

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution
1050 First Street, N.E., Third Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
April 02, 2019

<i>Student</i> , ¹)	Case No.: 2019-0014
through <i>Parents</i> ,)	
<i>Petitioners</i> ,)	Date Issued: 4/2/19
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates: 3/27/19 & 3/28/19
("DCPS"),)	ODR Hearing Room: 423
Respondent.)	

HEARING OFFICER DETERMINATION

Background

Petitioners, Student’s Parents, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because Student had not been provided appropriate Individualized Education Programs (“IEPs”) and placements/locations of services for 2017/18² and 2018/19. DCPS vigorously defended its proposed IEPs and placements/locations of services.

The same issues involving the same parties in 2015/16 and 2016/17 had been addressed by the undersigned in a Hearing Officer Determination (“HOD”) issued on 1/7/19 in Case No. 2016-0192, following the remand of a 11/1/16 HOD by a Hearing Officer no longer under contract with the Office of Dispute Resolution, in *[Initials], et al. v. Dist. of Columbia*, No. 16-cv-2346 (DLF) (D.D.C. 9/18/18).

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

² All dates in the format “2017/18” refer to school years.

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Procedural History

Following the filing of the due process complaint in this case on 1/17/19, the case was assigned to the undersigned on 1/18/19. Respondent filed a response on 2/12/19, which did not challenge jurisdiction.³ The resolution meeting took place on 1/31/19, but the parties neither settled the case nor shortened the 30-day resolution period, which ended on 2/16/19. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, requiring an HOD by 4/2/19.

The due process hearing took place on 3/27/19 and 3/28/19 and was closed to the public. Petitioners were represented by *Petitioners' counsel* and *Petitioners' co-counsel*. DCPS was represented by *Respondent's counsel*. Both Parents participated in the entire hearing.

Petitioners' Disclosures, submitted on 3/20/19, contained documents P1 through P38, all of which were admitted into evidence over numerous objections. Respondent's Disclosures, submitted on 3/20/19, contained documents R1 through R21, which were admitted into evidence over objections.

Petitioners' counsel presented 1 witnesses in Petitioners' case-in-chief (*see Appendix A*): *Educational Consultant* (qualified without objection as an expert in Special Education).

Respondent's counsel presented 6 witnesses in Respondent's case, all from DCPS (*see Appendix A*):

1. *Occupational Therapist* (qualified without objection as an expert in Occupational Therapy)
2. *Manager of Inclusive Programming* (qualified without objection as an expert in Special Education Programming and Placement)
3. *Monitoring Manager* (qualified without objection as an expert in Special Education Programming and Placement)
4. *Social Worker* (qualified without objection as an expert in Social Work and Behavior Support Services)

³ At this time, the Hearing Officer has jurisdiction to decide this case as all allegations in the complaint relate to the identification, evaluation or educational placement of Student or the provision of a free appropriate public education ("FAPE") to Student. Challenges to jurisdiction may be made at any time.

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5. *Principal of Proposed 2018/19 Public School*
6. *Special Education Specialist (qualified without objection as an expert in Special Education Programming and Placement)*

The issues to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to propose an appropriate IEP and/or placement/location of services with a sufficient type and amount of special education hours for 2017/18. *Respondent has the burden of persuasion on this issue, if Petitioners establish a prima facie case.*

Issue 2: Whether DCPS denied Student a FAPE by failing to propose an appropriate IEP and/or placement/location of services with a sufficient type and amount of special education hours for 2018/19. *Respondent has the burden of persuasion on this issue, if Petitioners establish a prima facie case.*

Issue 3: Whether Nonpublic School is a proper placement for Student. *Petitioners have the burden of persuasion on this issue.*

The relief requested by Petitioners is:

- DCPS shall reimburse Parents for the cost of tuition and any related services for Student at Nonpublic School for the 2017/18 and 2018/19 school years and place and fund Student there for the remainder of the 2018/19 school year.

Findings of Fact

After considering all the evidence, as well as the arguments of counsel for both parties, the Findings of Fact⁴ are as follows:

1. Student is a resident of the District of Columbia; Petitioners are Student's Parents.⁵ Student is *Age* and in *Grade* at *Nonpublic School*.⁶ Student is bright and a "good kid" who

⁴ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁵ P24-1.

⁶ *Id.*

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is distractible and very impulsive when around distractions; Student benefits from smaller classes.⁷ Student is proud of being a good student at Nonpublic School, but could potentially feel ashamed elsewhere; Nonpublic School works hard to make its students feel typical.⁸

2. Updated Evaluation. An 8/30/18 comprehensive psychological evaluation conducted by a DCPS school psychologist found that Student's overall cognitive functioning fell in the Average range (Full Scale IQ ("FSIQ") was 97, based on the Wechsler Intelligence Scale for Children – Fifth Edition ("WISC-V")), with verbal comprehension in the High Average range (Verbal Comprehension Index ("VCI") was 113), and processing speed in the Very Low range (Processing Speed Index ("PSI") was 72), suggesting uneven verbal, fluid reasoning, and working memory abilities.⁹ Student may work more slowly than peers and may have a reduced rate of task completion, making long tasks unreasonably difficult to complete.¹⁰ In a previous psychological evaluation on 10/13/15, the WISC-V was administered and Student's VCI had also been 113, but PSI was 83, giving a much smaller gap.¹¹

3. DCPS's 8/30/18 comprehensive psychological evaluation found that Student experienced challenges in reading decoding, reading comprehension, and math calculation; based on surveys and observations, Student struggled with attending and focusing for sustained periods when completing tasks.¹² Student's performance on the Behavior Assessment System for Children ("BASC") and Behavior Rating Inventory of Executive Functions ("BRIEF") suggested behaviors consistent with Attention Deficit Hyperactivity Disorder ("ADHD"), with challenges in planning/organization, shift, working memory, and inhibition.¹³ Given Student's academic history, challenges with attending and organization, the 8/30/18 evaluation recommended that Student be determined eligible for special education as a student with Multiple Disabilities ("MD"), due to Specific Learning Disability ("SLD") and Other Health Impairment ("OHI").¹⁴ On 11/6/18, a Prior Written Notice ("PWN") concluded that Student was MD, with SLD and OHI (ADHD-inattentive type).¹⁵

4. Need for Support; Observations. Student received "constant supports" from teachers and staff at Nonpublic School according to the head of several grades there; executive functioning impeded Student's ability to independently complete assignments, and despite progress Student continued to struggle with initiating independently and getting

⁷ R5-4; R13-11.

⁸ R5-4.

⁹ P24-1,6,7,8,9,21.

¹⁰ P24-21.

¹¹ P24-3,4; Educational Consultant.

¹² P24-21.

¹³ *Id.*

¹⁴ P24-18,21,22; R11-2,13 (MD eligibility determination).

¹⁵ P28-1.

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“flustered.”¹⁶ Student did not complete assignments independently most of the time.¹⁷ In testing for the evaluation, Student often needed directions repeated.¹⁸ The 7/24/18 IEP (“7/2018 IEP”) and 11/23/18 IEP (“11/2018 IEP”) noted that Student’s difficulty with executive functioning, with poor attention, sequencing, and self-monitoring, impacted Student’s ability to maintain progress in the general education setting.¹⁹ No executive functioning concerns were noted when DCPS observed Student in a class of 5; the associate head of the highest grades at Nonpublic School raised some executive functioning behavior concerns that he sought to include in the 11/2018 IEP.²⁰

5. On 5/10/17, Social Worker observed Student in English class for an hour without noticing any problems; she acknowledged the observation was a “snapshot” of that hour when Student seemed well-behaved, engaged and happy in the classroom.²¹ Social Worker only observed Student in a class of 4 students, but testified that she formed an opinion of how Student would do in larger settings based on the fact that she had observed other students at Nonpublic School who had similar disabilities and were distracted even in small classrooms; Social Worker reiterated that Student can participate in a class of 25 because of success in a class of 4, since other kids are distracted even in a class of 4.²² Social Worker acknowledged that the DCPS school psychologist appeared to describe a very different student who displayed behaviors consistent with ADHD.²³

6. In 2017/18, Student was observed in English (5 students and a teacher) and was very engaged and provided constructive comments and feedback throughout the class.²⁴ On 5/15/18, Student was observed in English (7 students and a teacher) where Student was completely attentive and engaged, with answers that were clear and coherent, contributing the most of any student in the class.²⁵ Educational Consultant observed Student in English class on 12/3/18 and noted that Student asked lots of questions and took academics seriously, but Student “really needed” assignments broken down and needed scaffolding.²⁶ Regular support (in public school) would not be sufficient for Student due to constant clarifying questions and many comments to peers which interrupt or distract.²⁷

¹⁶ P24-4; P20-20.

¹⁷ P20-20.

¹⁸ P24-5.

¹⁹ P20-4,5,6; P30-7,11.

²⁰ R14-2.

²¹ R5-5; Social Worker.

²² Social Worker (this perspective resulted in a significant loss of credibility with the undersigned).

²³ Social Worker; R10-21.

²⁴ R6-1.

²⁵ R7-1.

²⁶ P31-1.

²⁷ P31-2; Educational Consultant.

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7. On 11/6/18, Occupational Therapist observed Student during Geometry (9 students and 1 teacher) asking questions for clarification.²⁸ Student's Geometry teacher reported on 11/6/18 that Student will veer off topic, but is easily redirected.²⁹ Student's Geometry teacher noted in an 11/16/18 observation that attention is a challenge for Student, as Student is easily distracted and gets off-topic.³⁰ Monitoring Manager observed Student on 11/16/18 (and once before) but did not prepare an observation report; in Geometry class Student was a leader and on task or easily redirected when off task.³¹

8. A Nonpublic School conference report for Student dated 11/13/18 noted in Geometry that Student can easily get distracted by peers during class, needed constant redirection to stay focused, and needed a small class size of 9; in Physical Science, the report noted that Student can be easily distracted and the teacher gives constant reminders to turn in assignments and repeats directions multiple times; in History, Student can become distracted with peer conversations.³²

9. IEPs and Concerns. As a baseline, DCPS's proposed 1/11/16 IEP ("1/2016 IEP") for Student provided 10 hours/week of specialized instruction inside general education, and 2.5 hours/week of specialized instruction outside general education in each writing, reading, and math, along with occupational therapy.³³

10. DCPS's proposed 5/19/17 IEP ("5/2017 IEP") for Student (for 2017/18) provided 10 hours/week of specialized instruction inside general education, and 2.5 hours/week of specialized instruction outside general education for reading and writing, and 2.5 hours/week of specialized instruction for math inside general education (plus occupational therapy).³⁴ The 5/2017 IEP team meeting noted that Student responded very well to a writing class of 4 students.³⁵

11. Educational Consultant credibly testified that DCPS's proposed 2017/18 IEP was not appropriate for Student.³⁶ Student's needs in 2017/18 were very similar to 2016/17; nothing indicated that Student could handle more time inside general education in 2017/18 than in 2016/17.³⁷ Petitioners' co-counsel raised concerns at the time about executive functioning and attention, the size of the classroom, and where Student would go for the hours in general

²⁸ R13-10.

²⁹ R13-11.

³⁰ P30-6.

³¹ P30-5,28; Monitoring Manager.

³² P29-1,2,5.

³³ P5-14 (occupational therapy is not at issue).

³⁴ P10-13.

³⁵ R5-3.

³⁶ Educational Consultant.

³⁷ *Id.*

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education without special education support.³⁸ Educational Consultant is certain that Student cannot handle large general education classes and learn anything.³⁹

12. DCPS's proposed 7/24/18 IEP for Student (for 2018/19) provided 12.5 hours/week of specialized instruction inside general education and 5 hours/week of specialized instruction outside general education (plus occupational therapy).⁴⁰ DCPS's proposed 11/27/18 IEP for Student also provided 12.5 hours/week of specialized instruction inside general education and 5 hours/week of specialized instruction outside general education (but no occupational therapy).⁴¹

13. The parties disagreed on whether there were any disputes over goals in the 11/2018 IEP; Educational Consultant asserted that DCPS refused to provide IEP goals for executive functioning.⁴² The specialized instruction hours remained the key issue; Monitoring Manager believed that 5 hours/week outside general education and 12.5 hours/week inside general education was sufficient for Student and no more time was needed for a FAPE.⁴³ When asked if there were changed circumstances between the IEP for 2016/17 and the 11/2018 IEP, Monitoring Manager pointed to Student being in a more advanced grade and that less intensive reading instruction was needed in 11/2018 than in 2016/17.⁴⁴

14. Educational Consultant credibly testified that DCPS's proposed 11/2018 IEP (for 2018/19) was not appropriate for Student; the services and goals were the same as in the previous IEP even though the disability classification had expanded to include OHI/ADHD.⁴⁵ In the 11/2018 IEP meeting, Petitioners' co-counsel sought more than 5 hours/week of specialized instruction outside general education for Student (along with 12.5 hours/week inside general education).⁴⁶ The DCPS team and Parents' team did not agree on service hours on Student's IEPs.⁴⁷

15. Placement. DCPS did not provide a description of Student's classes and how the IEP hours for 2017/18 and 2018/19 would be implemented in the proposed DCPS placements.⁴⁸ Educational Consultant was clear that inclusion classes would be too large and too distracting for Student; Student would not be able to receive the level of supervision

³⁸ R5-4,7.

³⁹ Educational Consultant.

⁴⁰ P20-10.

⁴¹ P30-15.

⁴² Educational Consultant; Monitoring Manager (DCPS provided all goals requested in IEP); Special Education Specialist (service hours only area of disagreement on 11/2018 IEP).

⁴³ Monitoring Manager.

⁴⁴ *Id.*

⁴⁵ Educational Consultant; P30-15; P20-10; Educational Consultant.

⁴⁶ R14-4.

⁴⁷ Special Education Specialist.

⁴⁸ P31-2; Educational Consultant.

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and support required.⁴⁹ Educational Consultant recommended classes of no more than 7 students (including Student) in core classes including math, reading and writing, while somewhat larger classes of no more than 10 may be acceptable for classes such as History.⁵⁰ Student needs special education services all day long at school, including Art and Music; for Physical Education and lunch specialized instruction was not needed, but a small group setting was required.⁵¹ Educational Consultant observed at Nonpublic School and noted that Student was continually asking for clarification, to which Nonpublic School was able to respond, but a large school may be unable to.⁵²

16. Educational Consultant testified that he believes in the concept of Least Restrictive Environment (“LRE”) and considers that Student is in Student’s LRE this year at Nonpublic School; LRE must be determined on a year-by-year basis, but if it turned out that Student stayed at Nonpublic School through high school that would not prevent Student from going on to college, being independent and having a career.⁵³ Manager of Inclusive Programming testified that Student needs grade-level content outside Nonpublic School, and that Nonpublic School is restricting Student’s academics, although it is a good school.⁵⁴ Special Education Specialist asserted that DCPS’s observations showed Student engaged and attentive during classes, which she found inconsistent with claims that Nonpublic School was required.⁵⁵

17. *Proposed 2017/18 Public School.* According to the assistant principal on 6/6/16, the average size of all inclusion classes at Proposed 2017/18 Public School was around 22-23 students, with a special education teacher along with a general education teacher in all co-taught classes; Manager of Inclusive Programming testified that general education classes there averaged about 20-28 students.⁵⁶ According to the assistant principal, self-contained classes at Proposed 2017/18 Public School had an average of 4-5 students with one special education teacher; Manager of Inclusive Programming estimated self-contained classes at 6-8 students.⁵⁷ As for total school size, the assistant principal on 6/6/16 stated there were 1340 students across the 3 grades; Manager of Inclusive Programming at the hearing estimated 1200.⁵⁸

18. Manager of Inclusive Programming testified that the 5/2017 IEP could have been serviced at Proposed 2017/18 Public School in 2017/18, which would have provided a

⁴⁹ P6-5; Educational Consultant.

⁵⁰ Educational Consultant.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Manager of Inclusive Programming.

⁵⁵ Special Education Specialist; R6-1; R7-1.

⁵⁶ P6-3,4; Manager of Inclusive Programming.

⁵⁷ P6-4; Manager of Inclusive Programming.

⁵⁸ P6-3; Manager of Inclusive Programming.

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FAPE for Student.⁵⁹ Manager of Inclusive Programming had never met Student.⁶⁰ Manager of Inclusive Programming asserted that the 10 hours/week of specialized instruction inside general education could have served three classes, such as Science and Social Studies, and that it was helpful to have 2.5 hours/week of math inside general education to provide Student the tools to access math concepts.⁶¹ Social Worker testified that Proposed 2017/18 Public School was an appropriate placement for Student for 2017/18; Student would benefit from nondisabled peers, and the placement was Student's LRE.⁶²

19. Educational Consultant concluded that 2.5 hours/week for reading outside general education was not possible at Proposed 2017/18 Public School because reading was not available in the special education setting and because 2.5 hours would only cover about half the class each week.⁶³ The 2.5 hours/week for writing also would not work at Proposed 2017/18 Public School.⁶⁴ If re-designed and all reading and writing were in self-contained classes the size would be right, but the instruction and supports might not be appropriate.⁶⁵

20. For the 2.5 hours/week of specialized instruction outside general education for reading and writing in the 5/2017 IEP, Manager of Inclusive Programming asserted that it was actually desirable to split the reading and writing classes so half would be in the inclusion setting and half in the self-contained setting, which was intentionally being done in a few DCPS schools, although Proposed 2017/18 Public School had no students subject to this split in 2017/18 (when Student would have been enrolled) and a total of 1 student in 2018/19.⁶⁶

21. Proposed 2018/19 Public School. Proposed 2018/19 Public School is Student's "in-boundary" school and has 1,800 students; it is the largest public school in the District of Columbia.⁶⁷ Principal had not met and does not know Student, but testified without hesitation that Proposed 2018/19 Public School would have had "no problem at all" implementing Student's specialized instruction hours at the beginning of 2018/19 (or now), and that she had "no concern at all" about implementing Student's IEP goals; Student's Woodcock-Johnson IV ("WJ-IV") scores were viewed as average and similar to other students that Proposed 2018/19 Public School accommodates.⁶⁸ Principal stated that Proposed 2018/19 Public School has 90-minute blocks twice a week for each class, plus 39 minutes per class on Mondays; Principal considers the 5 hours/week of specialized instruction outside general education and 12.5 hours/week of specialized instruction inside

⁵⁹ Manager of Inclusive Programming.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Social Worker.

⁶³ P6-5; Educational Consultant.

⁶⁴ *Id.*

⁶⁵ P6-5.

⁶⁶ Manager of Inclusive Programming.

⁶⁷ Special Education Specialist; Principal.

⁶⁸ Principal; P24-10.

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general education on Student's IEP to be "suggestions" to be increased or adjusted as needed to fit a student's classes, with agreement of the IEP team and amendment of the IEP.⁶⁹

22. Educational Consultant credibly testified that Proposed 2018/19 Public School is not an appropriate setting for Student, who is easily distracted even in a class of 4, but progressing in classes of 4-6 at Nonpublic School.⁷⁰ Classes at Proposed 2018/19 Public School contain up to 20 or even 30 students.⁷¹ Educational Consultant has observed Proposed 2018/19 Public School for other cases in the last year and has seen the special education program there.⁷² The block schedule at Proposed 2018/19 Public School adds up to about 3.5 hours/week, but Student's IEP has 5 hours outside general education, which doesn't meet Student's needs in reading, writing and math, given Student's learning disability.⁷³

23. Special Education Specialist testified that Proposed 2018/19 Public School could satisfy Student's IEP and provide a FAPE, but acknowledged on cross-examination that the head of several grades at Nonpublic School knows more about Student than Special Education Specialist does, that the DC school psychologist concluded that Student was struggling with ADHD and did not see Student as improved as Special Education Specialist had testified; and that there was no evidence that Student had improved to be able to handle larger classes.⁷⁴ Special Education Specialist specifically acknowledged on cross-examination that there is no documentation suggesting that Student could perform in general education size classrooms.⁷⁵

24. Nonpublic School Is Proper; Equities. In the 5/2017 IEP team meeting, the head of several grades at Nonpublic School stated that Student improved at Nonpublic School due to the structure and specific routines there, with a majority of classes with 4-6 students; Student has increased impulsivity in larger classes and a lot more need for prompting.⁷⁶ Student had good grades in 2017/18, improving from a mix of "Bs" and "As" to all "As" over the school year, and mastered most learning objectives.⁷⁷ Student had good grades on into 2018/19.⁷⁸ Student's MAP scores in both reading and math trended upward between Fall 2015 and Spring 2018), with percentile highs of 60 in math and 84 in reading.⁷⁹ Student matured as a learner in 2017/18 and 2018/19 at Nonpublic School, and was

⁶⁹ Principal.

⁷⁰ Educational Consultant.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Special Education Specialist.

⁷⁵ *Id.*

⁷⁶ R5-8.

⁷⁷ P24-3 (with some plusses and minuses); P18; P19.

⁷⁸ P35.

⁷⁹ P17-1.

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connected to teachers, motivated, and progressing.⁸⁰ Student made progress in reading, writing and math, but has a long way to go.⁸¹

25. Student's 7/2018 and 11/2018 IEPs noted in each area of academic concern that based on available data points, Student had made "exceptional" progress and met and mastered the majority of academic standards.⁸² Special Education Specialist emphasized in testimony that Student had taken a more advanced math class than Grade.⁸³ DCPS asserted that Student was being held back at Nonpublic School.⁸⁴

26. Parents cooperated with DCPS and promptly completed a consent packet upon request by DCPS in April 2017, signed consent for testing at the 7/2018 IEP meeting, and signed consent for classroom observations and teacher interviews.⁸⁵ After an occupational therapy evaluation, the IEP team concluded that occupational therapy services were no longer needed; Parents agreed and signed the completion form.⁸⁶

27. Nonpublic School has an OSSE Certificate of Approval ("COA") and provided Student with an appropriate education and opportunity to pursue academic and functional advancement.⁸⁷ Student has made progress each year at Nonpublic School.⁸⁸

Conclusions of Law

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

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services

⁸⁰ Educational Consultant.

⁸¹ *Id.*

⁸² P20-3,4,6; P30-5,9,12.

⁸³ Special Education Specialist.

⁸⁴ Manager of Inclusive Programming.

⁸⁵ P8; P20-20; R11-13.

⁸⁶ P25; R16-2.

⁸⁷ P31-2; Educational Consultant.

⁸⁸ Educational Consultant.

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are ‘tailored to the unique needs’ of a particular child.” *Andrew F.*, 137 S. Ct. at 994, quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child’s disabilities and matching the child with a school capable of fulfilling those needs. See 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Andrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*, 137 S. Ct. at 1001. The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), citing *Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Andrew F.*, 137 S. Ct. at 1001.

In addition, Respondent must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are non-disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Andrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible).

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), quoting *N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioners carry the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioners establish a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of*

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Columbia, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). “Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5-E D.C.M.R. § 3030.3.

However, in circumstances such to these where multiple years of IEPs for the same student are at issue with a ruling on some years in advance of others, the D.C. Court of Appeals has established a “presumption of continuity,” explaining that “the losing party in the dispute over the [contested] IEP [or placement] will have the *burden of producing evidence and persuading the court of changed circumstances* that render the district court’s determination as to the initial year inappropriate for guiding its order of relief for subsequent years.’ *Id.* at 795 (emphasis added, footnote omitted).” *Andersen by Andersen v. Dist. of Columbia*, 877 F.2d 1018, 1022 (D.C. Cir. 1989) (brackets in original), quoting *Town of Burlington v. Dep’t of Educ. for Com. of Mass.*, 736 F.2d 773, 795 (1st Cir. 1984), *aff’d sub nom. Sch. Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985).

Issue 1: *Whether DCPS denied Student a FAPE by failing to propose an appropriate IEP and/or placement/location of services with a sufficient type and amount of special education hours for 2017/18. (Respondent has the burden of persuasion on this issue, if Petitioners establish a prima facie case.)*

Issue 2: *Whether DCPS denied Student a FAPE by failing to propose an appropriate IEP and/or placement/location of services with a sufficient type and amount of special education hours for 2018/19. (Respondent has the burden of persuasion on this issue, if Petitioners establish a prima facie case.)*

These first 2 issues are considered together as they address the same IEP and placement issues in the 2 school years under consideration. Petitioners established a prima facie case on these issues based on expert testimony and documentary evidence from Nonpublic School, shifting the burden of persuasion to DCPS, which failed to prove that any of the 3 IEPs developed for Student for 2017/18 and 2018/19 was appropriate or that placement/location of services was appropriate for either year.

The applicable legal standard for analyzing the appropriateness of the IEPs at issue was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether each IEP was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. As the Court of Appeals emphasized in *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 517 (D.C. Cir. 2018), *Endrew F.* “raised the bar on what counts as an adequate education under the IDEA” in that case, requiring more than “merely some” educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be “reasonably calculated to produce meaningful educational benefit”).

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The measure and adequacy of the IEPs are determined as of the time they were offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). Moreover, the analysis is not about achieving a perfect IEP, but one reasonably calculated to enable Student to make appropriate progress. *Andrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA “stops short of requiring public schools to provide the best possible education”). *See also Hill v. Dist. of Columbia*, 2016 WL 4506972, at *21 (D.D.C. 2016), quoting *Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015). The appropriateness of Student’s IEPs is analyzed by considering the concerns about specialized instruction hours raised by Petitioners, before shifting to consider placement.⁸⁹ *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

Specialized Instruction Hours. The essence of this dispute is whether Student continued to need full-time special education services at Nonpublic School for 2017/18 and 2018/19 or could make appropriate progress with significantly fewer services in DCPS public schools. No one disputes that Student has been making good progress at Nonpublic School, apparently doing even better over time. As in the previous case covering 2015/16 and 2016/17, the core of DCPS’s case is that Student was doing sufficiently well at Nonpublic School that there was no need to continue there or to receive full-time special education services anywhere.⁹⁰ Thus, instead of the 35 hours/week of specialized instruction set forth on the IEPs at Nonpublic School, in the IEP meetings for 2017/18 and 2018/19 DCPS determined that Student needed only 12.5 hours/week of specialized instruction inside general education and 5 hours/week of specialized instruction outside general education (along with a modest amount of occupational therapy services that ended with the 11/2018 IEP and are not at issue in this case).

Continuity from 2016/17. The evidence in this case was that Student’s needs in 2017/18 were very similar to the previous year in which the undersigned found that Student did require full-time special education services. Nothing in this case indicated that Student could handle more time inside general education in 2017/18 than in 2016/17. As in 2016/17, there were again concerns raised at the 5/2017 IEP meeting by Petitioners’ co-counsel about Student’s executive functioning and attention, the size of Student’s classes, and where Student would go for the hours in general education without any special education support. Educational Consultant persuasively testified that he was certain Student could not learn anything in large general education classes. *See Andersen*, 877 F.2d at 1022

⁸⁹ A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. No specific procedural violations were alleged in this case.

⁹⁰ As in the prior litigation over 2015/16 and 2016/17, the credibility of experts is key in this case, with Parents relying entirely on a single expert, Educational Consultant, who has worked with Student over the years, while DCPS presented 5 experts who were on the whole quite impressive, along with Principal, who was credible but had no contact or interaction with Student.

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(need for losing party to show changed circumstances to avoid presumption of continuity from prior year).

When asked if there were changed circumstances between 2016/17 and the 11/2018 IEP, Monitoring Manager simply referred to Student being in a more advanced grade and that less intensive reading instruction was needed in 11/2018 than in 2016/17, although that was not reflected in the services on the DCPS IEPs. The most noteworthy change, however, was the 8/30/18 comprehensive psychological evaluation, which was not raised by Monitoring Manager. That evaluation conducted by a DCPS school psychologist found, based on surveys and observations, that Student struggles with attending and focusing for sustained periods when completing tasks, and that Student's performance on the BASC and BRIEF suggested behaviors consistent with ADHD, with challenges in planning/organization, shift, working memory, and inhibition. Thus, the team acted and a DCPS PWN concluded that Student was MD, with SLD and OHI (due to ADHD-inattentive type). Yet, there was no change in the DCPS IEP goals or any increase in special education services to address the added disability classification.

Inclusion/General Education. The type of special education services proposed by DCPS were also a concern. Educational Consultant explained that the 12.5 hours/week of specialized instruction inside general education on each of the IEPs in issue was not appropriate for Student because inclusion classes were too large and too distracting for Student, and Student would not be able to get the level of supervision and support needed, given Student's repeated requests for guidance in the classroom. Educational Consultant recommended classes of no more than 7 students (including Student) in core areas of math, reading and writing, and classes of no more than 10 for areas such as History.

Nor did DCPS have any answer for concerns about Student being in general education without any support for all the time beyond 17.5 hours/week, which left another 10-15 hours/week without support (apart from 1 hour/week of occupational therapy until it ended in the 11/2018 IEP). Educational Consultant recommended special education services throughout the day, including Art and Music, explaining that specialized instruction was not needed during Physical Education and lunch, but that a small group setting was always required.

The thrust of DCPS's case was that various observations of Student at Nonpublic School revealed that Student was doing fine in class and was not unduly impacted by executive functioning/ADHD. Yet every one of those classes in which Student was observed was much smaller than the inclusion or general education classes that DCPS proposed for Student, which is a critical distinction.

No Explanation of Hours/Classes. DCPS did not attempt to explain the classes that Student would be expected to take in 2017/18 or 2018/19 or how they would mesh with the specialized instruction hours provided on Student's IEPs. But Educational Consultant explained that the fact that the 5 hours/week was divided into 2.5 hours/week for each reading and writing for 2017/18 raised problems, as 2.5 hours/week would not cover an entire class. In the previous case, DCPS had explained that at Proposed 2017/18 Public

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School Student would actually be given a full five hours/week outside general education for each class instead of 2.5 hours, in effect acknowledging that 2.5 hours/week was not sufficient. In this case DCPS relied on a new theory, explaining that having only half the time needed outside general education was in fact an advantage in order to permit students to have exposure to an inclusion setting for the other half of the class – which the undersigned found unpersuasive – as described in more detail in the placement discussion below.

Executive Functioning. In addition to insufficient specialized instruction hours, the other major concern about the 1/2016 IEP in the prior litigation was that it did not adequately address Student’s attentional and executive functioning issues. Nor were those issues addressed in any of the IEPs in this case, despite being emphasized in the 8/30/18 comprehensive psychological evaluation. Those needs were addressed at Nonpublic School through small classes and a high ratio of teachers to students. The fact that DCPS did not seek to address those issues in Student’s IEPs would have seriously interfered with Student’s progress, had Parents agreed to the DCPS IEPs. Moreover, this was a situation that was apparently not getting better over time, as Student’s very low processing speed worsened between the 2015 and 2018 evaluations. As held previously, given Student’s documented needs and the absence of executive functioning goals in Student’s IEP, Student very likely would have been overly distracted and overwhelmed in large inclusion classes and large general education classes and had a very negative public school experience in which Student would have been unable to make appropriate progress.

In sum, this Hearing Officer concludes that DCPS’s 5/2017, 7/2018 and 11/2018 IEPs were not reasonably calculated to enable Student to make appropriate progress in Student’s circumstances in 2017/18 or 2018/19, based on the proposed specialized instruction hours and lack of executive functioning goals and supports, which are substantive violations and denials of FAPE, leading to the remedy set forth below.

Placement

As for educational placement – which DCPS often considers mere location of services – DCPS failed to prove that Proposed 2017/18 Public School or Proposed 2018/19 Public School – or any other DCPS alternative – was appropriate for Student for the years at issue. The applicable legal standard for educational placements is that they must be “reasonabl[y] calculated to enable [a student] to progress appropriate[ly] in light of his circumstances,” but “need not satisfy a parent’s every desire and need not represent the best possible programming for the student.” *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 143, 144 (D.D.C. 2018). At a more pragmatic level, the IDEA also requires “school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student’s IEP.” *Middleton*, 312 F. Supp. 3d at 143, citing *O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008). See also *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013) (DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP”). The appropriateness of Student’s proposed placements are analyzed by reviewing the specific concerns of Petitioners, beginning with the fact that DCPS did not provide a description of the classes proposed for

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Student and how the IEP hours DCPS proposed for 2017/18 and 2018/19 would be implemented in the suggested DCPS placements.

At Proposed 2017/18 Public School, Educational Consultant concluded that 2.5 hours/week outside general education for each reading and writing would not work, for 2.5 hours would only cover about half the class sessions each week (and because reading may not have been in the special education setting at Proposed 2017/18 Public School). Yet as noted above, DCPS asserted at the due process hearing that it would actually be desirable to split the reading and writing classes so that half would be in a self-contained setting and half would be in an inclusion setting. Manager of Inclusive Programming testified that this was intentionally being done in a few DCPS schools, although none of the more than 1,000 students at Proposed 2017/18 Public School had such a schedule in 2017/18 when Student would have been there. Even if this was a compelling theory – of which this Hearing Officer is not yet convinced – the apparently after-the-fact nature of the explanation indicates that Proposed 2017/18 Public School was not a suitable placement for Student in 2017/18. If Parents (and their expert) were not given this explanation at the time, they could not have made an informed decision about the viability of Proposed 2017/18 Public School. Moreover, the undersigned is skeptical that such an unusual approach would have actually been provided to Student in 2017/18, if it was not provided to any other child in the school. In any case, inclusion classes at Proposed 2017/18 Public School contained about 22 or 23 students, which Educational Consultant convincingly explained is much too large for Student, even with the presence of a special education teacher, which was also a problem for the remaining 12.5 hours of inclusion on the DCPS IEP.

As for Proposed 2018/19 Public School, which is the largest public school in the District of Columbia with classes of 20 to 30 students, Principal testified without hesitation that the school would have no problem implementing Student's specialized instruction hours and she had no concern about implementing Student's goals. But the school's block schedule means that each class is about 3.5 hours/week, while Student's IEP has 5 hours outside general education, which doesn't meet Student's needs in reading and writing, given Student's learning disability. To address this, Principal testified that she considers the IEP's specialized instruction hours to merely be "suggestions" which can be increased or adjusted to fit needed classes as long as there is agreement by the IEP team and amendment of the IEP.

In the absence of litigation such adjustment might well be desirable, but the law is clear that IEPs are to be judged as initially offered to parents, not as they might be hypothetically improved. *Smith*, 2018 WL 4680208, at *5 ("adequacy of an IEP must be assessed by reference to 'what [the school] actually offered, not what it is capable of providing'"), quoting *Z.B.*, 888 F.3d at 526; *N.W. v. Dist. of Columbia*, 253 F. Supp. 3d 5, 14-15 (D.D.C. 2017) ("the correct yardstick for measuring the proposed services is the . . . text of the IEP in order to encourage clarity and reduce factual disputes"), quoting *N.S.*, 709 F. Supp. 2d at 72; *Z.B.*, 888 F.3d at 526 (the "IDEA does not permit us to sustain an inadequate IEP because the school system theoretically might bolster it"). Parents were required to decide how to proceed with Student's education based on DCPS's IEPs as proposed, not as later orally explained or justified by DCPS personnel. Taken as drafted,

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this Hearing Officer concludes that the DCPS IEPs did not contain sufficient specialized instruction in suitable educational placements to meet Student's needs.

Proposed 2018/19 Public School also has the same problem as Proposed 2017/18 Public School in terms of the inside general education or inclusion hours on Student's IEPs, for those classes are certainly too large for Student to obtain educational benefit, based on the expert testimony of Educational Consultant. With the small classes and extensive supports of Nonpublic School, Student was doing very well there, but the undersigned is persuaded that, in the absence of those supports at Proposed 2017/18 Public School or Proposed 2018/19 Public School, Student would not have made appropriate progress given Student's circumstances. *See N.G. v. Dist. of Columbia*, 556 F. Supp. 2d 11, 35 (D.D.C. 2008) (disabled students who are making progress in an appropriate nonpublic program should not be automatically disqualified from receiving the very services enabling their success).

Moreover, the law is clear that parents are not obliged to put their children into situations that do not appear viable in order to prove a denial of FAPE. As the Court explained in *N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 72 (D.D.C. 2010),

[P]arents are not required to wait and see a proposed IEP [or placement] in action before concluding that it is inadequate and choosing to enroll their child in an appropriate private school. *See Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484, 2492-93, 174 L. Ed. 2d 168 (2009) (holding that parents may be reimbursed for private-school placement when a school district fails to provide a FAPE even where the student has never received instruction in the public school); *see also Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994) ("a school district cannot escape its obligation under the IDEA to offer formally an appropriate educational placement by arguing that a disabled child's parents expressed unwillingness to accept that placement").

The undersigned concludes that on balance Respondent has failed to carry its burden of persuasion on the placement issue. There was a material failure in the ability of Proposed 2017/18 Public School and Proposed 2018/19 Public School to provide the services required by Student's IEPs, and the placements proposed would not afford Student the opportunity to make appropriate progress in Student's particular circumstances. *N.W.*, 253 F. Supp. 3d at 17, *quoting James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016). This failure is a substantive violation and a denial of FAPE, with the remedy addressed below.

Issue 3: *Whether Nonpublic School is a proper placement for Student. (Petitioners have the burden of persuasion on this issue.)*

Petitioners disputed at the due process hearing whether they bear the burden of persuasion on this issue, based on the presumption of continuity discussed above in *Anderson*, 877 F.2d at 1022, in which the D.C. Circuit Court held that if a disabled child's circumstances continue unchanged, a placement that was initially proper would continue to be so in succeeding years. While that principle appears applicable in this case, the

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undersigned concludes that in any case Petitioners did meet their usual burden of persuasion for the following reasons.

Petitioners demonstrated that Nonpublic School, where Student is doing well and has been educated for many years, is proper and appropriate for Student. The legal standard for proper placement is the same for school districts and for parents. *Leggett*, 793 F.3d at 70. Under *Andrew F.*, 137 S. Ct. at 1001, the question is whether Parents' unilateral private placement was reasonably calculated to enable Student to make appropriate progress given Student's circumstances. *Cf. Leggett*, 793 F.3d at 71, *quoting Rowley*, 458 U.S. at 207, 102 S. Ct. 3034. *See also Wirta v. Dist. of Columbia*, 859 F. Supp. 1, 5 (D.D.C. 1994), *quoting Rowley*, 458 U.S. at 176, 102 S. Ct. at 3034; *N.G. v. Dist. of Columbia*, 556 F. Supp. 2d 11, 37 (D.D.C. 2008). Petitioners' expert witness convincingly testified that Student's program at Nonpublic School is effective and Student's needs are being met. While LRE must be determined on a year-by-year basis, Educational Consultant persuasively testified that Student is in the LRE this year at Nonpublic School. Nonpublic School is providing meaningful educational benefit and Student is making progress appropriate in Student's circumstances. For these reasons, this Hearing Officer concludes that Nonpublic School is proper and appropriate for Student. *See* 34 C.F.R. § 300.148.

Remedy

As the remedy for the denials of FAPE concerning Student's IEPs and placements, Petitioners now seek reimbursement of their payments to Nonpublic School for 2017/18 and 2018/19, along with a request for Student to be placed and funded at Nonpublic School for the remainder of 2018/19. Judge Colleen Kollar-Kotelly recently confirmed that "if there is no public school which is suitable, the school district 'must pay the cost of sending the child to an appropriate private school.'" *Montuori ex rel. A.M. v. Dist. of Columbia*, 2018 WL 4623572, at *3 (D.D.C. 9/26/18), *quoting Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 519 (D.C. Cir. 2005). *See also Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991) (if a public school program were available to enable student to receive educational benefits, DCPS would not need to consider nonpublic placement).

Under the IDEA, however, parents who unilaterally place their disabled child in a private school, without obtaining the consent of local school officials, "do so at their own financial risk." *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993), *quoting Burlington*, 471 U.S. at 374. The Court of Appeals explained in *Leggett v. Dist. of Columbia*, 793 F.3d 59, 66-67 (D.C. Cir. 2015), that,

As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise "proper under the Act"; and (3) the equities weigh in favor of reimbursement – that is, the parents did not otherwise act "unreasonabl[y]."

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Here, the first prong of *Leggett* is met due to the denials of FAPE by DCPS failing to provide Student appropriate IEPs and placements, as discussed at length in the first 2 issues, above.

The second prong of *Leggett* focuses on whether Nonpublic School is proper for Student, which is addressed and satisfied in Issue 3, above.

The final prong of *Leggett* is to consider whether the equities weigh in favor of reimbursement or whether Petitioners acted unreasonably. Here, Parents interacted reasonably with DCPS and provided the signatures and documentation requested during the special education eligibility and IEP process. There was no serious assertion by DCPS that the third prong is not satisfied.

Accordingly, this Hearing Officer concludes that Parents should be reimbursed for Student's tuition and related expenses at Nonpublic School for 2017/18 and 2018/19, and that any remaining unpaid amounts for 2018/19 for Student's tuition and related expenses at Nonpublic School should be funded by DCPS. This remedy meets the Court's guidance that the essence of equity jurisdiction is "to do equity and to mould each decree to the necessities of the particular case." *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), *quoting Reid*, 401 F.3d at 523-24.

ORDER

Petitioners have prevailed on the issues in this case, as set forth above. Accordingly, **it is hereby ordered that:**

Upon receipt of documentation of payment by Petitioners, DCPS shall within 30 days (a) reimburse Petitioners for tuition and related expenses for Student at Nonpublic School for the 2017/18 and 2018/19 school years, and (b) fund tuition and related expenses for Student at Nonpublic School for the remainder of the 2018/19 school year.

Any and all other claims and requests for relief are **dismissed with prejudice.**

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.
Hearing Officer

NOTICE OF RIGHT TO APPEAL

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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).

Copies to:

Counsel of Record (Appendix A, by email)

OSSE-SPED (due.process@dc.gov)

ODR (hearing.office@dc.gov)

[Contact.resolution@dc.gov](mailto>Contact.resolution@dc.gov)