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OSSE
Office of Dispute Resolution
April 18, 2022

Confidential

Parents on Behalf of Student,	HEARING OFFICER'S DETERMINATION ¹
Petitioners,	Hearing Dates:
v.	February 7, 2022
District of Columbia Public Schools (Local Education Agency "LEA")	February 8, 2022
Respondent.	February 9, 2022
Case # 2021-0151	February 10, 2022
Date Issued: April 15, 2022	March 9, 2022
	March 15, 2022
	Counsel for Each Party listed in Appendix A
	<u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>

¹ This "Corrected" HOD is issued to make typographical and/or grammatical changes and/or to remove personally identifiable information; no substantive changes have been made. The HOD issuance date, April 15, 2022, remains unchanged, as does the applicable appeal date. Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30.

BACKGROUND AND PROCEDURAL HISTORY:

The Student who is the subject of this due process hearing ("Student") resides with Student's parents ("Petitioners") in the District of Columbia. District of Columbia Public Schools ("DCPS") is Student's local education agency ("LEA"). Student has been determined eligible for special education and related services pursuant to IDEA with a disability classification of Multiple Disabilities ("MD"), including Specific Learning Disability ("SLD") and Other Health Impairment ("OHI").

Student was first found eligible for special education in November 2017 when Petitioners and Student resided in California. Student had an individualized education program ("IEP") while Student attended school in California. After Petitioners relocated to the District of Columbia, Petitioners enrolled Student in a non-public special education day school ("School A") at the start of school year ("SY") 2019-2020.

On February 29, 2020, Petitioners submitted a referral to DCPS to evaluate Student's special education needs and eligibility and offer an IEP and school placement. On March 11, 2020, DCPS sent Petitioners acknowledgment that it had received Petitioners' referral request on March 2, 2020.

On April 22, 2020, DCPS convened an eligibility meeting and found Student eligible for special education based on existing data and set an IEP meeting date of May 19, 2020. On May 27, 2020, DCPS developed an IEP for Student and informed Petitioners that the IEP could be implemented at Student's local DCPS school.

On August 10, 2020, Petitioners filed a due process complaint ("DPC") alleging, inter alia, that the IEP and placement DCPS proposed for Student were inappropriate. Petitioners requested that DCPS place Student at School A for SY 2020-2021 and reimburse Petitioners for tuition paid to School A at the end of SY 2019-2020.

On August 17, 2020, Petitioner's attorney sent DCPS a letter of unilateral placement stating Student would be attending School A for SY 2019-2020 and requesting that DCPS place and fund Student at School A.

On August 28, 2020, DCPS responded in a letter that it did not agree to bear the cost of a private placement, and it was DCPS's position that it made a FAPE available with an appropriate IEP and a placement at Student's in-boundary neighborhood school, ("School B").

Petitioners withdrew their DPC on October 23, 2020. Student continued to attend School A with parental funding for the remainder of SY 2019-2020. In January 2020, Petitioners provided additional data to DCPS. DCPS conducted evaluations of Student and offered Petitioners an IEP and placement for Student for SY 2020-2021.

Petitioners filed the current DPC on September 23, 2021, alleging, inter alia, that the IEPs and placements DCPS proposed for Student for both SY 2019-2020 and SY 2020-2021 were inappropriate.

Relief Sought:

Petitioners request that DCPS be ordered to place Student at School A for the remainder of SY 2021-2022 and reimburse Petitioners for the costs they have paid for Student to attend School A for SY 2021-2022, SY 2020-2021, at the end of SY 2019-2020.

LEA Response to the Complaint:

DCPS filed a response to the Petitioners' DPC on October 19, 2021. DCPS denied any failure to provide Student with a FAPE. In its response, DCPS asserted, inter alia, the following:

Due to the Covid-19 pandemic, DCPS and School A were closed from March 16, 2020, until SY 2021-2022. All instruction during this period was virtual. The number of hours of specialized instruction in general education, class size, building size, and noise level are not at issue in the virtual environment.

The IEP team appropriately determined that Student did not meet the criteria for eligibility for math instruction, speech-language services, and occupational therapy ("OT"). Petitioners participated fully in the eligibility, IEP, and placement discussion. Petitioners had access to all information discussed and considered by the team for the placement determination.

On May 3, 2021, DCPS convened the annual IEP meeting. The IEP team proposed an IEP and placement that was appropriate. The team appropriately determined that Student did not meet the criteria for eligibility for math instruction, speech-language services, or OT. Again, Petitioners participated fully in the eligibility, IEPs, and placement discussions. Petitioners had access to all information discussed and considered by the team for the placement determinations.

On June 15, 2021, the team met to review Student's reevaluation. The team agreed to the disability classification and the areas impacted: math, reading, writing, and social/emotional. The team did not find Student eligible for speech-language services or OT.

On July 26, 2021, the team reconvened to amend Student's IEP after the reevaluation. The team added behavior support to Student's IEP and changed Student's placement to 20 hours of specialized instruction outside of general education per week in math, reading, written expression, science, and social studies. The team appropriately determined that Student did not meet the eligibility criteria for speech-language services or OT and offered a placement in the least

restrictive environment ("LRE") for Student. On August 9, 2021, Student received a location of service ("LOS") for Student's IEP to be implemented at a DCPS middle school ("School C").

Resolution Meeting and Pre-Hearing Conference:

The parties participated in a resolution meeting on October 7, 2021, and did not resolve the DPC. The parties did not mutually agree to shorten the 30-day resolution period. The 45-day period began on October 23, 2021, and ended [and the Hearing Officer's Determination ("HOD") was initially due] on December 7, 2021.

The parties agreed to hearing dates beyond the HOD due date and submitted motions of continuance that were granted. The parties requested additional time to submit written closing arguments following the due process hearing. The HOD is now due on April 15, 2022.

The undersigned independent hearing officer ("IHO") conducted a pre-hearing conference on November 18, 2021, and issued a pre-hearing order ("PHO") on December 2, 2021, outlining, inter alia, the issues to be adjudicated.

ISSUES:²

The issues adjudicated are:

1. Did DCPS deny Student a FAPE by failing to provide Student with an appropriate program and placement in Student's May 27, 2020, IEP, because the IEP did not prescribe the following:
(a) placement in a separate special education school, and/or (b) speech-language services, and/or (c) specialized instruction and goals in the area of math, and/or (d) OT services, and/or (e) a specific reading methodology or intervention?
2. Did DCPS deny Student a FAPE by failing to provide Student with an appropriate program and placement in Student's July 26, 2021, IEP, because the IEP did not prescribe the following:
(a) placement in a separate special education school, and/or (b) speech-language services, and/or (c) specialized instruction and goals in the area of math, and/or (d) OT services, and/or (e) a specific reading methodology or intervention?
3. Did DCPS deny Student a FAPE by failing to provide Petitioners specific information about the proposed placement/location of services where the May 27, 2020, IEP would implemented?
4. Did DCPS deny Student a FAPE by failing to provide Petitioners specific information about the proposed placement/location of services where the July 26, 2020, IEP would implemented?
5. Is [REDACTED] a proper placement for Student?

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

DUE PROCESS HEARING:

The Due Process Hearing was convened on February 7, 2022, February 8, 2022, February 9, 2022, February 10, 2022, March 9, 2022, and March 15, 2022. Due to the COVID-19 emergency and at the parties' request, the hearing was conducted via video teleconference on the Microsoft Teams platform. The parties submitted written closing arguments on March 31, 2022.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 80 and Respondent's Exhibits 1 through 26) that were admitted into the record and are listed in Appendix 2.³ The witnesses testifying on behalf of each party are listed in Appendix B.⁴

SUMMARY OF DECISION:

Respondent held the burden of persuasion on issues #1 and #2 after Petitioner established a prima facie case. Petitioners held the burden of persuasion on issues # 3, #4, and #5. Based on the evidence adduced, the IHO concluded that Respondent did not sustain the burden of persuasion by a preponderance of the evidence on issue #1 and sustained the burden of persuasion by a preponderance of the evidence on issue #2. Petitioners did not sustain the burden of persuasion on issues #3, #4, and #5. The IHO awarded Petitioners reimbursement for SY 2020-2021 and dismissed Petitioners' remaining claims with prejudice.

FINDINGS OF FACT: ⁵

1. Student resides with Petitioners in the District of Columbia, and DCPS is Student's LEA. Student has been determined eligible for special education and related services pursuant to

³ Any item disclosed and not admitted or admitted for limited purposes was noted on the record and is noted in Appendix A.

⁴ Petitioner presented five witnesses: (1) Student's Mother and the following individuals who were designated as expert witnesses: (2) an Educational Consultant, (3) a School A Speech-Language Pathologist, (4) a School A Administrator, and (5) a School A Occupational Therapist. Respondent presented eight witnesses, most of whom were designated as expert witnesses: (1) a DCPS Psychologist, (2) a DCPS Occupational Therapist, (3) a DCPS Speech Language Pathologist, (4) a DCPS Special Education Teacher/LEA Representative, (5) a DCPS Social Worker (6) a DCPS Manager of SLS Programs, and (7) a DCPS Non-Public School Monitor, (8) an LEA Representative for DCPS: School C. The Hearing Officer found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the testimony of witnesses that the Hearing Officer found are addressed in the conclusions of law.

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

IDEA with a disability classification of MD, including SLD and OHI, due to ADHD. (Mother's testimony, Respondent's Exhibits 3-25, 3-26, 15-1,)

2. Student was initially evaluated and found eligible for special education in November 2017 when Petitioners and Student resided in California. Student's initial evaluations determined that Student's cognitive functioning was average. Student's academic testing yielded the following scores:

Confidential Psycho Educational Report

Composites	Standard Score	Percentile	Classification
Basic Reading Skills	82	12	Low Average
<i>Letter – Word Identification</i>	72	3	Low
<i>Word Attack</i>	96	39	Average
WIAT-III Word Reading	73	4	Low

Reading Comprehension	77	6	Low
<i>Passage Comprehension</i>	74	4	Low
<i>Reading Recall</i>	85	16	Low Average

Math Calculation Skills	85	16	Low Average
<i>Calculation</i>	90	25	Average
<i>Math Facts Fluency</i>	84	14	Low Average
WIAT-III Numerical Operations	90	25	Average

Math Problem Solving	88	21	Low Average
<i>Applied Problems</i>	89	23	Low Average
<i>Number Matrices</i>	88	21	Low Average

Written Expression	96	39	Average
<i>Writing Samples</i>	99	47	Average
<i>Sentence Writing Fluency</i>	92	30	Average
WIAT-III Spelling	81	10	Low Average

(Respondent's Exhibit 3-1, 3-3, 3-17)

3. Student's California LEA updated Student's IEP on October 9, 2018. The IEP contained a goal for Phonics and Blending. The IEP did not address writing or math as areas of concern. The IEP prescribed 5 hours of specialized instruction per week in the general education setting and 2.5 hours per week in a special education setting. This amounted to 8% of Student's time outside the general education setting and 92% of the time inside the general education setting. The IEP also prescribed 60 minutes of occupational therapy ("OT") consult per academic year. (Petitioners' Exhibit 8-7, 8-9, 8-10)
4. Petitioners had an updated neuropsychological report completed in November 2018. That review noted that Student's prior year grade report card generally revealed good academic performance with improvements needed in phonics/word recognition and fluency. A review of Student's then-current grade report card indicated Student's had grade-level performance in math but had ongoing concerns with reading. In

addition, Student's teacher's comments revealed concerns with Student mastering math facts. (Petitioners' Exhibit 9)

5. The evaluator noted Student's positive growth and gains in response to parent, special education, and therapeutic-based interventions with notable improvements in phonological decoding and phonemic fluency skills with standard scores moving from the below-average to average range. Student's continued struggle with the rapid naming/fluency, single-word reading, oral reading fluency, and spelling was noted. While Student's gains were encouraging, the evaluator noted that Student would continue to require regular reading services targeting fluency and phonological decoding. (Petitioners' Exhibit 9)
6. In spring 2019, Student's California LEA administered standardized academic testing. Student met the California state targets for grade performance in English Language Arts ("ELA")/Literacy. Student also met the California state targets for Math and the standard for Student's grade at the time. Student exceeded the California state standard in two of the three areas of Math measured and neared the standard on the third. Student's end-of-year report card for SY 2018-2019 indicated Student was "Proficient" in ELA and Math. (Petitioners' Exhibits 11, 12)
7. Petitioners relocated from California to the District of Columbia during the summer of 2019. Petitioners enrolled Student in School A, a non-public special education day school. Petitioners contracted with School A to pay Student's tuition for SY 2019-2020. Student began attending School A at the start of SY 2019-2020 in August 2020. School A specializes in instructing students with language-based learning differences and provides specialized instruction and related services. In addition to specialized instruction, School A provided Student speech-language and OT. At School A, Student has no non-disabled peers. School A does not provide its students with special education services during lunch and recess. School A has an OSSE Certificate of Approval ("COA") (Mother's testimony, Witness 2's testimony, Witness 8's testimony, Petitioners' Exhibit 17)
8. School A evaluated Student in the area of speech-language. Student presented with above-average receptive vocabulary and average expressive vocabulary. Student displayed wordfinding difficulties across testing. Student demonstrated solid receptive syntax skills and did not make any overt grammatical errors, but Student's ability to construct complex sentences was impacted. The evaluator recommended that Student receive a 45-minute individual speech-language therapy session each week to focus on word retrieval, syntax, receptive and expressive contextual language (in both oral and written contexts), and phonological awareness as it applies to reading and spelling. School A did not conduct an OT evaluation. (Petitioners' Exhibit 14, Witness 3's testimony, Witness 4's testimony, Witness 9's testimony)

9. On February 29, 2020, Petitioner submitted a referral request to DCPS to evaluate Student's special education eligibility and needs and offer Student an IEP and school placement. (Respondent's Exhibit 4-1)
10. On March 11, 2020, DCPS acknowledged Petitioner's referral requested, noting that DCPS received Petitioners' referral on March 2, 2020 (Respondent's Exhibit 4-2.)
11. On April 22, 2020, DCPS convened an eligibility meeting. Based on the documentation and data from Student's prior LEA and IEP, DCPS found Student eligible for special education with the MD classification and set an IEP meeting date of May 19, 2020. On April 27, 2020, DCPS sent a prior written notice ("PWN") documenting the eligibility determination. (Respondent's Exhibits 5 & 6)
12. DCPS obtained consent to evaluate Student from Petitioners on April 24, 2020. DCPS did not conduct any Student evaluations during SY 2019-2020 due to the COVID-19 pandemic restrictions. (Petitioners' Exhibit 24, Witness 5's testimony)
13. On May 11, 2020, a DCPS Speech-Language Pathologist ("SLP") reviewed School A's July 2019 evaluation. The evaluator noted that Student had word-finding difficulties and poor narrative production. She also noted relative weaknesses on some subtests but that Student's index scores fell in the Average range. The SLP concluded that Student did not "demonstrate a disabling communication disorder that would prevent [Student's] ability to access or gain benefit from [REDACTED] educational curriculum" (Witness 6's testimony, Respondent's Exhibit 7)
14. On May 27, 2020, DCPS developed an IEP for Student that included goals in Reading, Written Expression, and Motor Skills/Physical Development. The IEP did not include Math as an area of concern and did prescribe speech-language services. The IEP prescribed 10 hours per week of specialized instruction outside general education and 180 minutes per month of OT consult. (Respondent's Exhibit 8)
15. On August 10, 2020, Petitioners filed a due process complaint alleging, among other things, that the IEP and placement DCPS proposed for Student were inappropriate and requesting that DCPS be ordered to place Student at School A for the end of SY 2019-2020 and SY 2020-2021. (Respondent's Exhibit 13)
16. On August 17, 2020, Petitioners' attorney sent DCPS a letter of unilateral placement stating that Student would be attending School A and requesting that DCPS place and fund Student at School A for SY 2020-2021. (Petitioners' Exhibit 37-1)
17. On August 28, 2020, DCPS responded to Petitioners' notice of unilateral placement with a letter that stated DCPS did not agree to bear the cost of a private placement, and it was DCPS's position that it had made a FAPE available with an appropriate IEP and a

placement at Student's in-boundary neighborhood school ("School B"). (Petitioners' Exhibit 37-2)

18. Petitioners withdrew their DPC without prejudice on October 23, 2020. Student continued to attend School for SY 2020-2021 with Petitioners' funding the tuition. (Mother's testimony, Respondent's Exhibit 13)
19. During fall 2020, Petitioners engaged the services of an educational consultant who completed a review of Student's educational records and assisted Petitioners in meetings with School A. (Witness 1's testimony, Petitioners' Exhibit 47)
20. Petitioners' obtained a neuropsychological evaluation at Children's National Medical Center ("CNMC"). The evaluator noted Student's average cognitive functioning, average reading comprehension, average receptive language skills, and average fine motor dexterity. The evaluator also noted Student's weakness in attention and executive functioning, some areas of reading, and anxiety. The evaluator concluded that Student's neuropsychological profile had been stable for some years, such that comprehensive evaluation would likely not be needed for at least three years. The evaluator recommended that Student receive specialized instruction outside the general education setting multiple times per week in reading and math fluency. Petitioners provided DCPS with the CNMC evaluation report in January 2021. (Petitioners' Exhibit 44)
21. On March 2, 2021, DCPS convened a meeting to review existing data and discuss additional assessments. Petitioners shared that Student's transition to in-person learning went well, and Student was excited to be back in school and with friends. DCPS reviewed the CNMC evaluation report and requested consent to complete assessments. Including speech-language, OT assessments, and social/emotional needs. (Respondent's Exhibit 14)
22. On May 3, 2021, DCPS convened the annual IEP meeting for Student. The IEP team proposed an IEP and placement of 10 hours of specialized instruction per week outside of general education, 5 hours of specialized instruction in general education, and 180 minutes per month of OT consult. The team noted that DCPS would be conducting additional evaluations. (Respondent's Exhibits 15, 16, 17.)
23. On May 12, 2021, DCPS conducted an observation of the student at School A (Respondent's Exhibit 18)
24. On June 7, 2021, DCPS completed a speech-language evaluation. In the areas assessed, Student's language skills were consistent with Student's age-matched peers. Student demonstrated variability in performance for knowledge and use of complex grammatical and syntactical forms and more nuanced social language skills, including evaluating information, prioritizing information, evaluating the accuracy of information, and considering feelings. The evaluator reported that Student's attention, focus, and executive functioning difficulties appear to be notable barriers to Student applying learned skills. The evaluator also noted that Student's oral communication performance appeared to be an

area of relative strength and Student's performance was commensurate with that of age-matched peers. The evaluator concluded that Student did not demonstrate a disabling oral communication disorder that would prevent Student from accessing the educational curriculum and did not meet eligibility as a student with a Speech-Language Impairment. (Witness 6's testimony, Respondent's Exhibit 19).

25. On June 8, 2021, DCPS completed an OT evaluation on Student. The evaluator conducted assessments and classroom observations of Student. The evaluator concluded that Student demonstrates functional gross and fine motor skills. Student was assessed as average to superior in fine and visual perceptual-motor skills and writing skills and was compliant with the use of glasses to accommodate for Student's documented convergence and reading eye movement delays. The evaluator noted that Student will ask for headphones when distracted by auditory information and uses moveable seating to assist with attention in school. Student was processing sensory information just like the majority of others overall. During the observation, Student became dysregulated when asked a question, as noted by visible reddening of Student's cheeks and ears and Student's increased movement. The evaluator noted that this observation supported that Student's need for movement is not rooted in a sensory processing disorder. Student's teachers reported that Student was hardworking and able to follow directions and class routines with visual schedules or checklists and submitted assignments to expectations. The areas of concern raised by Student's teacher were impulsivity and attention. The evaluator noted that while writing is not a preferred mode for Student, Student's writing is functional and legible. The evaluator concluded there was no negative educational impact in Student accessing the curriculum that required the skilled input of an occupational therapist. She concluded that Student did not qualify for direct OT services. (Witness 9's testimony, Respondent's Exhibit 20)

26. On June 8, 2021, DCPS completed a psychological evaluation of Student. The psychologist reviewed Student's educational records and prior evaluations and conducted assessments and a classroom observation. Student's academic assessment results were as follows:

	Standard Score	Percentile Rank	Classification
Math Composite	87	19	Below Average
*Math Concepts & Applications	95	37	Average
*Math Computation	82	12	Below Average
Math Fluency	74	4	Low
Written Language Composite	72	3	Low
*Written Expression	79	8	Low
*Spelling	66	1	Very Low
Writing Fluency	77	6	Low

(Respondent's Exhibit 21)

27. On June 15, 2021, the MDT met to review the reevaluations. The team continued to find Student eligible for special education under the MD disability classification for SLD and OHI and concluded that Student's disability impacted Student in Math, Reading, Written Expression, and Social-Emotional/Behavioral Development. (Respondent's Exhibit 22)
28. On June 15, 2021, DCPS emailed Petitioners a list of all available DCPS schools or locations of service ("LOS") from which Petitioners could choose for Student to attend and where Student's IEP could be implemented. (Respondent's Exhibit 24)
29. On July 26, 2021, DCPS convened a meeting to update Student's IEP. The team agreed to add math as an area of concern and increased the hours of specialized instruction to 20 hours per week outside of the general education setting. The DCPS members of the team who evaluated Student concluded that the evaluative data did not support Student being in an educational placement totally removed from non-disabled peers. The IEP also prescribed 120 minutes per month of behavioral support services outside of the general education setting, 180 minutes per month of OT consult, and 60 minutes per month of behavioral support services consult. (Testimony of Witnesses 5, 6, 7 & 9, Petitioners' Exhibit 68)
30. On August 9, 2021, DCPS sent Petitioners a LOS designation of a DCPS school ("School C") near Petitioners' home. (Respondent's Exhibit 26)
31. If Student were to attend School C, Student's DCPS IEP would be implemented in a self-contained special education program for students with specific learning disabilities with no more than 12 students and a special education teacher and an instructional aide. Student would also have the support of an educational aide during lunch and recess, where Student would be with non-disabled peers. School C can implement the full complement of services prescribed in Student's most recent DCPS IEP. DCPS uses specific evidence-based reading interventions and especially in the self-contained special education programs, such as the program at School C. (Testimony of Witnesses 8, 10, 11)
32. Student's mother contacted School C. She was informed that at School C, Student would be in a self-contained special education classroom with approximately 12 students. She was provided what she considered an incomplete description of the services that would be made available to Student at School C. The School C representative she talked with did not know the specific reading intervention used at School C and could not state the maximum number of students in any elective courses that Student might take. She does not think any school in DCPS would be appropriate because she believes that the IEP DCPS proposed is not appropriate and, therefore, she wants Student to remain at School A. (Mother's testimony)

CONCLUSIONS OF LAW:

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

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

34 C.F.R. § 300.17 provides:

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

Pursuant to 5E DCMR 3030.14, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). Petitioners held the burden of persuasion on issues #3, #4 and #5. The burden of persuasion fell to Respondent on issues #1 and #2. once Petitioner has established a prima facie case on those issues. 6 The burden of persuasion shall be met by a preponderance of the evidence. The normal standard is a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Did DCPS deny Student a FAPE by failing to provide Student with an appropriate program and placement in Student's May 27, 2020, IEP, because the IEP did not prescribe the following: (a) placement in a separate special education school, and/or (b) speech/language services, and/or (c) specialized instruction and goals in the area of math, and/or (d) OT services, and/or (e) a specific reading methodology or intervention?

⁶ DC Code § 38-2571.03 (6) provides:

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

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

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement; provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance of the evidence that the IEP DCPS developed on May 27, 2020, was reasonably calculated to provide Student educational benefit in light of Student’s unique circumstances because it did not include math as an area of concern and did not include math goals.

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

“The IEP is the “centerpiece” of the IDEA’s system for delivering education to disabled children,” *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must “focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits.”

The second, substantive, prong of the *Rowley* inquiry is whether the IEP DCPS developed was reasonably calculated to enable Student to make progress appropriate in light of Student’s individual circumstances.

In *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the “educational benefits” requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Endrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

The key inquiry regarding an IEP’s substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student’s needs at the time, the IEP offered was reasonably calculated to enable the specific student’s progress....“Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137

S. Ct. 988.

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

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

The IEP that DCPS developed for Student on May 27, 2020, was based on the available data, principally the evaluations conducted when Student attended school in California and Student's California IEP. During the evaluation and eligibility process in the spring of 2020, DCPS requested and gained consent to conduct evaluations. Because of the COVID-19 pandemic and school closure that resulted in virtual learning, DCPS was not conducting in-person evaluations. DCPS reviewed the speech-language evaluation that School A conducted in July 2019 but otherwise conducted none of its own assessments of Student's academic functioning.

There were insufficient reasons presented by DCPS witnesses to explain why virtual evaluations were not conducted. Some of the data available such as statewide testing and Student's report cards, indicated Student was on grade level and did not have deficits in math. Nonetheless, the data available in Student's existing evaluations noted that Student had a weakness in math fluency and that Student was receiving specialized instruction at School A in the area of math. The School A members of the IEP team advocated for Student to be provided specialized instruction in Math. When DCPS conducted assessments of Student the following school year to update Student's IEP, the assessment data supported specialized instruction in Math, and the MDT ultimately determined to include Math as an area of concern and added math goals to Student's IEP for SY 2021-2022.

Therefore, it can be presumed that had DCPS conducted evaluations of Student in the spring of 2020, Student's May 27, 2020, IEP would have also included Math as an area of concern and included math goals. For that reason alone, the IHO concludes that Student's May 27, 2020, IEP was not reasonably calculated to provide Student educational benefit in light of Student's unique circumstances and that DCPS thereby denied Student a FAPE.

The alternative reasons Petitioners assert rendered the May 27, 2020, IEP and placement inappropriate or improper are not sufficiently supported by the evidence. However, they are more readily addressed with regard to Student's July 26, 2021, IEP.

ISSUE 2: Did DCPS deny Student a FAPE by failing to provide Student with an appropriate program and placement in Student's July 26, 2021, IEP, because the IEP did not prescribe the following: (a) placement in a separate special education school, and/or (b) speech/language services, and/or (c) specialized instruction and goals in the area of math, and/or (d) OT services,

and/or (e) a specific reading methodology or intervention?

Conclusion: Respondent sustained the burden of persuasion by a preponderance of the evidence that Student's July 26, 2021, IEP was reasonably calculated to provide Student educational benefit in light of Student's unique circumstances.

As discussed in the issue above, the evidence in this case supports the finding that Student was in need of specialized instruction and goals in the area of Math. The July 26, 2021, IEP included Math as an area of concern and included Math goals. In addition, this IEP increased Student's specialized instruction outside the general education setting to 20 hours per week. Therefore, the absence of specialized instruction and goals in math is not a basis for which this IEP can be deemed inappropriate or improper.

Student did not receive speech-language services through Student's California IEP. When Student arrived at School A, a speech-language evaluation was conducted. Student's receptive and expressive language skills were assessed as Average. Nonetheless, School A provided Student speech-language services to principally assist in addressing Student's reading deficits. In developing Student's May 27, 2020, IEP, DCPS conducted a formal review of the School A speech-language evaluation. The DCPS evaluator noted that despite Student's word-finding difficulties noted as a relative weakness on some subtests measured, Student's index scores fell in the Average range. The DCPS SLP concluded that Student did not demonstrate a disabling communication disorder that would prevent Student from accessing the educational curriculum.

In addition, that DCPS SLP evaluated Student in 2021 and noted that Student's oral communication performance appeared to be an area of relative strength, and Student's performance was commensurate with that of age-matched peers. The evaluator concluded that Student did not demonstrate a disabling oral communication disorder that would prevent Student from accessing the educational curriculum. The IHO found the DCPS SLP more credible with regard to Student's lack of need for speech-language services, principally because she personally conducted the most recent speech-language evaluation. Consequently, the IHO does not conclude that Student's July 26, 2021, IEP was inappropriate because it did not include speech-language services.

Although School A provided Student direct OT services during both SY 2020-2021 and SY 2021-2022, School A never conducted an OT assessment. Student's California IEP included OT consult, and DCPS included that service in Student's May 27, 2020, IEP and significantly increased the consult OT services that were to be provided. Although, Petitioners' witness testified that Student benefited from the direct OT services that School A provided Student, that witness, unlike the DCPS OT expert witness, had never evaluated Student. The IHO, therefore, found DCPS's witness more credible. She credibly testified that based on the data from her assessment, there was no negative educational impact on Student accessing the curriculum that required the skilled input of an occupational therapist, and Student did not qualify for direct OT services. She also credibly testified that Student's delays and behaviors that would benefit from OT could be effectively addressed in Student's DCPS IEPs with the consult OT services prescribed.

Petitioners, their representatives, and the School A staff assert that Student should have an IEP that prescribes all services outside general education such that Student's LRE is a separate special education day school.

In addition to the 20 hours per week of specialized instruction outside general education that the July 26, 2021, IEP prescribes, it also prescribes behavioral support services outside general education. Petitioners assert that the number of hours of specialized instruction in Student's full school week should be outside general education.

At School A, Student is with no general education students. The only evidence presented that reflects Student's time and performance in a general education setting was when Student attended School in California. Although Student's mother and her consultant testified that Student struggled in school in California and needed a separate special education day school such as School A, neither of them effectively explained how Student could have received passing grades and scored on grade level in statewide assessments when Student was in a general education immediately before Petitioners enrolled Student in School A.

Although Petitioners assert that Student is in need of special education throughout the school day and must be totally removed from non-disabled peers, the data related to Student's educational and social-emotional functioning belies that assertion. There is no evidence that Student currently receives specialized instruction during lunch and recess at School A. There is no indication that Student cannot effectively interact with general education students during lunch and recess, which would presumably be a small portion of Student's school day in DCPS.

Petitioner also alleges that the IEP did not prescribe a specific reading intervention program. The IEP meeting notes do not reflect that during the IEP meeting, there was any mention of or request for a specific reading methodology or intervention program to be included in the IEP.

As to Petitioner's assertion, the IEPs DCPS developed were inappropriate because they lacked a specific reading intervention or methodology, the case law that is most compelling and recent clearly states that the specific instructional methodology is the proper purview of the school district.

As the Court points out in *R.B. vs. the District of Columbia* 75 IDELR 102 (September 30, 2019) "Plaintiffs' additional concerns go to the methodology of special education instruction at [Public School] but the methodology to be employed in the future execution of an IEP is not a question for courts to decide. As the Supreme Court stated in *Rowley*, "courts must be careful to avoid imposing their view of preferable educational methods upon the States." 458 U.S. at 207. "The primary responsibility for formulating the education to be accorded ... and for choosing the educational method most suitable to the child's needs, was left by [IDEA] to state and local education agencies in cooperation with the parents or guardian of the child." *Id.* "Therefore, once a court determines that the requirements of the Act have been met, questions of methodologies are for resolution by the States." *Id.* at 208."

The evidence presented by Petitioner did not sufficiently demonstrate when countered by the evidence presented by Respondent, that Student requires specialized instruction throughout Student's school day and that Student should be educated in an environment in which Student is

totally removed by non-disabled peers. Nor was there sufficient evidence that the IEPs were inappropriate because they did not prescribe a specific reading intervention program.

There was insufficient evidence presented that Student requires special education throughout the school day or that Student's academic and/or social/emotional or other challenges support a conclusion that Student's unique circumstances require that Student be totally removed from the general education setting such that Student's LRE is a separate special education school.

The evidence adduced supports the finding that services proposed and the amount and type of services that DCPS proposed for Student in the July 26, 2021, IEP were appropriate, and the IEP was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances.

Consequently, the IHO concludes that Respondent sustained the burden of persuasion by a preponderance of the evidence that Student's July 26, 2021, IEP and the educational placement that DCPS offered, both in the IEP and the school proposed to implement the IEP, was appropriate and proper.

ISSUE 3: Did DCPS Student a FAPE by failing to provide Petitioners specific information as to the proposed placement/location of services where the May 27, 2020, IEP would implemented?

Conclusion: Petitioners did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

The purpose of IDEA is to "ensure that all children with disabilities have available to them a free and 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." *M.G. v. District of Columbia*, 246 F.Supp.3d 1,7 (D.D.C. 2017) (citing 20 U.S.C. § 1400(d)(1)(A)).

Parents must have an opportunity to participate in the IEP process, and "procedural inadequacies that 'seriously infringe upon the parents' opportunity to participate in the IEP formulation process ... clearly result in the denial of a FAPE." *Cooper v. District of Columbia*, 77 F.Supp.3d 32, 37 (D.D.C. 2014) (*quoting A.I. 3ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 164 (D.D.C. 2005)) (alteration in original). To ensure these requirements are followed, IDEA established procedural safeguards that allow parents to seek a review of IEP decisions they disagree with. *See Middleton v. District of Columbia*, 312 F.Supp.3d 113, 122 (D.D.C. 2018). Section 1415(f)(1)(A) provides "the parents or the local education agency involved in such a complaint shall have an opportunity for an impartial due process hearing ..."

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the Least Restrictive Environment provisions of the IDEA; and the public agency must ensure that the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home. See 34 C.F.R. § 300.116.

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

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

Pursuant to D.C. Code § 38-2561.02(c) Special education placements shall be made in the following order of priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this chapter: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school; (2) Private or residential District of Columbia facilities; and (3) Facilities outside of the District of Columbia.

The legal standard under the IDEA is that DCPS "must place the student in a setting that is capable of fulfilling the student's IEP." *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013). See also *O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student's IEP requirements).

The evidence demonstrates that after DCPS developed Student's May 27, 2020, IEP, DCPS informed Petitioners that the IEP could be implemented at School B, Student's neighborhood school. In addition, DCPS later informed Petitioners Student could enroll in the DCPS school of their choice. Petitioners attempted to contact Student's neighborhood school and access information regarding the school on the internet. There is no evidence that Petitioners took any action to gain information regarding any other DCPS school.

This offer of School B was made well before the start of SY 2020-2021. Although Petitioners were not involved in choosing the actual school that would implement the IEP, there was ample time to visit the school personally, and if they wanted to request another DCPS school location, that would have been considered. The case law generally supports the proposition that the actual school location where a student's IEP will be implemented is the purview of the school district.

In *Sanchez v. District of Columbia*, No. 19-7048, 2020 U.S. App. LEXIS 15834 (D.C. Cir. May 15, 2020), the Court stated:

"First, the Court concludes that Z.B. was not denied a FAPE on this ground because the decision to refer Z.B. to Kennedy Krieger was a change in location of services, not a change in educational placement, which would have necessitated parental involvement. The IDEA requires that a student's parents be part of the team that creates the student's IEP and determines the student's educational placement. See 20 U.S.C. § 1414(d)(1)(A)-(B). However, [**33] the IDEA does not "explicitly require parental participation in site selection." *James*, 949 F. Supp. 2d at 138 (quoting *White ex rel. White v. Ascension Parish School Bd.*, 343 F.3d 373, 379 (5th Cir. 2003)). Plaintiff

has failed to cite any case, from this Circuit or another, requiring parental involvement in site selection. Instead, all of the cases cited by Plaintiff in support of her argument refer to parental participation in the development of the student's IEP and educational placement. *See e.g., Doug C. v. Hawaii Dep't of Educ.*, 720 F.3d 1038, 1044-45 (9th Cir. 2013) (requiring parental participation in the student's IEP development and educational placement); *Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047, 1055 (9th Cir. 2012) (same); *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 857-59 (6th Cir. 2004) (explaining that a predetermination of services can violate the parents' right to participate in the IEP process)."

Based on the evidence adduced and consideration of the case law, the IHO concludes that adequate information was available to Petitioners regarding the DCPS schools where the IEP could be implemented, and Petitioners did not fully avail themselves of that information. DCPS's action in informing Petitioner regarding the location where Student's IEP would be implemented did not impede Student's right to FAPE or significantly impede Petitioners' opportunity to participate in the decision-making process regarding the provision of FAPE or cause Student a deprivation of educational benefits.

ISSUE 4: Did DCPS Student a FAPE by failing to provide Petitioners specific information as to the proposed placement/location of services where the July 26, 2020, IEP would implemented?

Conclusion: The IHO concludes that Petitioners did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

IDEA allows states to create additional procedural and substantive protections if they are consistent with IDEA. *Middleton*, 312 F.Supp.3d at 122. If a state creates a higher standard, "an individual may bring an action under the federal statute seeking to enforce the state standard." *Id.* (quoting *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1035).

In 2014, the District of Columbia passed the Student Rights Act. The Act "provides district parents with additional procedural safeguards to help make sure parents have the tools they need to stay informed, engaged, and empowered throughout the special education process." *See D.C. Council Comm. Rep. on B 20-723 (D.C. 2014) at 1.* Recognizing that "parents who do not have a specific background in the subject area ... often cannot adequately evaluate whether their child's instruction is sufficient [and that] parents are concerned that an LEA may limit such access to the point that the observation is unable to provide meaningful input into their child's educational progress," the Student Rights Act expanded on a parent's "right to observe" under the IDEA...⁷

The Act (D.C. Code § 38-2571.03) states in pertinent part the following:

⁷ *Woodson, et al., v. District of Columbia*, 119 LRP 28316

5(A) Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child's current or proposed special education program:

(i) the parent of a child with a disability; or

(ii) a designee appointed by the parent of a child with a disability who has professional expertise in the area of special education being observed or is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent; provided, that the designee is neither representing the parent's child in litigation related to the provision of a free and appropriate public education for that child nor has a financial interest in the outcome of such litigation.

(C) A parent, or the parent's designee, shall be allowed to view the child's instruction in the setting where it ordinarily occurs or the setting where the child's instruction will occur if the child attends the proposed program.

(D) the LEA *shall not impose any conditions or restrictions on such observations except those necessary to:*

(i) Ensure the safety of the children in the program;

(ii) Protect other children in the program from disclosure by an observer of confidential and personally identifiable information in the event such information is obtained in the course of an observation by a parent or a designee, or

(iii) Avoid any potential disruption arising from multiple observations occurring in a classroom simultaneously.

(E) An observer shall not disclose nor use any information obtained during the course of an observation for the purpose of seeking or engaging clients in litigation against the District or the LEA.

Generally, a school district has the discretion to determine the actual school location where a Student's IEP is to be implemented, and parents are generally allowed to visit that location before a student's enrollment.

After the July 26, 2021, IEP was developed, DCPS informed Petitioners that the IEP could be and would be implemented at School C. In addition, DCPS informed Petitioners that Student could enroll in the DCPS school of their choice. Petitioners contacted a School C representative and accessed information regarding the school on the internet. Petitioners were provided information about the services provided at School C and how Student's IEP would be implemented. Although Petitioners found the information provided lacking, there was also no evidence that Petitioners took any action to gain information regarding any other DCPS school.

This offer of School C was made well before the start of SY 2021-2022. Although Petitioners were not involved in choosing the actual school that would implement the IEP, there was ample

time to visit the school personally, and if they wanted to request another DCPS school location, that would have been considered. The case law generally supports the proposition that the actual school location where a student's IEP will be implemented is the purview of the school district.

The evidence sufficiently demonstrates, through the credible testimony of the DCPS witnesses, that School C can provide Student specialized instruction both inside and outside of general education, can provide Student with a specialized reading program, the related services, and the accommodations in the IEP to help support Student's academic challenges and other challenges related to Student's disability.

There was no material failure or discrepancy between the services proposed for the disabled child and the services required by that child's IEP. *N.W. v. Dist. of Columbia*, 253 F. Supp. 3d 5, 17 (D.D.C. 2017), *quoting James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016).

Based upon the evidence adduced, the IHO concludes that School C could effectively implement the IEP that DCPS developed for Student on July 26, 2021, and could otherwise appropriately address the academic and social/emotional and other concerns noted in Student's evaluations and IEP. Consequently, the IHO concludes that Respondent sustained the burden of persuasion by a preponderance of the evidence that the educational placement that DCPS offered, both in the IEP and in the school proposed to implement the IEP, was appropriate and proper.

ISSUE 5: Is [REDACTED] a proper placement for Student?

Conclusion: Petitioners did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

A student's IEP determines whether an educational placement is appropriate; the placement does not dictate the IEP. *See Roark v. District of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C. 2006); *Spielberg v. Henrico Cty. Public Sch.*, 853 F.2d 256, 258 (4th Cir. 1988) ("Educational placement is based on the IEP, which is revised annually."); 34 C.F.R. § 300.116(b)(2).

Under the IDEA, parents who unilaterally decide to 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 *Sch. Comm. of the Town of Burlington v. Dep't of Educ.*, 471 U.S. 359, 374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)). "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]." *Leggett v. District of Columbia*, 793 F.3d 59, 66–67 (D.C. Cir. 2015) (citing *Carter*, *supra*, 510 U.S. at 15–16, 114 S.Ct. 361; 20 U.S.C. § 1412(10)(C)(iii)(III)).

Albeit the evidence demonstrates that since Student has attended School A, Student has made progress and that Petitioners are pleased and want Student to remain at School A, based upon the evidence adduced, the IHO does not conclude that Student's appropriate LRE at the time the July

26, 2021, IEP was developed was a separate special education day school, like School A, where Student is totally removed from non-disabled peers. The IHO, therefore, concludes that despite the progress Student has made at School A, School A is not a placement that DCPS is obligated to fund for SY 2021-2022.

As already discussed above, there was sufficient evidence that the IEP DCPS proposed for Student for SY 2020-2021 was not reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances, and the order below provides Petitioners a remedy.

ORDER:

1. DCPS shall reimburse Petitioners for the payments that Petitioners made to School A for Student's attendance at School A from the time of Petitioners' initial referral and request for special education services on March 2, 2020, up to and including the end of SY 2020-2021.
2. DCPS shall provide Petitioners the reimbursement mentioned above within 30 calendar days after Petitioners provide DCPS billing and payment documentation of the tuition Petitioners paid to School A for Student's attendance at School A from March 2, 2020, up to and including the end of SY 2020-2021.
3. Within 30 calendar days of the issuance of this order, DCPS shall, if it has not already done so, convene an IEP update meeting with Petitioners and take action to develop an updated IEP and propose an educational placement for Student for SY 2022-2023.
4. All other relief requested by Petitioners is denied.

APPEAL PROCESS:

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

/s/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: April 15, 2022

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