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

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Office of Dispute Resolution
April 05, 2025

PARENT, on behalf of STUDENT,[1] Petitioner, v. DISTRICT OF COLUMBIA PUBLIC SCHOOLS, Respondent.	))))))))))))	Hearing Officer: Peter Vaden Case No: 2025-0039 Hearing Dates: March 27-28, 2025 Date Issued: April 5, 2025

DISTRICT OF COLUMBIA PUBLIC SCHOOLS, Petitioner, v. PARENT, on behalf of STUDENT, Respondent.	)))))))))))	Case No: 2025-0050

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

These consolidated cases came to be heard upon the Administrative Due Process Complaint Notices filed by the parent (MOTHER) and by District of Columbia Public Schools (DCPS), respectively, under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq*., and Title 5-A, Chapter 5-A30 of the

[1] Personal identification information is provided in Appendix A.

District of Columbia Municipal Regulations (DCMR). In Case No. 2025-0039, the Parent seeks relief for DCPS' alleged denial of a free appropriate public education (FAPE) to STUDENT by proposing to place him/her in an overly restrictive educational setting. In Case No. 2025-0050, DCPS seeks the hearing officer's permission to change Student's placement to an interim alternative educational setting, pursuant to 34 C.F.R. § 300.532. For the reasons explained herein, I find in favor of DCPS in both cases.

Mother's Due Process Complaint in Case No. 2025-0039, filed on February 25, 2025, named DCPS as Respondent. The parties met for a Resolution Session Meeting on March 24, 2025 and did not resolve the issues in dispute. DCPS' Due Process Complaint was filed on March 12, 2025 and named both parents as respondents. The undersigned hearing officer was appointed on February 26, 2025 and on March 13, 2025 in the respective cases. The child's parents are reportedly separated and FATHER did not file any pleadings or appear at the due process hearing.

On March 10, 2025, I convened a telephone prehearing conference with counsel in Case No. 2025-0039 to discuss the issues to be determined, the hearing date and other matters. At the prehearing conference, DCPS' counsel gave notice that DCPS would file a due process complaint under 34 C.F.R. § 300.532 to request permission to change Student's placement to an interim alternative educational setting. DCPS filed its separate complaint, which required an expedited due process hearing, on March 12, 2025. Upon DCPS' unopposed motion to consolidate the cases, on March 20, 2025, I ordered that Case No. 2025-0039 and Case No. 2025-0050 be consolidated for hearing.

Also, on March 20, 2025, I issued a Prehearing Order for the consolidated cases. The expedited decision in Case No. 2025-0050 is due by April 11, 2025. The decision in Case No. 2025-0039 is due by May 11, 2025. This hearing officer determination is the final administrative decision for both cases.

The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on March 27 and 28, 2025. Mother appeared online for the hearing and was represented by MOTHER'S COUNSEL and MOTHER'S CO-COUNSEL. DCPS was represented by DCPS' COUNSEL and by LEA REPRESENTATIVE. With Mother's consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. Mother's Counsel made an opening statement. Mother testified and called no other witnesses. DCPS called as witnesses PARAPROFESSIONAL MANAGER, CASE MANAGER, LEA Representative and ASSISTANT PRINCIPAL.

The parent's Exhibits P-1 through P-18 were admitted into evidence, including Exhibit P-12 admitted over DCPS' objection. At the conclusion of Petitioner's evidence in Case No. 2025-0039, DCPS' Counsel made an oral motion for a directed finding for DCPS, which I denied. DCPS' Exhibits R-1 through R-15 and R-17 through R-20 were all were admitted into evidence without objection. DCPS did not offer Exhibit R-16. After both parties had rested their cases, Mother's Counsel and DCPS' Counsel made oral closing arguments. There was no request to file written closings.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issues for determination in Case No. 2025-0039, as set out in the March 20, 2025 Prehearing Order, are:

> A. Did DCPS deny the Student a FAPE by moving him/her to a more restrictive placement (BES classroom) without respecting the parent's right to meaningfully participate in the decision?
>
> B. Did DCPS deny Student a FAPE by developing an inappropriate Individualized Education Program (IEP)/Educational Placement which did not allow him/her to learn in the least restrictive environment by failing to provide a dedicated aide as a supplementary service and allow him/her to remain in inclusive general education programming.

For relief in Case No. 2025-0039, Mother requests that the hearing officer order DCPS as follows:

> A. The child must continue to attend CITY SCHOOL 1 in a general education classroom with his/her prior IEP fully implemented, while placement is disputed under Stay-Put and
>
> B. DCPS must revise the child's IEP to include a dedicated aide and hire the aide as soon as practicable to allow Student to access education in the least restrictive environment.

At the due process hearing, the parent withdrew, on the record, a previous request for a compensatory education award for Student.

In Case No. 2025-0050, DCPS requests the hearing officer's permission to move Student immediately to an interim alternative placement, the Behavior and Education

Support (BES) classroom at CITY SCHOOL 2, for up to 45 days. DCPS also seeks a determination that at the January 16, 2025 IEP team meeting, the District proposed an appropriate IEP and placement for Student and provided the child with a FAPE.

FINDINGS OF FACT

After considering all of the evidence received at the due process hearing in these cases on March 27 and 28, 2025, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE child, divides time between his/her parents, who are separated. When with Mother, the child resides in the District of Columbia. Testimony of Mother, Exhibit R-11.

2. Student is eligible for special education as a student with Autism. Exhibit R-5.

3. In the 2024-2025 school year, Student is in GRADE at City School 1. Student has been enrolled in City School 1 since the 2020-2021 school year. Testimony of LEA Representative. In the 2024-2025 school year, Student's challenging behaviors really increased. Testimony of LEA Representative, Testimony of Mother.

4. A DCPS psychologist (DCPS PSYCHOLOGIST) conducted a comprehensive psychological evaluation of Student over 4 days in November and December 2024. The psychologist administered an extensive battery of tests to Student, had both parents and Student's teacher complete rating scales, interviewed Mother and the child's teachers and made classroom observations. In her December 9, 2024 report,

DCPS Psychologist reported, *inter alia*, that cognitively, Student's overall performance was in the Below Average range, with a Full Scale IQ (FSIQ) of 88.[2] Academically, Student's performance in Broad Reading and Broad Written Language was in the Very Low range. Student's performance in math was in the Low range. Student's adaptive abilities were measured using the Adaptive Behavior Assessment System 3 (ABAS-3) rating scales. The ABAS-3 scores indicated that Student's social, emotional, and behavioral functioning were perceived differently by his/her father and by his/her teachers, with Father rating most areas within the Average range. Teacher ratings revealed more significant concerns, particularly in behavioral rigidity, self-regulation and social interactions, suggesting that Student may face more pronounced challenges in adapting to the social and behavioral demands of the classroom compared to his/her peers. Rating scales scores across the Autism Spectrum Rating Scales (ASRS), Behavior Assessment System for Children, Third Edition (BASC-3) and the Conners 4th Edition (Conners 4) indicated that Student presented with a pattern of strengths and weaknesses, however, overall, he/she struggled to attend to the general education setting. DCPS Psychologist concluded that it can be supported that Student's educational profile fit the criteria for a student with Autism. Exhibit R-11.

5. Student's May 23, 2024 IEP, developed by the City School 1 IEP Team,

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[2] It appears that in her December 9, 2024 report summary, DCPS Psychologist erroneously included cognitive and academic scores for another child, in addition to Student's scores. *See* Exhibit R-11, pages 32-33.

provided for 4 hours per week of Specialized Instruction in General Education, 4 hours per week of Specialized Instruction outside General Education, 1 hour per week of Behavioral Support Services in General Education, 2 hours per week of Behavioral Support Services outside General Education, 2 hours per month of Speech Language Pathology and 2 hours per month of Occupational Therapy, both outside general education. For present levels of performance in the Emotional, Social and Behavioral Development goal area, Student's classroom teacher reported, *inter alia*, that Student had made progress in self-advocating, building tolerance for non-preferred activities and attending to direct instruction on the carpet. She reported that Student still required quite a bit of flexibility, however Student redirected well. The teacher shared that only occasionally did Student shut down and given space and time to recover, worked well during a shut down. This IEP stated that Student's behavior did not impede his/her learning or that of other children, and that Student did not require the support of a dedicated aide. Exhibit R-1.

6. On the first day of school of the 2024-2025 school year, August 26, 2024, Student "eloped" from the school building, running to a busy 4-lane intersection four blocks from the school. Student had to be restrained and Staff, security and Mother escorted the child back to the school building. Testimony of Case Manager. On August 29, 2024, August 30, 2024 and September 5, 2024, Student eloped from the classroom to attempt to go outside on school grounds. He/she was intercepted by school staff each time. Also on September 5, 2024, Student eloped off school grounds. A staff member

successfully prevailed upon Student to go back into the school building. Exhibit R-1A. On September 5, 2025, the school Student Safety Team, including Mother, developed a Safety Plan for Student aimed at safely maintaining Student in the school setting. Exhibit R-1A. Beginning with the safety plan meeting, Mother requested that Student be provided a dedicated aide. Testimony of Mother.

7. On September 9, 2024, Student's IEP was amended to add a toileting goal. Testimony of Case Manager.

8. On September 26, 2024, the City School 1 school social worker completed a Functional Behavior Assessment Level 1 (FBA 1) to consider Student's problematic behaviors, including, in order of severity Elopement, Work refusal, Difficulty with transition and Shutting down. The hypothesized function of all of the behaviors was avoidance of non-preferred activities as well as the demands of school routines. Also, on September 26, 2024, the social worker developed a Behavior Intervention Plan - Level 1 (BIP 1) to promote replacement behaviors for the problematic behaviors. Exhibit R-8.

9. On October 18, 2024, City School 1 completed a Dedicated Aide Procedural Checklist Form for Student which was sent to DCPS. Exhibit R-7.

10. On October 24, 2024, Student's IEP was amended to add 10 additional hours per week of specialized instruction, outside general education, and assistive technology, as well as additional goals in Adaptive Daily Living Skills, OT and Social, Emotional Development/Behavior. At the IEP team meeting, Mother again requested a dedicated aide for Student and the team took the request under advisement. The IEP

team stated in the amended IEP that Student's behavior impeded his/her learning or that of other children and that Student presented with behaviors of work refusals, shutting down and having difficulty with transitions, as well as incidents of elopement. The amended IEP continued to state that Student did not require the support of a dedicated aide. Exhibits R-2, P-7.

11. Although the October 24, 2024 IEP did not provide for a dedicated aide for Student, Case Manager adjusted his schedule to provide almost 1:1 support for Student and would stay right next to Student all the school day, every day. Despite Case Manager's efforts, Student's participation in class was "zero." Testimony of Case Manager.

12. Around the second week of February 2025, LEA Representative took over as Student's special education teacher and case manager. Mother had said that Case Manager was bothering Student and Student had become totally unresponsive to Case Manager. Testimony of Case Manager. LEA Representative spends most of her day with Student. The school psychologist and social worker also support the child. LEA Representative describes herself as 1:1 with Student. Testimony of LEA Representative.

13. City School 1 staff maintained a Behavior Tracker for Student. The Behavior Tracker form shows that from the start of the 2024-2025 school year through March 18, 2025, Student eloped from his/her classroom approximately 50 times. Over 10 of the elopements were outside of the school building and/or off school grounds. These included the following incidents:

August 26, 2024	Student eloped off of school grounds after realizing he/she did not have his/her water bottle.
September 17, 2024	Student left PE and went towards the cottages.
September 25, 2024	Student left the soccer area into the playground area.
October 7, 2024	Student eloped outside towards the playground where he/she refused to come back into the school for over 20 minutes.
November 7, 2024	Student ran off the soccer field and down to nearby street. A staff member brought Student up to the playground. Upon entering the playground, Student became frustrated and eloped from gym again. He/she climbed through the gap between the fence and the gate and unsafely climbed down the ledge of the staircase. He/she then ran up two streets and eventually entered into the breezeway.
November 18, 2024	Student eloped off of school grounds while he/she was supposed to be at recess. Student eloped to the sidewalk and could not be contained into the school building.
November 21, 2024	Student eloped from playground at the end of the recess period due to falling on the basketball court and low frustration tolerance. Student ran to the front of the school building, refusing to enter at the school side entrance by the playground and would only enter through the front door of the school.
December 10, 2024	Student left the PE area outside the school building. He/she walked the sidewalk and waited by one of the outside school fences.
January 8, 2025	Student tried to get back outside, however three staff members were blocking the door, and DCPS Psychologist was outside of the door. After attempting to leave the room, Student screamed "F*** You" to Case Manager.

January 16, 2025	Student refused to wait for Mother by the front entrance for pick up. He/she ran out the door to the basketball court, ran onto the field, and onto the playground. Student did not have a coat and the temperatures were below freezing.
February 4, 2025	Student went up the stairs towards the school side entrance by the security guard. He/she walked towards the cottages and then went on the trail behind the cottages and would not go inside.
February 25, 2025	Student eloped from Music class and refused to come inside the building.

Exhibit R-15. As of the hearing date, Student was eloping from the school building approximately one time every week. Testimony of LEA Representative.

14. On November 21, 2024, City School 1 convened a multidisciplinary team (MDT) meeting for Student to discuss safety concerns for Student regarding the child's elopements from school grounds. Mother, her educational advocate and Mother's Counsel attended the meeting. At the meeting, Mother's Counsel again requested a dedicated aide for Student. Case Manager responded that based on the current and aggregate data, he was not recommending a dedicated aide, but would continue to collect data. Testimony of Case Manager, Exhibits R-3, P-8.

15. On December 2, 2024, at the request of City School 1, DCPS sent a paraprofessional support specialist (SPECIALIST) to assess the appropriateness of the assignment of a dedicated aide for Student. In her December 5, 2024 Observation Report, Specialist reported that the reason for the request for the dedicated aide was

that Student displayed regression in academics, behavioral and functional adaptive skills. Student's reported behaviors included eloping from school, destruction of school property and aggressive behaviors toward staff members, including biting and throwing items in the classroom. Specialist did not recommend that Student have a dedicated aide, but recommended that Student would benefit from a small special classroom focused on his/her needs academically and behaviorally, to support Student and children who have similar needs in all areas of behavior, academics, adaptive skills, life skills and social skills. Exhibit R-7.

16. In November 2024 the City School 1 school social worker conducted a Functional Behavioral Assessment Level 2 (FBA 2) of Student. She issued a FBA 2 report on December 9, 2024 and developed a Behavior Intervention Plan Level 2 (BIP 2) on January 17, 2024. The school social worker identified Student's targeted behaviors as Elopement, Work Refusals, Difficulty with Transition and Shutting Down. The functions of these behaviors were reported to be escape, attention, and to gain access to specific activities or items. In the BIP 2, the social worker recommended, *inter alia*, that Student required consistency in his/her daily schedule to include a highly structured routine in an uninterrupted environment with minimal distractions and transitions. Exhibit R-9.

17. LEA Representative scheduled an IEP team combined eligibility and IEP meeting for January 16, 2025. By email of January 10, 2025 to Mother and her representatives, LEA Representative wrote, "[T]he urgency of this matter cannot be

overstated. [Student] is currently in crisis, with [his/her] most recent incident occurring Wednesday (1/07/25) when [he/she] eloped from the school during PE with [teachers' names]. Delaying this meeting any further could significantly impact our ability to provide timely interventions and resources that are critical to [Student's] well-being, safety, and academic success." Exhibit R-4.

18. City School 1 provided a draft revised IEP to the parents on January 8, 2025. Exhibit R-3.

19. On January 16, 2025, Case Manager convened the eligibility/IEP review meeting for Student at City School 1. The meeting ran from 1:20 to 3:45 p.m. Mother, Father and Mother's Counsel attended in person or online. The team discussed DCPS' assistive technology (AT) assessment and recommendations for Student. Mother stated that Student previously had AT and she was in agreement with the AT recommendations. The school social worker reviewed the FBA 2 she had conducted in December 2024. She reported that Student's behaviors noted were elopements at least 3 times a week, work refusal, challenges with transitions before, during and after school and Student's shutting down. Mother stated her agreement with the way the social worker described Student. Mother expressed concerns about Student's being physically restrained and stated she was not in agreement with any type of physical restraint. DCPS' Counsel clarified that restraints are only done in time of emergencies. Father expressed that he was in agreement with restraints as a form to keep Student safe. School Psychologist reviewed her psychological reevaluation of Student and the criteria

for finding an Autism Spectrum Disorder. The team agreed that Student met IDEA eligibility criteria for Autism. Exhibit R-3.

20. For the IEP review, Case Manager reviewed all present levels of performance in the areas of Reading, Written Expression and Mathematics and the proposed annual goals in each academic area, as well as increasing Student's Specialized Instruction service hours to 20 hours per week. There was no disagreement with these aspects of the proposed IEP. Case Manager proposed that the IEP team consider a BES program for Student. Case Manager explained that the BES program offers a therapeutic learning environment for students with small group support, and is staffed with behavior technicians and paraprofessionals who are trained to support students with complex behavioral problems. He noted that City School 1 does not have a BES program and recommended that DCPS provide Student with access to a BES program in another location. Case Manager reviewed the need for a dedicated aide and advised that the school team did not recommend a dedicated aide for Student. Student's classroom teacher expressed that Student had not yet been able to make progress toward accessing general education content and curriculum and she agreed that Student would benefit from a small group setting where his/her needs could be met in full. The teacher also did not recommend a dedicated aide. Mother stated that she disagreed with the placement decision. She believed that the team was equipped to fully support Student at City School 1. The school team members were in full agreement that a dedicated aide was not recommended or appropriate to meet Student's needs. Father stated he was not

opposed to having a dedicated aide. The school IEP team members recommended a BES classroom for Student based on the aggregate data. LEA Representative indicated she would follow up with another email to provide the DCPS dedicated aide observation report. Case Manager wrote in an email that he had already sent the report to the parents and all team members on December 13, 2024. Mother stated that she had not received the observation report with recommendations. The school team recommended that the IEP process be completed and finalized, capturing all concerns, so that DCPS could provide Student with FAPE as soon as possible, due to the aggregate data, crisis and emergency of his/her needs. LEA Representative stated she would email all relevant documentation for the parents' records and review. Additionally, she would provide the parents with the contact information for the DCPS Manager of the BES program to help answer any additional questions the parents may have about the program. The City School 1 team would follow up with a location of services letter and would work with the BES program, the IEP team and parents to schedule a transition meeting for Student. At the conclusion of the meeting, Mother stated she was in disagreement with having Student participate in a self-contained setting and in disagreement with the school team's recommendation that Student would not benefit from a dedicated aide. Father stated he was in disagreement with the school team's recommendation that Student would not benefit from having a dedicated aide. He also said he disagreed with self-contained programming for Student due to not having enough information. Exhibit R-6, Testimony of Case Manager.

21. The January 16, 2025 IEP identified Autism as Student's disability category. The IEP affirmed that Student's behavior impedes his/her learning or that of other children and recited that Student presents with behaviors of work refusals, shutting down, having difficulty with transitions and incidents of elopement. The IEP states that in addition, Student has had incidents of physical aggression towards staff and destruction of school materials in the classroom. The IEP recited classroom teachers' major areas of concern that Student demonstrates significant behavioral challenges that impact their ability to engage in grade-level content and make academic progress. The teachers reported a consistent lack of participation in class activities, and that Student often avoids or refuses to complete tasks despite individualized supports. They reported that attention and focus remained major concerns, as the student is easily distracted and struggles to maintain engagement during lessons. The teachers reported that additionally, Student exhibits difficulty with self-regulation, often becoming frustrated or disengaged when faced with challenging work, or simply asked to do classwork entirely. The teachers reported that Student has difficulty following classroom routines or complying with expectations, which further limits progress. Exhibit R-5.

22. The January 16, 2025 IEP provides for Student to receive 20 hours per week of Specialized Instruction Services outside general education, as well as Speech-Language, Occupational Therapy (OT) and Behavioral Support Services related services. The Least Restrictive Environment (LRE) section of the IEP proposed that Student have

22 services hours per week (65.19%) outside general education. The IEP states Student does not require the support of a dedicated aide. Exhibit R-5.

23. In a January 17, 2025 Prior Written Notice (PWN) to the parents, attached to the January 16, 2025 IEP, DCPS gave notice that Student's proposed new IEP required 20 hours per week of Specialized Instruction, which was a change in placement, and that the IEP could not be fulfilled at City School 1. According to the PWN, the school team members strongly believed that, given Student's emotional, social, academic, adaptive daily living skills and safety needs, Student requires 20 hours per week of specialized instruction outside of general education; that Student's emotional and safety needs prevent him/her from gaining appropriate access to and making progress within the general education curriculum across subjects; that Student will require intensive interventions to access and make progress academically; that due to Student's adaptive and dally living needs, in addition to intensive academic needs, it is crucial that he/she receive all core academic instruction outside of the general education setting and attend specials classes with general education peers. According to the PWN, the school team believed that due to Student's intensive need for support to access curriculum material, his/her lack of knowledge of appropriate boundaries and limits, difficulties with self-regulation, and challenges with managing schedules, transitions, and materials throughout the school day, elopements and physical aggression towards staff, Student requires a more restrictive school setting for his/her social-emotional well-being, safety, and overall success in all areas. The PWN lists nine

events of escalated behaviors over the 2024-2025 school year when Student allegedly engaged in eloping from school, physical aggression against staff or destruction of school property. The PWN states that the school team considered Mother's request for a dedicated aide, but agreed that the implementation of a dedicated aide would not take the place of Student's need for a more restrictive placement. The PWN acknowledged that Mother and Father disagreed with the IEP team's decision that Student would not benefit from a dedicated aide or that Student should be placed in a self contained setting. Exhibit R-5.

24. On February 18, 2025, DCPS issued a location of services letter informing Mother that City School 2 had been identified as Student's location of service and that City School 2 is the BES location in Student's high school boundary. Exhibit P-11.

25. The BES classroom at City School 2 proposed for Student can serve 6 to 8 students in three grades, beginning at Student's current grade. At present, there are 4 children in the BES class. There is a classroom teacher, a teacher's aide and a behavior technician assigned to the class. The school also has a school psychologist and school social worker who work in collaboration with the BES team. The BES program provides a 20 hours per week program outside general education. The BES class students "shadow" general education peers for specials classes – Mandarin language, music, library, physical education, art and enrichment activities. City School 2 is able to implement the proposed January 16, 2025 IEP for Student and could accept him/her immediately, upon enrollment by the parent. Testimony of Assistant Principal.

26. Mother filed her due process complaint in Case No. 2025-0039 on February 25, 2025 and invoked stay-put protection under 34 C.F.R. § 300.518. Pursuant to the stay-put provision, through the present, Student has remained at City School 1 in the setting provided in the October 24, 2024 amended IEP. Testimony of Case Manager. Student's escalated behaviors have continued through the hearing date, which include elopements, physical aggression and destruction of property. Student may hit other students about 1 time per week. Elopements outside the school building occur about one time per week. Testimony of LEA Representative.

CONCLUSIONS OF LAW

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

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, Mother in Case No. 2025-0039 and DCPS in Case No. 2025-0050, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the child's IEP or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency. The burden of persuasion

shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

ANALYSIS

Case No. 2025-0039

A. Did DCPS deny Student a FAPE by moving him/her to a more restrictive placement (BES classroom) without respecting the parent's right to meaningfully participate in the decision?

B. Did DCPS deny Student a FAPE by developing an inappropriate IEP/educational placement which did not allow him/her to learn in the least restrictive environment by failing to provide a dedicated aide as a supplementary service and allow him/her to remain in inclusive general education programming?

The core of Mother's complaint in this matter is that DCPS' January 16, 2025 proposed IEP is inappropriate for Student because it would change the child's educational placement from a mix of push-in and pull-out special education services, based in the general education classroom at City School 1, to a self-contained BES program at a different DCPS school. DCPS maintains that Student requires the more restrictive setting provided in the January 16, 2025 IEP for the child's social-emotional well-being, safety, and overall success in all areas.

U.S. District Judge Rudolph Contreras explained in *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 (D.D.C. 2018), how a court or a hearing officer must assess an IEP:

> In reviewing a challenge under the IDEA, courts conduct a two-part inquiry: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Bd. of Educ. of Hendrick Hudson Cent. Sch.*

> *Dist. v. Rowley*, 458 U.S. 176, 206–07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (footnotes omitted).

Middleton at 128.

With respect to the January 16, 2025 IEP, Mother alleges that DCPS failed to comply with IDEA procedures because City School 1 did not respect her right to meaningfully participate in the decisions made by the IEP team – specifically the team's decisions that Student required a self-contained BES educational placement and that Student did not require a dedicated aide. I find that Mother did not meet her burden of persuasion on her procedural violation claim.

The IDEA requires that the parents of a child with a disability be afforded the opportunity to participate meaningfully in every IEP meeting. *See* 34 C.F.R. § 300.322(a). *See, also, e.g., B.D. v. District of Columbia*, No. CV 15-1139 (RJL), 2021 WL 6049879, at *7 (D.D.C. Dec. 21, 2021) (Central importance of parental participation in the creation of educational programs under the IDEA cannot be gainsaid.) With regard to the development of the January 16, 2025 IEP, I find that the parents did participate meaningfully. City School 1 provided copies of the draft IEP to the parents a week before the meeting. Mother, her attorney and Father attended the 2-hour January 16, 2025 IEP meeting online. The meeting notes reflect that Mother and Father spoke at the meeting and Mother stated that she was in disagreement with having Student participate in a self-contained setting and in disagreement with the school team's recommendation that Student would not benefit from a dedicated aide.

Where a parent has participated in the IEP meeting, courts in this jurisdiction have refused to find a procedural violation. *See, e.g.*, *Edward M.-R. by & through T.R.-M. v. D.C.*, 660 F. Supp. 3d 82, 152 (D.D.C. 2023), *aff'd sub nom. Edward M.R. v. District of Columbia*, 128 F.4th 290 (D.C. Cir. 2025) (Courts have refused to find a serious deprivation where a parent participated in the relevant IEP meetings. *Id.* at 152, *citing J.T. v. District of Columbia*, 496 F. Supp. 3d 190, 203–04 (D.D.C. 2020), *aff'd,* No. 20-7105, 2022 WL 126707 (D.C. Cir. Jan. 11, 2022). *Cf., also, e.g, Barber v. Dist. of Columbia*, No. 21-CV-3158 (JEB/GMH), 2022 WL 22841025, at *16 (D.D.C. Dec. 9, 2022), *report and recommendation adopted*, No. CV 21-3158 (JEB/GMH), 2023 WL 11835281 (D.D.C. Jan. 3, 2023) ("Well-established that parents do not have "a veto power over the IEP team's decisions.")

Mother testified that she was not provided, before the IEP meeting, the observation report made by DCPS' dedicated aide specialist. This was disputed by Case Manager, who wrote that he had provided the report, by email, to the parent on December 13, 2024. *See* Exhibit P-6. In any case, the parent has not cited any legal requirement for DCPS to have provided the observation report to the parents before the IEP meeting. I conclude that Mother has not established that DCPS failed to comply with IDEA procedures in developing the January 16, 2025 IEP.

Turning to the substantive prong of the *Rowley* inquiry, I consider Mother's claim that the January 16 2024 IEP was inappropriate for Student, because the proposed IEP would not allow Student to remain in inclusive general education

programming with the support of a dedicated aide. In *A.D. v. Dist. of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570, (D.D.C. Mar. 8, 2022), U.S. District Judge Beryl Howell explained the IDEA's IEP requirement:

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

A.D., 2022 WL 683570 at *1.

The IDEA requires local education agencies to ensure that students with disabilities are educated in the "[l]east restrictive environment." 20 U.S.C. § 1412(a)(5). "That means that, '[t]o the maximum extent appropriate,' disabled children must be educated alongside their peers and can be removed 'from the regular educational environment . . . only when' they cannot be 'satisfactorily' educated 'in regular classes with the use of supplementary aids and services.'" *Pierre-Noel on behalf of K.N. v. Bridges Pub. Charter Sch.*, 113 F.4th 970, 975 (D.C. Cir. 2024), *quoting* 20 U.S.C. § 1412(a)(5)(A).

Mother contends that if Student were provided a dedicated aide, he/she could be satisfactorily educated in his/her current educational setting based in the regular

education classroom at City School 1. Mother opined in her testimony, that Student's placement at City School 1 in the general education classroom, with push-in and pull-out special education services, is a great setting for the child. She explained that Student is very familiar with the school staff and that in the general education classroom with 19 students, Student benefits from exposure to typically developing peers, from whom he/she learns about social-emotional-behavioral expectations, problem solving, seeing other perspectives, and reading cues. Mother opined that Student could do the general education curriculum with appropriate supports, including a dedicated aide. She opined that a dedicated aide would be able to support Student academically in the general education setting, implement Student's IEP accommodations and modifications, provide for his/her sensory needs, deter elopements from the classroom and assist with toileting.

Mother also testified that she visited the BES classroom at City School 2. She believes that in a BES classroom, children have extreme behaviors. She contends that Student does not have extreme behaviors and would not be able to perform academically in a BES setting.

Although Mother did not call an expert witness, I find that through her own testimony, she established a *prima facie* case that DCPS' January 16, 2025 IEP was inappropriate because the proposed IEP would remove Student to a self-contained classroom setting for much of the school day and the IEP did not provide for a dedicated aide. Therefore, DCPS must bear the burden of persuasion on the appropriateness of

the proposed January 16, 2025 IEP. A hearing officer "may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." *See Endrew F.,* 137 S.Ct. at 1002.

DCPS' expert witnesses, Paraprofessional Manager, Case Manager and LEA Representative opined on the appropriateness of the January 16, 2025 IEP. Case Manager testified that Student had zero participation in the general education classroom at City School 1 and up to the 2024-2025 winter break, had made no progress in the areas the team was trying to address. He opined that the City School 1 team had created an IEP that was appropriate for Student, because he/she would still be in an inclusion program in the BES program and Student does not have access to FAPE in the current placement. He opined that the BES program is the least restrictive environment for Student at this time. LEA Representative testified that Student needed a 20-hour self-contained program with more structure and a dedicated behavior technician to help incorporate behavior management in Student's program. She testified that in the setting at City School 1, Student is not currently accessing his/her IEP goals. Paraprofessional Manager opined that placement in the 20-hour BES program was appropriate for Student because he/she requires more time in a smaller educational setting to work on behavior issues. She opined that the BES program is appropriate because it would address Student's complex behavior needs with trained staff and a behavior technician to support him/her.

All three experts testified that providing a dedicated aide to support Student in his/her program at City School 1 would not be appropriate. Case Manager testified that since the Student's IEP was amended on October 24, 2024 to provide for 18 hours per week of Specialized Instruction, he had effectively provided 1:1 support to Student and sat by the child in class all day, every day. LEA Representative took over from Case Manager in mid-February 2025 and she likewise described herself as a one-on-one with Student. Both witnesses testified that despite this level of support, Student's behaviors continued to be out of control and Student was not able to access his/her IEP goals. They opined that, considering their 1:1 support for Student had not been successful, it was unlikely that assigning a dedicated aide, who lacked their level of training, would be effective. Paraprofessional Manager, similarly opined that a dedicated aide would not be appropriate for Student, because having Case Manager and LEA Representative, who are trained special educators, be with Student in the classroom had not worked. She pointed out that a dedicated aide would not be able to physically keep Student from eloping from the classroom.

I found persuasive the opinions of DCPS' experts that a self-contained classroom for most of the school week is, for now, Student's least restrictive environment and that a dedicated aide would not be appropriate for Student. Each expert has years of experience working with children with disabilities. Case Manager has worked directly with Student since the start of the 2024-2025 school year. LEA Representative has known Student since the 2020-2021 school year and worked one-on-one with him/her

since mid-February 2025. It is undisputed that Student's behaviors have seriously escalated this school year at City School 1, with more than 40 elopements, including approximately one elopement per week outside the school building. Despite being provided intensive special education teacher support, Student is not making the desired progress on his/her IEP goals. On this evidence, I conclude that DCPS has met its burden of persuasion that the decisions of the January 16, 2025 IEP team to place Student in a more restrictive BES classroom and not to provide for Student to have a dedicated aide were appropriate and that the IEP was reasonably calculated to enable this student to make progress appropriate in light of his/her circumstances.

Case No. 2025-0050

> Should the Hearing Officer grant DCPS permission to change Student's placement to an appropriate interim alternative educational setting for not more than 45 school days, because maintaining Student's current placement is substantially likely to result in injury to the child or to others?

Student's current educational placement is at City School 1, in a mixed pull-out, push-in special education placement, pursuant to the October 24, 2024 IEP. DCPS alleges that this setting is unsafe. In Case No. 2025-0050, the District seeks the hearing officer's permission to change Student's placement, on an interim basis, to the BES program at City School 2 pursuant to 34 C.F.R. § 300.324(b). Section 300.324(b)(2)(ii) provides that a hearing officer may,

> [o]rder a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Id. In a comment on this section, the U.S. Department of Education explained that,

> School officials must seek permission from the hearing officer under § 300.532 to order a change of placement of the child to an appropriate interim alternative educational setting. Hearing officers have the authority under § 300.532 to exercise their judgments after considering all factors and the body of evidence presented in an individual case when determining whether a child's behavior is substantially likely to result in injury to the child or others. . . . [T]he meaning of ''substantially likely to result in injury to the child or others'' is left to the judgment of the hearing officer . . . .

Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46540, 46722. (August 14, 2006). There are few reported case decisions interpreting Section 300.324(b)(2)(ii). In *Vilonia Sch. Dist. v. M.S.*, No. 4:18-CV-00219-KGB, 2018 WL 8733056, (E.D. Ark. Apr. 11, 2018), the District Court pronounced,

> When a school district seeks to remove a student who receives educational services pursuant to an IEP, the [hearing officer] must determine if the school district has shown "that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others." *[Honig v. Doe*, 484 U.S. 305, 328 (1988)]. In addition, the school district must show "that the school district has done all that it reasonably can to reduce the risk that the child will cause injury." *[Light v. Parkway C-2 School District*, 41 F.3d 1223, 1228 (8th Cir. 1994)].

Vilonia Sch. Dist., 2018 WL 8733056, at *20.

<u>Is Student's continued placement at City School 1 substantially likely to result in injury?</u>

Student is a child with autism who presents with very challenging behaviors, including incidents of elopement and physical aggression. In its complaint in Case No. 2025-0050, DCPS alleges that during the 2024-2025 school year, Student's behaviors

have increased in severity and frequency, resulting in over 140 behavioral incidents to date. DCPS asserts that due to the high level of behavior concerns with this child, the maintenance of Student's placement at City School 1 is substantially likely to result in injury to the child or others. DCPS' concern about likely injury to Student is due to the child's frequently running out of the school building away from the school grounds. The school is located close to a busy 4-lane traffic intersection in the District. The hearing evidence establishes that since the start of the school year, Student has eloped from the school building more than 10 times and this is still happening about about once every week. Student has, on at least one occasion, had to be physically restrained by an adult to keep him/her safe from being hit by a moving vehicle. Student also frequently hits other students, although at the hearing, there was no evidence of injuries to those children. When upset, the Student has also bitten, kicked and scratched school staff. On at least one occasion, Case Manager had to seek medical attention.

While Student's physical aggression against school staff and his/her hitting other students is concerning, the likelihood that these behaviors may result in serious injury to others was not clear from the evidence. However, in my judgment, after considering the hearing evidence, with the heavy street traffic near City School 1, Student's continuing elopements out of the school building is substantially likely to result in injury to the child.

Has DCPS taken reasonable steps to minimize Student's risk of causing injury to him/her self?

In the *Light* decision, the Eighth Circuit Court of Appeals explained that because a local education agency (LEA) has an obligation to make FAPE available to all children with disabilities, before removing a "dangerous child" to an interim alternative setting, the school district must show that it has made reasonable efforts to accommodate the child's disabilities so as to minimize the likelihood that the child will injure him/herself or others. *See Light, supra*, 41 F.3d at 1228. I find that DCPS has made such efforts. The evidence establishes that City School 1 staff have been very proactive in addressing Student's unsafe elopement behaviors. Following elopements from school at the start of the 2024-2025 school year, City School 1 speedily developed a safety plan for Student. On October 24, 2024, the school IEP team increased Student's Specialized Instruction services from 8 hours to 18 hours per week. Since then, City School 1 special educators have provided Student essentially 1:1 support, staying near Student throughout the school day. The school social worker has conducted an FBA 1 and an FBA 2 for Student and developed corresponding BIPs. Throughout the school year, the school has collaborated closely with the parents, especially Mother, to strategize on Student's behaviors. Unfortunately, the school's efforts have not succeeded in reducing Student's elopements and unsafe behaviors. I conclude, therefore, that DCPS has met its burden of persuasion that maintaining the Student's current placement, under the October 24, 2024 IEP at City School 1, is substantially likely to result in injury to the child.

DCPS has proposed the BES program at City School 2 as Student's interim alternative educational setting. Assistant Principal testified that City School 2 could

accept Student immediately and could implement Student's IEP. She explained that at City School 2, the BES behavior technician, as well as the school social worker and school psychologist, would collaborate to identify the triggers to Student's unsafe behaviors and assure there would be more than one adult to intervene. DCPS' expert, Paraprofessional Manager, opined that the BES program would be able to address Student's complex behavior needs with its trained teaching staff and behavior technician. On this evidence, I find that the BES program at City School 2 is an appropriate interim educational setting for Student. Therefore, I will grant DCPS permission to change Student's placement to the BES program at City School 2 for not more than 45 school days.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ORDERED:

1. Pursuant to 34 C.F.R. § 300.324(b)(2)(ii), DCPS is granted permission to place Student in the BES program at City School 2 for not more than 45 school days as an interim alternative educational setting;

2. All other relief requested by the parties in Case No. 2025-0039 and in Case No. 2025-0050 is denied.

April 5, 2025

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

NOTICE OF RIGHT TO APPEAL

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

cc: Counsel of Record
Office of Dispute Resolution