District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parents, on behalf of Student,[1]	)	
	)	
Petitioners,	)	**Date Issued: March 29, 2015**
	)	**(Corrected: April 8, 2015)**
v.	)	
	)	
District of Columbia Public Schools,	)	
	)	
Respondent.	)	**Hearing Officer: Michael Lazan**

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving a student who is eligible for services as a student with Other Health Impairment. .

A Due Process Complaint ("Complaint") was received by District of Columbia Public Schools ("DCPS" or "Respondent") pursuant to the Individuals with Disabilities Education Act ("IDEA") on January 6, 2015 in regard to the Student. On January 14, 2015, Respondent filed a response. A resolution meeting was held on February 5, 2015. The resolution period expired on February 7, 2015.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Improvement Act ("IDEIA"), 20 U.S.C. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of

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

the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

III. Procedural History

On January 22, 2015, this Hearing Officer held a prehearing conference.

A prehearing conference order issued on January 27, 2015 summarizing the rules to be applied in this hearing and identifying the issues in the case.

On February 18 and 19, 2015, the parties appeared before this Hearing Officer to try to resolve prehearing issues.

On February 23, 2015, Respondent filed District of Columbia Public Schools's Motion to Dismiss. This motion requested dismissal because of arguments that Petitioner's claims were not "cognizable" under the IDEA, that the Student is no longer a Student who requires special education, and that Petitioner did not act in good faith, "as equity demands." Respondent also argued that Petitioner's requested relief was unavailable, that the Student does not need special education, and that Respondent acted reasonably throughout its interactions with Petitioner.

On the same date, Respondent filed District of Columbia Public Schools's Motion to Compel Access to Educational Records. This motion contended that Respondent was entitled to the Student's educational records at School C through a request for an authorization by the parent. Respondent also sought an observation and evaluation of the Student.

On February 24, 2015, Petitioner submitted Petitioner's Opposition to Respondent's Motion to Dismiss, contending that the relief that was requested was proper and that objections to relief should not form the basis for dismissal of a Complaint.

On the same date, Petitioner filed Petitioner's Opposition to Respondent's Motion to Compel Access, contending that Petitioner had in fact provided access through a consent form. Respondent also argued that they have agreed to an evaluation of the Student.

On the same date, Petitioner filed Petitioner's Motion for Sanctions, alleging that counsel for Respondent made certain misrepresentations in her motion papers.

On February 27, 2015, Respondent filed Respondent's Opposition to Petitioner's Motion for Sanctions, arguing that hearing officers have no sanctions power and that, in any event, Respondent filed proper motions.

By written order dated March 1, 2015, this hearing officer denied all three motions.

One hearing date followed, on March 13, 2015. This was a closed proceeding.

Petitioner moved into evidence Exhibits 1-13. There was no objection from Respondent. Exhibits 1-13 were admitted. Respondent moved into evidence Exhibits 1, 3, 4, 7-9. There were no objections by Petitioner. Exhibits 1, 3, 4, 7-9 were admitted.

At the close of the hearing, Petitioner sought to present a written closing argument and a concomitant continuance application. There was no objection from Respondent.

On March 17, 2015, Petitioner filed Unopposed Motion for Continuance. This motion was granted via Interim Order on Continuance Motion filed March 21, 2014. This motion extended the decisional timelines seven days from March 22, 2015 to March 29, 2015.

The parties submitted closing arguments on March 23, 2015. DCPS submitted District of Columbia's Written Closing Argument and Petitioner submitted Petitioner's Closing Brief.

Petitioners presented as witnesses: Petitioner; Witness C, a psychologist; and Witness D, an educational advocate. Respondent presented as witnesses: Witness A, a Progress Monitor, and Witness B, a resolution specialist.

IV. Credibility

I found all the witnesses had some credibility in this proceeding. There were no material inconsistencies uncovered in connection to any witness. There was a significant conflict in the testimony of the Petitioner and Witness A with respect to whether the June 5, 2014 IEP meeting was a "draft" meeting or not. I believe Petitioner was more credible in this regard because there is nothing in the record to suggest that the IEP was a draft.

V. Issues

As identified in the Amended Prehearing Conference Summary and Order and in the Due Process Complaint, the issues to be determined are as follows:

1. Did DCPS fail to develop an appropriate IEP on June 1, 2014,[2] consistent with the requirement to provide Students with an education in the least restrictive environment? If so, was the Student denied a FAPE?

2. Did DCPS fail to provide the Student with an appropriate location of services following the June 1, 2014 IEP?

Issue number three in the prehearing order was withdrawn by Petitioner through the Notice of Withdrawal of Issue filed on March 2, 2015.

As relief, Petitioners seek placement at School C.

VI. Findings of Fact

1. The Student is a eligible for services as a student with Other Health Impairment. (P-3-1)

2. The Student is a bubbly, child. (Testimony of Parent)

3. She was initially diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and Dyslexia (Testimony of Parent)

4. The Student is still characterized as having ADHD. (Testimony of Witness C; Exh. P-5-7).

5. She is now taking an anti-anxiety medication. (Testimony of Parent)

6. She tests in the average to high average range in intelligence, with relative weakness in working memory. Her Full Scale IQ is 111. (P-5-11)

[2] Petitioner is clearly referencing the June 5, 2014 IEP here. No objection was raised in this connection from Respondent.

7. She showed overall age appropriate ability pursuant to the Woodcock Johnson Tests of Achievement-IV, with standard scores ranging from 93 to 108. (P-5-5, 13)

8. She has average to above average abilities in verbal reasoning, visual-spatial reasoning, overall intelligence, fine motor skill, and memory. (P-5-6)

9. In reading, the Student performs on the 8th grade level. She needs assistance in organizing her thoughts, maintaining focus in class, and expressing her thoughts. (P-3-4)

10. In math, the Student has difficulty organizing her work space and paying attention without teacher directive, but is on an 8th grade instructional level. (P-3-3)

11. She is a creative writer, particularly in narrative assignments. She needs assistance in organizing her thoughts, staying within the topic, transitioning between paragraphs, and in editing. (P-3-5)

12. Her single word reading, decoding, spelling skills, and written expression are one year below grade level, though in the average range when compared with peers. (P-5-5)

13. Psychological testing on the Wechsler Intelligence Scale for Children-IV ("WISC-IV") and the Test of Variables of Attention ("TOVA") showed that the Student's performance in "brief attention performance" and "sustained attention performance" were in the average range. (P-5-4)

14. Executive functioning measures show that the Student has weakness in terms of planning, organization, flexibility, inhibitory control, working memory and self-

monitoring on a variety of measures. She has low frustration tolerance, variable attention skills, and has difficulty showing what she knows. (P-5-4-6)

15. She exhibits moments of overstimulation and needs assistance in setting limits and strategies to calm herself. She also needs to work on active listening and questioning and will be inflexible, talk too long on a topic, and lose perspective. (P-3-8)

16. She tends to talk a lot and ask a lot of questions, which can be a "turn off" to other children. (P-5-2)

17. She has demonstrated difficulties in emotional regulation as per parent and self-reporting on a variety of measures. (P-5-5-6)

18. During the Student's 7th grade year, in 2012-2013, she did very well at School A. DCPS representative Witness A suggested that the Student move on from the school, and the parent agreed. (Testimony of Parent)

19. During the Student's 8th grade year, in 2013-2014, she started at School B, a DCPS public school. (Testimony of Parent)

20. There were 22-23 students in the classroom at School B. (Testimony of Parent)

21. At School B, the Student did not do well because of stress. After three to four months, she went back to School A, with the assent and agreement of DCPS. (Testimony of Parent)

22. At about the time of the transfer, Witness A advised Petitioner to find the Student a school. By December, 2014, Witness A told Petitioner to look at private schools. (Testimony of Parent)

23. DCPS did not recommend any schools to Petitioner at this time. (Testimony of Parent)

24. Petitioner found School C through a "blast" email. She looked at the school and found that it contains students with IEPs, students who had ADHD, and students who take medication daily. (Testimony of Parent)

25. Petitioner signed a contract for the Student to attend School C for the 2014-2015 school year for $44,500 in tuition, with a tuition refund plan of $1,246, and accident insurance of $109.75. This was mailed to the school on May 14, 2014. (P-2-2-3)

26. Petitioner received financial aid of $30,000K as a "7 day boarder" for the school year. (P-2-1)

27. Witness A was enthusiastic about Petitioner's choice of schools. (Testimony of Parent)

28. The IEP meeting was scheduled for May, 2014, but there was an agreement to postpone the meeting for a month. (P-6-2)

29. An IEP meeting was held on June 5, 2014. An IEP was recommended for "full-time" services. Petitioner was told that the only school that DCPS would be able to offer the Student was School B. (Testimony of Parent)

30. The IEP recommends 30 hours per week of specialized instruction outside general education, with speech and language pathology, 120 minutes per month, and behavioral support services, 360 minutes per month. (P-3-11)

31. The IEP also recommends markers to maintain place, repetition of directions, preferential seating, location with minimal distractions, a noise buffer, and small group testing with various accommodations. (P-3-13)

32. There was no indication to Petitioner that this IEP was a draft. (Testimony of Parent)

33. After the IEP meeting, Witness A asked the parent for an opportunity to conduct another IEP meeting and send the Student to a DCPS school. (Testimony of Parent)

34. Petitioner was sent a letter of invitation for an IEP meeting on July 22, 2014. (R-4-3)

35. Petitioner resisted meeting with DCPS again and would not meet to create a new IEP. (Testimony of Parent)

36. Petitioner felt that the IEP was finalized and done. (Testimony of Parent)

37. There was no subsequent IEP meeting for the 2014-2015 school year. The school district did not recommend a placement for the Student for the school year. (Testimony of Witness A)

38. The Student was still technically enrolled at School B in September, 2014. When the Student did not show up, Witness A called Petitioner and told her the Student was being marked truant. (Testimony of Parent)

39. The Student has attended School C for the 2014-2015 school year. (Testimony of Parent)

40. She is currently attending the 8th grade for the second time at School C. This is not because she was "left back." She is repeating the grade because the curriculum is more difficult at School C than it was at School A, which is a school geared to students with special needs. (Testimony of Parent)

41. There is no formal accommodation plan at School C. (P-5-2)

42. School C provides the Student with small class size. They work to ensure the Student does not feel different because of her learning differences. There is one teacher in her classroom, and there is a psychiatrist and a social worker on staff. (Testimony of Parent)

43. She sees the social worker maybe three times a week, on an "as needed" basis. This might just be a "hello" and it is always casual.
(Testimony of Parent)

44. The school provides the Student with preferential seating and testing accommodations. (Testimony of Parent)

45. She functions appropriately in the School C classroom in terms of social and emotional functioning. (P-5-5)

46. The Student has been homesick at School C, and teachers have expressed some concerns about the Student's overall anxiety and well-being. (P-5-2)

47. The Student did not report any depression or anxiety symptoms during psychological testing relating to her attendance at the school. (P-5-5)

48. She missed some school during the first marking period. (R-5-1)

49. For the 2014-2015 school year, marking period one, the Student received academic grades ranging from 73 to 88. She was "great in class" in Algebra, where she received a 73. She was creative but did not complete all of her homework in English, where she received a 76. She had a bit of a hard time getting material down in Science, where she received an 85. She worked well in discussion but needed assistance in note-

taking in World Geography, where she received an 83. She led the class in Spanish, where she received an 88. (R-5-1)

50. For the second marking period, her grade went up to 80 in Algebra, resulting in a semester 1 grade of 78. She was frustrated at times with tricky problems but asked questions and advocated for herself. Her grade went up to an 89 in English, with a semester 1 grade of 83. She became a "strong student" that had no trouble communicating. In Science, her grade went up to an 98, resulting in a semester 1 grade of 89 – although her exam grade was 71. In World Geography, her grade went up to a 92, with a semester 1 grade of 88. She did well on her exam and on a presentation. In Spanish, her grade went up to an 89, resulting in a semester 1 grade of 87. She did well but was capable of doing better. (R-5-3)

51. The school's "Progress Report 3" showed even more improvement, with an 100 in Algebra, a 91 in English, a 101 in Science, a 95 in World Geography, and a 94 in Spanish. (R-5-5)

52. The Student was subject to a neuropsychological evaluation in November, 2014. The evaluator recommended a small class size, with a modified exam schedule, extra time, and testing in a smaller setting with reduced distractions. There was also a recommendation of high structure in class, movement breaks, extra time, a written checklist, preferential seating, and an assignment book. (P-5-7-8)

VII. Conclusions of Law

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The burden of proof in a special education due process hearing lies with the party seeking relief. 5-E DCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005).

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The burden of proof in a special education due process hearing lies with the party seeking relief. 5 DCMR Sect. 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005).

The central purpose of the IDEA is to ensure that all children with disabilities have available to them special education and related services designed to meet their unique needs and provided in conformance with a written IEP (i.e., free and appropriate public education, or "FAPE"). 20 U.S.C. Sects. 1400(d)(1(A), 1401(9)(D), 1414(d); 34 C.F.R. Sects. 300.17(d), 300.320; Shaffer v. Weast, 546 U.S. 49, 51 (2005).

Pursuant to the Supreme Court's decision in Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176, (1982), the IEP must, at a minimum, "provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005).

The District may be required to pay for educational services obtained for a student by a student's parent if the services offered by the District are inadequate or inappropriate ("first criterion,") the services selected by the parent are appropriate ("second criterion"), and equitable considerations support the parent's claim ("third criterion"), even if the private school in which the parents have placed the child is unapproved. School

Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359 (1985); Florence County School District Four et al. v. Carter by Carter, 510 U.S. 7 (1993).

On the first criterion, the Petitioner should show that the District denied the Student a FAPE. A FAPE is offered to a student when (a) the District complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits. While Districts are required to comply with all IDEA procedures, not all procedural errors render an IEP legally inadequate under the IDEA. Pursuant to the IDEA, when procedural violations are alleged, an administrative officer may find that a child did not receive a FAPE only if the procedural inadequacies (a) impeded the child's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the child, or (c) caused a deprivation of educational benefits. 20 U.S.C. Sect. 1415(f)(1)(E)(ii); 34 C.F.R. Sect. 300.513(a)(2).

1. First Criterion.

The IDEA requires that children with disabilities be placed in the "least restrictive environment." This means**,** "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved

satisfactorily." N.T. v. District of Columbia, 839 F. Supp.2d 29, 34-35 (D.D.C. 2012); Dist. of Columbia v. Nelson, 811 F. Supp. 2d 508, 514-15 (D.D.C. 2011); 20 U.S.C.Sect. 1412(a)(5)(A); 5-E DCMR 3011.1.

Mainstreaming is not only a "laudable goal" but is also a “requirement of the Act.” Devries v. Fairfax County Sch. Bd., 882 F.2d 876, 878 (4th Cir.1989). However, mainstreaming is not proper for every disabled child. Schoenbach v. Dist. of Columbia, 2006 WL 1663426 (D.D.C. 2006)

In Oberti v. Board of Educ., 995 F.2d 1204 (3d Cir. 1993), the Third Circuit Court of Appeals explained the duties of school districts to provide an education to students with disabilities in the least restrictive environment. The Third Circuit set forth a test to determine whether students have been appropriately mainstreamed by a District: (1) whether the District has made reasonable efforts to accommodate the child in a regular education classroom; (2) whether there are the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and (3) whether there are possible negative effects of the inclusion of the child on the education of the other students in the class. Id., at 1217-1218. The Oberti court continued to explain that, if after considering these factors, the court determines that the District was justified in removing the child from the regular classroom and providing education in a segregated, special education class, the court must consider whether the school has included the child in school programs with nondisabled children to the maximum extent appropriate.

Here, the IEP from June 5, 2014 clearly provides the Student with an inappropriately restrictive program. The IEP recommends 30 hours per week of

specialized instruction outside general education, with speech and language pathology, 120 minutes per month, and behavioral support services, 360 minutes per month. The record shows that the Student is ready to move on from a full-time setting, such as the setting at School A. There is no dispute about this issue from the parties. DCPS has not argued that the June 5, 2014 IEP constitutes an appropriate program for the Student, and no witness testified that this IEP was appropriate for the Student.

Instead, DCPS's position, in fact, is that there was no IEP at all in this case. DCPS contends that the IEP from June 5, 2014 was a draft that was not finalized at the meeting. The record does not support this assertion. There are no documents in the record to support a conclusion that this IEP was a draft. The IEP does not indicate that it is a draft, and there are no emails or correspondences from DCPS to alert Petitioner that this IEP should be considered a draft. I agree with Petitioner that the June 5, 2014 IEP was in fact a finalized IEP.

Alternatively, if DCPS is correct in its assertion that the June 5, 2014 IEP was a draft, there was *no IEP at all* for the 2014-2015 school year. DCPS argues that the complete lack of an IEP constitutes a procedural violation that had no impact on the Student, but this argument is clearly without merit. The utter lack of *any* educational program necessarily has a substantive impact on a Student that needs *some* special education services. The case cited in support by DCPS, K.E. v. District of Columbia, 19 F. Supp.3d 140 (D.D.C. 2014), is completely consistent with this position. In that case, Judge Walton affirmed a hearing officer's decision that DCPS denied the Student a FAPE by failing to have an IEP in place by the beginning of the school year. Id. @ 150. See also Maynard v. District of Columbia, 701 F.Supp.2d 116, 123–24 (D.D.C.2010)

(DCPS's failure to convene any IEP team meeting prior to the first day of school denied student a FAPE); Alfono v. District of Columbia, 422 F.Supp.2d 1, 5–8 (D.D.C.2006) (DCPS's failure to incorporate the findings of various evaluations in the student's IEP *prior* to the first day of school amounted to a denial of a FAPE).

Nor can Respondent argue that the lack of an IEP was a mere procedural violation because the location of services offered would have provided the Student with a FAPE in any event. No location of services was offered to the Student, as was made clear during the testimony of Witness A.

As a result of the foregoing, Respondent denied the Student a FAPE for the 2014-2015 school year.

2. Second Criterion.

On the second criterion, parents who unilaterally place their child at a private school without the consent of school officials do so at their own financial risk. Florence Cnty. Sch. Dist. 4 v. Carter, 510 U.S. 7, 15 (1993). Parents in such situations may be reimbursed only if "the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate," 34 C.F.R. Sect. 300.148(c) (2012); see also Florence Cnty., 510 U.S. at 15 (parent may only receive tuition reimbursement "if a federal court concludes both that the public placement violated IDEA and that the private school placement was proper under the Act"); Holland v. District of Columbia, 71 F.3d 417, 420 n. 3 (D.C.Cir.1995) (noting that the circuit has ordered reimbursement "where the public agency violated [the IDEA] and the parents made an appropriate placement").

The record indicates that the Student requires a small class size with individualized interventions to address her executive functioning, attentional, emotional, and organizational issues. Additionally, the Student's strong academics suggest a need for her to be integrated into a full-time general education environment.

Under these circumstances, to this IHO, Petitioner's choice of School C was reasonable for the Student. The evidence shows that School C provided the Student with small class size that she required, and there were special education interventions employed even though the school is a "general education" setting. For instance, the school provided the Student with preferential seating, testing accommodations, psychiatric counseling, and check-ins with a social worker. The Student was previously in a DCPS general education public school at School B and did poorly. However, at School C, the record shows that the Student did reasonably well, with passing grades in all of her classes and no major social or emotional problems that prevented her from accessing her education. As indicated by Witness A in her remarks to the parent, School C was a good choice for the Student for the 2014-2015 school year in light of the Student's earlier difficulties.

Respondent suggests that, because it is a "general education" school, School C cannot be the basis of a reimbursement or tuition payment claim under Florence County. It is true that a unilateral private placement cannot be regarded as proper under the IDEA when it does not, at a minimum, provide some element of special education services in which the public school placement was deficient. Frank G v. Board of Educ. of New Hyde Park., 459 F.3d 356, 365 (2d Cir. 2006). This must be balanced against a situation where parents are in effect gaming the system by choosing a private school that offers

"the kind of educational and environmental advantages and amenities that might be preferred by parents of any child, disabled or not." Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 115 (2d Cir. 2007)

Still, there are multiple reported cases where parents receive reimbursement where they have placed their children in general education schools. Frank G., 459 F.3d at 365 (private parochial school); L.B. ex rel. K.B. v. Nebo Sch. Dist., 379 F.3d 966, 979 (10th Cir. 2004)(private mainstream pre-school); G.B. ex rel. N.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 585 (S.D.N.Y. 2010) aff'd sub nom. G.B. v. Tuxedo Union Free Sch. Dist., 486 F. App'x 954 (2d Cir. 2012)(integrated classroom setting). As the court pointed out in G.B.: "a court will not fault the parents simply because they chose a school that has other appealing features as well." Id., 751 F. Supp. 2d at 585.

In this connection, DCPS cites to Werner v. Clarkstown Cent. Sch. Dist., 363 F. Supp. 2d 656, 660 (S.D.N.Y. 2005), where the Court denied tuition reimbursement for a student who was placed at a non-public school by parents. However, in Werner, the parents failed to sustain their burden of showing that the non-public school offered the student the sort of special education services he needed. Here, Petitioner did show that the proposed school offered the Student with the services she needed. DCPS did not point to any particular services that School C lacked in connection to the Student. Moreover, there is no testimony from any DCPS witness that School C was inappropriate or inadequate in any way.

In sum, I find that Petitioner's selection of School C was proper under the Act. Petitioner prevails on the second criterion.

3. Third Criterion.

On the third criterion, the IDEA allows that tuition reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents. 20 U.S.C. Sect. 1412(a)(10)(C)(iii). With respect to a parents' obligation to raise the appropriateness of an IEP in a timely manner, the IDEA provides that tuition reimbursement may be denied or reduced, if parents neither inform the CSE of their disagreement with its proposed placement and their intent to place their child in a private school at public expense at the most recent CSE meeting prior to their removal of the child from public school, nor provide the school district with written notice stating their concerns and their intent with remove the child within ten business days before such removal. 34 CFR Sect. 148(d)(i), (ii). Under 20 U.S.C. Sect. 1412(a)(10)(C)(iii), a denial or reduction in reimbursement is discretionary.

The Supreme Court has suggested that the statutory factors are a non-exhaustive list. Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 241 (2009)"The clauses of Sect. 1412(a)(10)(C) are ... best read as elucidative rather than exhaustive."). In addition, courts have broad discretion to consider the range of all relevant facts in determining whether and to what extent awarding relief is equitable. See Florence County, 510 U.S. at 16. Among the most important of these is "whether the parents have cooperated with the [District] throughout the process to ensure their child receive a FAPE." Bettinger v. N.Y.C. Bd. of Educ., 2007 WL 4208560, at *6 (S.D.N.Y. Nov. 20, 2007).

The IEP created in June, 2014 is a peculiar document in that the parties, at that time, appeared to realize the program was too restrictive. It is hardly surprising that

DCPS then decided to try to revise or rewrite the document so it would be more attuned to the Student's needs. DCPS sought to meet with the Petitioner during the summer, before the school year started, to do just that.

While I am sure it was dispiriting for the parent to have to revisit the IEP process after the IEP meeting had already taken place in June, 2014, I find that the Petitioner did not react appropriately to the DCPS request for an IEP meeting in July, 2014. The record shows that Petitioner flatly refused to meet to rewrite or revise this IEP, explaining at the hearing that "the train had left the station." I am of the view that Petitioner had a continuing obligation to cooperate with the school district to give them an opportunity to provide a more appropriate IEP and placement *prior to the start of the school year* in view of the defects in the IEP. Cf. R.E. v. New York City Dep't of Educ., 694 F.3d 167, 188 (2d Cir. 2012)(in some circumstances, district may rehabilitate defective IEP even after Due Process Complaint is served if it acted in good faith or made an inadvertent mistake).

Additionally, as pointed out by DCPS in their brief, Petitioner failed to provide DCPS with written notice of the unilateral placement at School C. As a result – while some at DCPS clearly knew of Petitioner's intent to enroll the Student at School C – some at Respondent were under the impression that the Student would be returning to School A for the 2014-2015 school year. The Student was accordingly marked as truant when she did not show up at School A at the beginning of the school year.

Cases suggest that a reduction of the award is in order given these facts. For instance, in C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 71 (3d Cir. 2010), the parents unilaterally withdrew a student from a district without any prior notice to the

district. Further, the parents delayed the continuation of the IEP meeting and cancelled the speech and language evaluation of the student. The court held that "the IDEA was not intended to fund private school tuition for the children of parents who have not first given the public school a good faith opportunity to meet its obligations" and denied all tuition to the parents. Id.

I do not believe that these facts warrant a complete denial of tuition. The record shows that the parent did try to work with the school district for a placement for a long time, in effect from November, 2013 through to June, 2014. I also credit the Petitioner's testimony when she indicated that the District encouraged her to find a private placement in December, 2013. As a result, this is also not a case where there was a "transfer made truly unilaterally, bereft of any attempt to achieve a negotiated compromise and agreement." Town of Burlington v. Dep't of Educ., 736 F.2d 773, 799 (1st Cir.1984), *675 *aff'd,* 471 U.S. 359 (1985)

Still, if parents are to be able to get full tuition reimbursement under the IDEA, they should give the district "a meaningful opportunity to minimize its expenses by developing its own IEP that would provide the child with a FAPE within the School District." W.M. v. Lakeland Cent. Sch. Dist., 783 F.Supp.2d 497, 504 (S.D.N.Y. 2011).

Under the circumstances, I find that the parent's refusal to meet with DCPS to rewrite or revise the IEP created on June 5, 2014 warrants a 50 percent deduction in the tuition award. J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635, 676 (S.D.N.Y. 2011)(75 percent deduction justified where delayed notice to the District of their insistence that the District pay tuition, mixed evidence of the parents'

cooperativeness with the District, and the parents' apparent predisposition to view skeptically any placement that the District might suggest).

IX. Order

As a result of the foregoing, I hereby order the following:

1. Respondent shall fund 50% of the Petitioner's obligation to pay for the Student's placement at School C for the 2014-2015 school year.

Dated: March 29, 2015
Corrected: April 8, 2015

Michael Lazan
Impartial Hearing Officer

X. Notice of Appeal Rights

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

Date: March 29, 2015
Corrected: April 8, 2015

Michael Lazan
Impartial Hearing Officer