC on April 13, 2026, (2026-0069). Rather than granting an amendment to the original DPC, the IHO has granted Petitioner permission to withdraw the two claims and to file them in a separate DPC. The original DPC (2026-0029) is not considered amended; the timeline for the due process complaint remains unchanged, except for the anticipated motion to continue discussed below.

[4] Petitioner presented two witnesses: (1) an independent psychologist, and (2) another independent psychologist both who testified expert witnesses. DCPS presented three witnesses, all who testified as experts: (1) the Student's School A special education teacher, (2) a DCPS speech-language pathologist teacher and (3) another of the Student's School A special education teacher. The IHO found the witnesses credible unless noted otherwise in the conclusions of law. Any material inconsistencies in the testimony of witnesses identified by the IHO are discussed in the conclusions of law.

disclosures (Petitioners' Exhibits 1 through 13 and Respondent's Exhibits 1 through 40), which were admitted into the record and are listed in Appendix 2.

SUMMARY OF DECISION:

Petitioner bore the burden of persuasion on all adjudicated issues. Petitioner failed to meet that burden by a preponderance of the evidence on issues #1, #2, and #3. Petitioner met that burden by a preponderance of the evidence on issue #4. The IHO ordered DCPS to grant the Petitioner authorization to obtain an independent psychological evaluation.

FINDINGS OF FACT: [5]

1. The Student is eligible for special education and related services under the IDEA with a disability classification of Intellectual Disability ("ID"). The Student and Petitioner reside in the District of Columbia. DCPS is the Student's LEA. The Student is a _____-grade student at School A. (Respondent's Exhibit 8)

2. In November 2023, while the Student was in _____ grade and attending another DCPS school ("School B"), DCPS conducted a psychological reevaluation to determine the Student's continued eligibility for special education and related services under the ID classification. The evaluation report was dated December 1, 2023. The DCPS psychologist noted concerns regarding whether the Student required placement in a more specialized learning support program and determined that formal assessments of intellectual ability, academic achievement, social-emotional functioning, and adaptive behavior were necessary for educational planning. (Respondent's Exhibit 2)

3. As part of the 2023 reevaluation, the DCPS psychologist administered the following assessments: the Wechsler Intelligence Scale for Children–Fifth Edition ("WISC-V"); the Woodcock Johnson Tests of Achievement–Fourth Edition ("WJ-IV"); the Vineland Adaptive Behavior Scales–Third Edition ("Vineland-3") Parent and Teacher Forms; and the Behavior Assessment System for Children–Third Edition ("BASC-3") Teacher Rating Scale. The psychologist also conducted classroom and student observations and reviewed educational records. (Respondent's Exhibit 2)

4. The Student's mother completed the Vineland-3 Parent Form. The Student obtained an Adaptive Behavior Composite ("ABC") score of 76, in the Moderately Low range. Communication was identified as a relative weakness. Daily living skills were identified as a relative strength. The Student's Socialization domain score was 78, also within the Moderately Low range. (Respondent's Exhibit 2)

5. The Student's teacher completed the Vineland-3 Teacher Form. The Student obtained an ABC score of 72, in the Moderately Low range. The Communication domain score was 69, in the Low range, and identified as a relative weakness. The Daily Living Skills domain score was 68, also in

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

the Low range. The Socialization domain score was 85, in the Moderately Low range, and identified as a relative strength. (Respondent's Exhibit 2)

6. On December 11, 2023, School B determined that the Student remained eligible for special education services under the ID classification and developed an IEP for the Student. (Respondent's Exhibit 3)

7. The Student began attending School A during SY 2024–2025. On November 6, 2024, School A convened an annual IEP review meeting and developed an IEP providing for 8 hours per week of specialized instruction outside general education, 2 hours per week of specialized instruction inside general education, 1.5 hours per month of speech-language services outside general education, and 2 hours per month of occupational therapy outside general education. (Respondent's Exhibit 3)
8. During the November 6, 2024, IEP meeting, team members discussed collecting additional data in the following quarter to determine whether the Student had made sufficient academic progress to support a reduction in the number of hours of specialized instruction outside the general education setting. (Respondent's Exhibit 3)

9. On November 6, 2024, DCPS issued a Prior Written Notice ("PWN") proposing to reduce the Student's specialized instruction outside the general education setting from 8 to 5 hours per week. The PWN noted that several IEP team members disagreed with the proposed reduction. It further stated that the team would collect additional data on the Student's progress toward IEP goals and reassess service hours as needed. (Respondent's Exhibit 3)

10. On June 3, 2025, DCPS convened an annual IEP meeting, and Petitioner attended. The IEP team proposed increasing the Student's specialized instruction outside general education to 20 hours per week, which, under DCPS policy, would place the Student in a self-contained setting. The IEP also provided for 2 hours per month of occupational therapy and 1.5 hours per month of speech-language services outside general education (Respondent's Exhibits 8 and 9).

11. On June 3, 2025, DCPS issued a PWN stating that School A proposed increasing the Student's specialized instruction services and changing the Student's placement to a more restrictive educational setting because the Student could not be adequately supported in the general education environment. The PWN further stated that the DCPS Manager of Inclusion observed the Student and determined that the Student had not made adequate progress. It also stated that School A did not offer the program required to meet the Student's needs and that DCPS would issue a Location of Service ("LOS") letter identifying another school placement. Petitioner disagreed with the proposed restrictive placement and requested that the Student remain at School A. Petitioner's disagreement was documented in the PWN. (Petitioner's Exhibit 3)

12. On July 17, 2025, DCPS issued an LOS letter proposing that the Student attend another DCPS school ("School C") in the 3–5 SLS Program for SY 2025–2026 (Petitioner's Exhibit 4).

13. On August 8, 2025, Petitioner filed a due process complaint challenging the proposed restrictive placement, requesting updated evaluations, and seeking that the Student remain in the general education setting with the services identified in the November 2024 IEP. DCPS agreed to conduct updated psychoeducational and speech-language evaluations (Petitioner's Exhibit 5).

14. On October 30, 2025, DCPS completed a speech-language evaluation identifying significant receptive and expressive language deficits. On the Peabody Picture Vocabulary Test–Fifth Edition ("PPVT-5"), the Student scored in the 4th percentile for receptive language skills. On the

Expressive Vocabulary Test–Third Edition ("EVT-3"), the Student scored in the 5th percentile for expressive language skills. (Petitioner's Exhibit 6)

15. On October 31, 2025, DCPS conducted a comprehensive psychoeducational evaluation using the WISC-V, BASC-3, WJ-IV Achievement, classroom observations, teacher and parent input, and related measures. The evaluation assessed academic, cognitive, language, behavioral, and classroom functioning. Regarding adaptive behavior, the evaluation relied on qualitative and reported information rather than a formal adaptive behavior assessment. DCPS concluded that the Student's intellectual, academic, and adaptive functioning profile supported continued eligibility under the ID classification rather than a Specific Learning Disability ("SLD") classification. The October 31, 2025, psychoeducational evaluation did not include a formal adaptive behavior assessment. (Respondent's Exhibit 21).

16. On November 25, 2025, and December 1, 2025, DCPS convened eligibility meetings to review the Student's evaluations. Petitioner attended the meetings with counsel and an educational consultant. Attendees included the LEA representative, special education teachers, general education teachers, the DCPS psychologist, the speech-language pathologist, an occupational therapist, a social worker, the School A principal, and a DCPS resolution specialist. (Witness 5's testimony)

17. During the eligibility meetings, the team reviewed the psychoeducational and speech-language evaluations and the eligibility criteria for Intellectual Disability. All DCPS team members agreed that the Student demonstrated intellectual functioning significantly below average. The team also concluded that the Student demonstrated deficits in adaptive functioning that affected educational performance. Petitioner, Petitioner's attorney, and Petitioner's educational consultant disagreed, maintaining that the adaptive behavior data were insufficient and that a formal adaptive behavior assessment was necessary. (Respondent's Exhibit 27; Petitioner's Exhibit 9)

18. At the December 1, 2025, eligibility meeting, Petitioner's attorney objected to DCPS's use of the WISC-V and requested that the Comprehensive Test of Nonverbal Intelligence ("C-TONI") be administered. The DCPS psychologist responded that the C-TONI was inappropriate given the Student's language profile. (Respondent's Exhibit 27; Witness 5's testimony)

19. During the December 1, 2025, eligibility meeting, Petitioner requested an Independent Educational Evaluation ("IEE") due to concerns about the appropriateness of the cognitive assessment and DCPS's alleged failure to assess all areas of suspected disability, including adaptive functioning. Petitioner also maintained that the Student's cognitive and academic profile could support eligibility under the SLD classification rather than ID. (Petitioner's Exhibits 8 and 9; Respondent's Exhibit 27).

20. The School A team determined that the Student continued to meet the eligibility criteria under the ID classification. Petitioner, Petitioner's attorney, and Petitioner's educational consultant disagreed with that determination and requested consideration of a different disability classification. (Respondent's Exhibit 27)

21. DCPS maintained that Petitioner was afforded meaningful participation throughout the eligibility process because DCPS responded to emails, shared evaluation data, and convened meetings over two separate days to review the evaluations and eligibility criteria. (Witness 5's testimony)

22. At the conclusion of the December 1, 2025, meeting, Petitioner's attorney stated that she would submit a written disagreement with the eligibility determination and identify the disability classification she wished the team to consider. The DCPS psychologist agreed to provide WISC-V subtest scores and BASC-3 numerical scores, and the LEA representative agreed to forward Petitioner's IEE request to DCPS. (Respondent's Exhibit 27)

23. DCPS conducted a supplemental psychological reevaluation on December 17, 2025, at the request of Petitioner's attorney and educational consultant. The evaluation included detailed WISC-V subtest scores, BASC-3 T-scores, and qualitative social-emotional and behavioral information. (Respondent's Exhibit 30)

24. The supplemental psychological evaluation concluded that the Student's results supported continued eligibility under the ID classification. The Student obtained a Full-Scale IQ score of 59 on the WISC-V, with primary and ancillary index scores ranging from Extremely Low to Very Low. (Respondent's Exhibit 30).

25. The supplemental evaluation identified pervasive cognitive delays across verbal reasoning, nonverbal reasoning, working memory, processing speed, and overall cognitive proficiency. BASC-3 teacher reports indicated clinically significant deficits in study skills, functional communication, adaptability, leadership, attention, and learning behaviors. The evaluation concluded that the Student demonstrated significant deficits in adaptive functioning that affected independence, academic progress, and classroom functioning, and that the Student required ongoing specialized instruction, accommodations, and supports. (Respondent's Exhibit 30)

26. DCPS responded to Petitioner's emails, shared evaluation data, and convened eligibility meetings over two days to review the evaluations and eligibility criteria. DCPS maintained that Petitioner was afforded meaningful participation throughout the eligibility process. (Witness 5's testimony)

27. DCPS denied the request for an IEE before conducting the supplemental psychological evaluation and informed Petitioner that, pursuant to guidance from DCPS central office staff, School A's psychologist would conduct any additional assessments because School A had an available psychologist. (Witness 5's testimony)

28. After DCPS provided the supplemental psychological evaluation, neither Petitioner nor Petitioner's representatives responded or requested an additional meeting to review it. (Witness 5's testimony)

29. As of February 20, 2026, the date Petitioner filed her DPC, DCPS had not filed its own due process complaint to defend its evaluation and its denial of the requested IEE. (Respondent's Exhibit 32)

30. DCPS filed its DPC to defend its evaluation on February 23, 2026. On February 26, 2026, DCPS issued a notice of meeting inviting Petitioner to attend an annual IEP review meeting tentatively scheduled for March 17, 2026. (Respondent's Exhibit 32)

CONCLUSIONS OF LAW:

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

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

34 C.F.R. § 300.17 provides:
A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c), Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). The burden of persuasion shall be met by a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii). Petitioner bore the burden of persuasion on all four issues that were adjudicated. [6]

ISSUE 1: Did DCPS deny the Student a FAPE by finding the Student eligible as a student with an intellectual disability without any evidence regarding the Student's adaptive skills?

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS denied the Student a FAPE by finding the Student eligible as a student with an intellectual disability without any evidence regarding the Student's adaptive skills.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special

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[6] DC Code § 38-2571.03 (6) provides:
(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

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

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement, provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.
(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

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

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

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

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

The Student has been determined to be a child with a disability in need of special education. DCPS determined that the Student is eligible for special education and a FAPE under the intellectual disability (ID) classification.

Pursuant to 34 C.F.R. § 300.08(c)(6), intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. The term "intellectual disability" was formerly termed "mental retardation."

5A DCMR 3011.7 provides that in determining eligibility on the basis of intellectual disability, the following shall apply:

(a) Intellectual disability shall mean significantly below average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. Intellectual disability does not

include conditions primarily due to a sensory or physical impairment, traumatic brain injury, autism spectrum disorders, severe multiple impairments, cultural influences, or a history of inconsistent or inadequate educational programming;

(b)The IEP Team shall consider assessments and child data related to: (1) Whether the child displays intellectual functioning well below the mean on an individually administered standardized intelligence assessment. The IEP Team shall account for the standard error of measurement of the assessment in interpreting the results; and (2) Whether the child displays deficits in adaptive behavior that significantly limit a child's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and school performance that is expected of the individual's age level and cultural group, as determined by clinical judgment;

(c) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for intellectual disability, including medical documentation or a medical diagnosis, if available; and

(d) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by intellectual disability and not any of the inappropriate determinant factors listed in Section 3010.2.

Petitioner alleges that DCPS failed to administer adaptive scales to determine the Student's current level of adaptive functioning. Petitioner asserts that, without evidence of poor adaptive skills, intellectual disability is not an appropriate eligibility classification. Petitioner argues that, based on the evidence DCPS has provided, a specific learning disability is a more appropriate classification. Petitioner presented two expert witnesses who testified about the adequacy of the school district's psychologist's evaluation of the Student.

However, Petitioner's expert witnesses testified only that they would consider SLD alongside ID; they did not testify that the data supported an SLD classification over an ID classification. At best, they testified that the data was inconclusive without the additional assessments they recommended. Although both of Petitioner's expert witnesses identified additional assessments they would have administered, neither could affirmatively conclude that the Student does not have an intellectual disability (ID). Both ultimately acknowledged that the district conducted a comprehensive and appropriate evaluation before Petitioner's request for an IEE.

On the other hand, the evidence shows that the Student's ID classification was in place and supported by prior evaluations, including adaptive testing with the Vineland. That prior finding was not disputed. Petitioner's witnesses testified only that adaptive functioning can improve or decline over time and that they would recommend updated adaptive assessments. Their testimony did not establish that the Student should be classified as having an SLD.

The testimony of both expert witnesses had limited probative value for several significant reasons. One expert witness had never met the Student. Neither expert conducted an independent evaluation of the Student, observed the Student in a classroom setting, attended any IEP team meetings, or communicated with the district's evaluator. One witness's opinions were based solely on a review of records, and he collected no additional data beyond what DCPS had already gathered. The other

expert witness had only a 15-minute introductory Zoom meeting with the Student, during which she asked general, get-to-know-you questions. She did not administer any assessments, observe the Student in a classroom setting, collect any additional data beyond that brief interview, or speak with the evaluator(s) or any of the Student's providers. Critically, based on her brief interaction with the Student, she observed that the Student's communication skills were below age level and that she did not observe any strengths that would affirmatively rule out an ID classification.

Neither expert witness concluded that the Student does not have an ID. When asked which disability classification would be appropriate based on the available assessments, one expert testified that the Student could be classified as having either SLS or ID. The experts further testified that determining the appropriate classification and moving away from an ID classification would require additional data, neither of which they sought to collect.

The DCPS witnesses credibly testified, based on their observations, about the Student's adaptive skills deficits, and the DCPS speech-language pathologist credibly testified about the Student's speech-language deficits. In addition, the psychological evaluation report and the notes from the December 1, 2025, eligibility meeting indicate that the DCPS psychologist addressed Petitioner's and her representative's concerns about the Student's adaptive skills.

The IHO concludes that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS denied the Student a FAPE by finding the Student eligible as a student with an intellectual disability without any evidence regarding the Student's adaptive skills.

ISSUE 2: Did DCPS deny the Student a FAPE by failing to evaluate the Student in all areas of suspected disability?

ISSUE 3: Did DCPS deny the Student a FAPE by failing to evaluate the Student's cognitive skills with an instrument that did not take into account the Student's known receptive and cognitive deficits?

Conclusion: Petitioner did sustain the burden of persuasion by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to evaluate the Student in all areas of suspected disability and/or by failing to evaluate the Student's cognitive skills with an instrument that did not take into account the Student's known receptive and cognitive deficits.

Pursuant to 34 C.F.R. § 300.304 (c), a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that "a full and individual evaluation is conducted for each child being considered for special education and related services."

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

All areas "related to the suspected disability" should be assessed, including academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. D.C. Mun. Regs. Title. 5E § 3005.9(g). The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5A § 3006.7(f).

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

In fact, the IDEA lacks specific parameters for the content of psychological evaluations, or, for that matter, of other evaluations. It merely requires that such evaluations "use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." 20 U.S.C. § 1414(b)(2)(C). Its implementing regulations provide only that students be "assessed in all areas related to the suspected disability" and that such evaluations use "[a] variety of assessment tools and strategies ... to gather relevant functional and developmental information about the child [...] that may assist in determining -- [t]he content of the child's IEP." 34 C.F.R. § 300.304(b)(1), (c)(4). *Sylvia HILL et al., v. District of Columbia,* August 26, 2016 68 IDELR 133, citing *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 250 (3d Cir. 2012) (finding that evaluations "should be tailored to the specific problems a potentially disabled student is having" but not "designed to identify and diagnose every possible disability").

Petitioner alleges that DCPS's psychological evaluation was flawed because the DCPS psychologist did not administer adaptive scales to determine the Student's current level of adaptive functioning and did not administer a C-TONI to account for the Student's language deficits.

Although both of Petitioner's expert witnesses identified additional assessments they would have administered, both of these expert witnesses agreed that the WISC, administered by DCPS's psychologist, is the "gold standard" in psychoeducational assessment and that they would have administered it themselves. Both witnesses further acknowledged that DCPS conducted a comprehensive evaluation before the IEE request and that it met professional standards. They also confirmed that it is appropriate for a clinician to interpret test results in light of a student's language limitations, as DCPS's evaluator did, and that the IDEA does not require the use of a single adaptive behavior measure. DCPS's evaluation incorporated multiple measures, including the WISC, the BASC, school records, behavioral data, and other observations and interviews, all of which were used to assess the Student's adaptive functioning.

As noted, the testimony of both of Petitioner's expert witnesses had limited probative value for several significant reasons. One expert witness had never met the Student. Neither expert conducted an independent evaluation of the Student, observed the Student in a classroom setting, attended any IEP team meetings, or communicated with the district's evaluator. One witness's opinions were based solely on a review of records, and he collected no additional data beyond what DCPS had already gathered. The other expert witness had only a 15-minute introductory

Zoom meeting with the Student, during which she asked general, get-to-know-you questions. She did not administer any assessments, observe the Student in a classroom setting, collect any additional data beyond that brief interview, or speak with the evaluator(s) or any of the Student's providers.

The witnesses DCPS called included the speech-language pathologist who also evaluated the Student, as well as two special educators who have worked with and observed the Student for the two years the Student has attended School A. In addition, the IHO reviewed the Student's prior psychological evaluation and the October 25, 2025, psychological evaluation, and considered the testimony of both the DCPS witnesses and the parent's experts.

The DCPS witnesses credibly testified, based on their observations, about the Student's adaptive skills deficits, and the DCPS speech-language pathologist credibly testified about the Student's speech-language deficits. In addition, the psychological evaluation report, along with the notes from the December 1, 2025, eligibility meeting, indicate that the DCPS psychologist addressed the parent's and her representative's concerns about the Student's adaptive skills and the use of a C-TONI, and explained why the assessment tools that Petitioner's representatives mentioned were not warranted.

Based on the evidence adduced, the Hearing Officer concludes that Petitioner failed to meet the burden of persuasion by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to evaluate the Student in all areas of suspected disability and/or by failing to evaluate the Student's cognitive skills using an instrument that did not account for the Student's known receptive and cognitive deficits.

ISSUE 4: Did DCPS deny the Student a FAPE by failing to provide an IEE or timely due process to defend its evaluation?

Conclusion: Petitioner sustained the burden of persuasion that the DCPS denied the Student a FAPE by failing to evaluate the Student following Petitioner's request for an IEE on December 1, 2025.

The IDEA regulations provide parents with a limited right to obtain an independent educational evaluation at public expense. An independent evaluation is one "conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." The limited right arises only after the agency has procured an evaluation with which the parent "disagrees." *34 C.F.R. § 300.502(b)*.

The regulations limit the parent to one independent evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. *Id.* Once the parent expresses her disagreement, she may request an independent reevaluation at public expense, which the agency must either provide or, as DCPS has done in this case, file a due process complaint to establish that its evaluation is "appropriate." *See 34 CFR § 300.502(b)(2*). If the agency's evaluation is found to be appropriate, the parent may still obtain an independent evaluation at her own expense. *34 C.F.R. § 300.502(b)(3)*. *See South Kingstown School Committee v. Joanna S.,* 2014 WL 197859 (D.R.I. 2014).

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

If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason for objecting to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation. 34 C.F.R. § 300.502(b)(4). Once a parent requests an IEE, the law requires the school to act "without unnecessary delay" to either fund the IEE or demonstrate that its evaluation was appropriate. 34 C.F.R. § 300.502(b)(1)-(3).

Petitioner first requested an IEE at the conclusion of the December 1, 2025, eligibility meeting. Petitioner's attorney followed up on the request via email on December 1, 2025, and on December 4, 2025, DCPS notified Petitioner that it would not fund the IEE. As of the date of Petitioner's filing her DPC on February 20, 2026, DCPS had not filed its own due process complaint to defend its evaluation. Petitioner asserts that a delay of more than two months constitutes unnecessary delay.

On the other hand, DCPS denies that it "unnecessarily delayed" filing a DPC after the IEE request. DCPS maintains that it acted within reasonable timelines and exchanged multiple emails with the parent and counsel in November–December 2025.

Petitioner submitted a request for an IEE on December 1, 2025, in part because of dissatisfaction with DCPS's October 2025 psychological evaluation. DCPS offered neither a persuasive explanation for the delay nor any authority supporting its claim that its response to the request was timely.

The law requires that DCPS prove the appropriateness of its evaluation at a due process hearing, initiated by DCPS without "unnecessary delay." See 5A DCMR 3038.2(a). DCPS failed to file due process for over two months after Petitioner first requested an IEE.

As Petitioner aptly noted in her closing argument, during the period between Petitioner's request and DCPS's filing of its DPC, there were no negotiations between the parties regarding the IEE that could explain the delay. DCPS eligibility meeting notes, along with the DCPS LEA representative's testimony, demonstrated that Petitioner requested an IEE on December 1, 2025. There is no evidence that DCPS and the parent continued negotiating after that initial request.

Although DCPS sent an invitation to an IEP meeting after Petitioner filed her DPC, there is no indication that DCPS took any action before Petitioner filed her DPC. Consequently, the IHO concludes that DCPS failed to promptly grant Petitioner's request for an IEE or to file a due process complaint to defend its evaluation, thereby significantly impeding Petitioner's opportunity to participate in the decision-making process regarding FAPE.

ORDER:

1. DCPS shall, within ten (10) business days of the issuance of this order, provide Petitioner authorization to obtain an independent comprehensive psychological evaluation at the OSSE prescribed rate.

2. All other relief requested by Petitioner is denied.

APPEAL PROCESS:

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

/S/ *Coles B. Ruff*

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Coles B. Ruff, Esq.
Impartial Hearing Officer
Date: May 19, 2026

Copies to: Counsel for Petitioners
Counsel for LEA
Office of Dispute Resolution