

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
1050 First Street, NE, 3<sup>rd</sup> Floor  
Washington, DC 20002

OSSE  
Office of Dispute Resolution  
April 15, 2025

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PARENTS, on behalf of STUDENT, <sup>1</sup>	)	Date Issued: April 15, 2025
	)	
Petitioners,	)	Hearing Officer: Peter B. Vaden
	)	
v.	)	Case No: 2025-0014
	)	
DISTRICT OF COLUMBIA	)	Online Videoconference Hearing
PUBLIC SCHOOLS,	)	
	)	Hearing Dates:
Respondent.	)	April 4, 7 and 8, 2025
	)	

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner parents 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 District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the parents seek private school reimbursement and ongoing tuition funding from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied Student a free appropriate public education (FAPE) by, *inter alia*, failing to timely offer him/her appropriate Individualized Education Programs (IEPs) and educational placements for the 2023-2024 and 2024-2025 school years.

Petitioners' Due Process Complaint, filed on January 28, 2025, named DCPS as Respondent. The undersigned hearing officer was appointed on January 29, 2025. The

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<sup>1</sup> Personal identification information is provided in Appendix A.

parties met for a Resolution Session Meeting on February 7, 2025 and did not resolve the issues in dispute. On February 11, 2025, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. On February 13, 2025, I granted the Petitioners' continuance motion to extend the final decision due date to April 25, 2025 to accommodate the parties' first mutually available dates to hold the due process hearing.

With the parents' consent, the due process hearing was held online and recorded by the hearing officer using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on April 4, 7 and 8, 2025. MOTHER and FATHER appeared online for the hearing and were represented by PETITIONERS' COUNSEL. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL. Petitioners' Counsel made an opening statement.

Petitioner called as witnesses EDUCATIONAL ADVOCATE, PRIVATE SCHOOL DEAN and Mother. DCPS called as witnesses SPECIALIZED EDUCATION DIRECTOR, CIEP SOCIAL WORKER, CIEP SPECIALIST 1, CIEP SPECIALIST 2 and SCHOOL PSYCHOLOGIST 2. Petitioners' Exhibits P-1 through P-26 were admitted into evidence, including Exhibit P-11 admitted over DCPS' objection. DCPS' Exhibits R-1 through R-27, R-29 through R-30 and R-33 through R-37 were admitted into evidence without objection. Exhibits R-28 and R-38 were not offered. Exhibits R-31 and R-32 were withdrawn.

On April 8, 2015, after the close of all the evidence, Petitioners' Counsel and DCPS' Counsel made oral closing arguments. There was no request to file written closings but the hearing officer granted counsel leave to submit by email citations to legal authorities they may deem relevant to this matter. Neither party submitted email citations.

### **JURISDICTION**

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

### **ISSUES AND RELIEF SOUGHT**

The issues raised by Petitioners against DCPS are as follows:

- A. Did DCPS deny Student a FAPE by failing to provide an appropriate IEP and placement/location of services for the 2023-2024 school year, including that the November 13, 2023 IEP failed to provide appropriate specialized instruction, was in a setting too large, and was not supportive enough for him/her?
- B. Did DCPS deny Student a FAPE by failing to provide an appropriate IEP and placement/location of services for the 2024-2025 school year, including that the October 10, 2024 IEP failed to provide appropriate specialized instruction, was in a setting too large, and was not supportive enough for him/her?
- C. Did DCPS deny Student a FAPE by failing to timely make an eligibility decision and propose an IEP and placement, that is, in time for the start of the 2023-2024 school year?
- D. Did DCPS deny Student a FAPE by denying the parents a meaningful observation of the proposed placement at CITY SCHOOL 2 on February 2, 2024 and April 10, 2024?
- E. Did DCPS deny Student a FAPE by failing to allow the parents' educational consultant to observe the proposed program at City School 2?

For relief, the Petitioners request that the hearing officer order DCPS to

reimburse the parents for private school tuition and related services already paid to PRIVATE SCHOOL for the 2023-2024 and 2024-2025 school years, and place and fund Student there prospectively.

### **FINDINGS OF FACT**

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE youth, resides with the parents in the District of Columbia. Testimony of Mother.
2. Student is eligible for special education as a student with an Other Health Impairment as having a diagnosis of Attention Deficit Hyperactivity Disorder, combined presentation (OHI-ADHD). Exhibits P-5, P-21.
3. Since January 2022, Student has been unilaterally enrolled by the parents at Private School, where he/she is currently in GRADE. Previously, from at least the 2016-2017 school year, Student was enrolled in CITY SCHOOL 1, a DCPS public school. Exhibit P-5, Testimony of Mother.
4. During Student's tenure at City School 1, he/she had a Section 504 Plan (Section 504 of the Rehabilitation Act of 1973) to address concerns regarding Student's emotional-behavioral functioning. The parents had concerns about the implementation of the 504 plan at City School 1. Additionally, it was noted that the parents reported safety concerns during Student's 2021-2022 school year. It was reported that Student became a victim of peer verbal bullying. Student's records also indicated that he/she

also received supports through the 504 Plan developed to address his/her social-emotional needs. Student displayed challenges with communicating and interacting with peers, separating from parents, and maintaining sustained attention and focus. The 504 Plan addressed communication and emotional regulation in the academic environment. Student received supports transitioning to the classroom during morning entry and whole group. The 504 Plan also included a home to school communication component to support Student and provide structured routines for him/her. Exhibit P-5.

5. Student's grades for the 2020-2021 school year at City School 1 were all Advanced or Proficient except for "Basic" in Spanish and Math. Exhibit P-5.

6. On February 6, 2023, CLINICAL PSYCHOLOGIST conducted a psychological evaluation of Student upon referral by Petitioners' attorneys. Clinical Psychologist diagnosed Student with Oppositional Defiant Disorder, Attention-Deficit/Hyperactivity Disorder – Combined Presentation and Unspecified Mood Disorder. For educational recommendations, Clinical Psychologist recommended, *inter alia*, that Student qualify for special education services via an IEP under the federal classification code of Multiple Disabilities (Other Health Impairment and Emotional Disability); Small, highly structured classroom environment; Access to an executive functioning support class/period with access to a special educator and direct support for executive functioning skills; Behavior Intervention Plan (BIP) and Preferential seating. Exhibit

P-2. The parents shared Clinical Psychologist's evaluation of Student with DCPS in spring 2023. Testimony of Mother.

7. The parents filed a prior due process hearing request for Student on May 2, 2023 (Case No. 2022-0083), alleging that DCPS denied Student a FAPE by failing to comply with its child find obligations for the 2021-2022 and 2022-2023 school years, and by failing to keep Student safe from bullying during the 2021-2022 school year. Following a hearing on June 20 through 22, 2023, Impartial Hearing Officer Terry Michael Banks issued a hearing officer determination dismissing the parents' complaint with prejudice (July 15, 2023 HOD). In the July 15, 2023 HOD, Hearing Officer Banks, found, *inter alia*, that the parents failed their burden of proving that Student's Separation Anxiety condition adversely affected his/her educational performance during the 2021-2022 school year; that by the beginning of the 2022-2023 school year, DCPS "had no additional data that would warrant a suspicion that Student had a disability as such is defined in IDEA;" and "that Petitioners failed to meet their burden of proving that DCPS failed to comply with its child find obligations during the [2022-2023] school year." Exhibit R-9.

8. The parents appealed the July 15, 2023 HOD to the U.S. District Court for the District of Columbia. On April 4, 2025, U.S. District Judge Royce Lamberth issued a memorandum opinion and final order affirming Hearing Officer Banks' determinations and granting summary judgment to the District of Columbia. *See H.S. et al. v. District of Columbia*, Case 1:23-cv-02982-RCL, (D.D.C. April 4, 2025). In its analysis, the Court

found, *inter alia*, that the record supported Hearing Officer Banks' conclusions that Student displayed almost uniformly strong academic performance up until the first term of the 2021-2022 school year; that Student's report cards and the reflections of City School 1's staff also demonstrated that, notwithstanding some behavioral challenges—such as talking out of turn, trying to exert control over conversations, trouble engaging in play with his/her peers, and occasional tantrums— Student generally met his/her teachers' expectations for social and personal development; and that Student's aversion to Spanish was well-known to City School 1's staff, so when Student's academic progress stalled in Spanish and math, the school could rationally attribute it to the school's Spanish language environment rather than to his/her diagnosed separation anxiety. *H.S.*, 2025 WL 1019300, at \*13.

9. After the July 15, 2023 HOD was issued, by email letter of August 4, 2023, Petitioners' attorneys notified DCPS that Student would continue to attend Private School for the 2023-2024 school year. Counsel wrote that this decision was made in order to provide Student the FAPE to which he/she was entitled under the IDEA and that “[w]e do not believe that an appropriate special education program has been identified or offered by DCPS for the upcoming year, despite our best efforts and intentions to procure such a program and placement.” Counsel requested that DCPS place and fund Student at Private School and gave notice that should DCPS refuse the parents' request for funding, they reserved the right to seek funding for that placement. DCPS' RESOLUTION DIRECTOR 1 responded by letter of August 25, 2023. He wrote

that DCPS does not agree to bear the cost of a private placement for Student. He noted that on July 15, 2023, Hearing Officer Banks had dismissed the parents' due process complaint requesting placement and funding for Private School and that DCPS was then in the process of determining initial eligibility for Student, but eligibility had not yet been determined. Resolution Director 1 wrote that in the interim, Student's special education needs could be served at City School 2. Exhibit P-4.

10. On May 2, 2023, while the prior due process complaint (Case No. 2022-0083) was in litigation, DCPS received a parental referral for Student to be evaluated for special education eligibility. Exhibit R-11. DCPS convened an Analysis of Existing Data (AED) meeting on July 14, 2023 and agreed to evaluate the student. Exhibit R-12. On July 15, 2023, Hearing Officer Banks issued the HOD in Case No. 2022-0083. Exhibit R-9. On July 21, 2023, the parents gave their consent for DCPS to conduct an initial eligibility evaluation of Student. Exhibit R-10.

11. DCPS SCHOOL PSYCHOLOGIST reviewed Clinical Psychologist's report and issued a Review of Independent Educational Evaluation report dated September 7, 2023. DCPS School Psychologist's review report does not indicate any disagreement with Clinical Psychologist's evaluation data. In her review report, DCPS School Psychologist summarized that Student's cognitive and academic profile suggested that he/she had the intellectual acumen and capacity to access the general educational curriculum with appropriate accommodations; that Student's cognitive abilities were in the Average range; that Student performed in the Low Average to High Average ranges

for academic skills; and that Student's academic history, as supported by his/her report cards, indicated that he/she met age and grade expectations during his/her tenure at City School 1 and, later, while at Private School. However, Student's behavior with teachers and peers had been noted to impact his/her academic performance. DCPS School Psychologist noted that Student had made progress in his/her Private School environment, but Student continued to display challenges with attention and focus. DCPS School Psychologist concluded that taken all together, Student's academic performance and behavior presentation was consistent with a student with Attention Deficit Hyperactivity Disorder and met the criteria for Other Health Impairment (OHI). Exhibit P-5.<sup>2</sup>

12. DCPS originally sought to schedule Student's initial eligibility meeting for September 25, 2023. The parents were not available that day. The meeting was scheduled for October 2, 2023. However, because DCPS School Psychologist had updated her report, now proposing that Student be eligible under the Other Health Impairment (OHI) classification, the parents wanted time to review the revised report. The eligibility meeting was rescheduled for October 12, 2023. Testimony of CIEP Specialist 2, Exhibit R-29.

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<sup>2</sup> DCPS School Psychologist's final September 7, 2023 IEE Review Report, Exhibit P-5, was revised from two prior report drafts completed by DCPS School Psychologist. In the earlier drafts, also dated September 7, 2023, the psychologist wrote that Student's "cognitive and academic profile suggest that [he/she] has the intellectual acumen and capacity to access the general educational curriculum with appropriate accommodations." See Exhibits R-15 and R-16.

13. On October 12, 2023, DCPS issued a Prior Written Notice (PWN) to the parents notifying them that as of October 12, 2023, the City School 1 eligibility team determined that Student was eligible for special education services; that the eligibility team reviewed the comprehensive psychological report completed by DCPS School Psychologist based on the Independent Educational Evaluation (IEE) completed by Clinical Psychologist. Student was found eligible for special education under the classification of Other Health Impairment (OHI) and based on the data, the team determined that there was an adverse educational impact. The eligibility team found Student eligible for services for written expression and mathematics as well as Behavior Support Services. The team considered reading as an area of concern; however, according to the PWN, the data showed that Student performed solidly in the average to high average range. Exhibit P-6.

14. At an IEP team meeting on November 13, 2023, the DCPS Central Office IEP team developed an initial IEP for Student. Mother, Father, Private School Dean, and an attorney and educational advocate for the parents attended the meeting. The team identified Mathematics, Written Expression and Social-Emotional-Behavioral Development as areas of concern for Student. For special education and related services in the November 13, 2023 IEP, the team provided for Student to receive 5 hours per week of Specialized Instruction in the general education setting, 2 hours per week of Specialized Instruction outside general education and 4 hours per month of Behavioral Support Services outside general education. The IEP also provided for 1 hour per month

of consultation Specialized Instruction Services and 2 hours per month of consultation Behavioral Support Services. Exhibit P-8. The 2 hours per week of Specialized Instruction services outside general education would not be in a self-contained classroom. At the IEP meeting, the parents asked about direct services proposed for Student and the DCPS team explained the services, multiple times, in great detail.

Testimony of CIEP Specialist 2. After reviewing the IEP, the parents agreed to the IEP's proposed present levels of performance, goals, and accommodations. The parents, their attorney and educational advocate disagreed with the proposed hours, as they believed Student should remain at Private School and be placed in a full-time small group setting with supports. Exhibit P-8.

15. Student attended Private School for the 2023-2024 school year under the parents' unilateral placement. By email letter of July 18, 2024, Petitioners' attorneys notified DCPS that Student would continue to attend Private School for the 2024-2025 school year. Counsel wrote that this decision was made in order to provide Student the FAPE to which he/she was entitled under the IDEA and that "[w]e do not believe that an appropriate special education program has been identified or offered by DCPS for the upcoming year, despite our best efforts and intentions to procure such a program and placement." Counsel requested that DCPS place and fund Student at Private School and gave notice that should DCPS refuse the parents' request for funding, they reserved the right to seek funding for that placement. DCPS' RESOLUTION DIRECTOR 2 responded by email letter of July 29, 2024. He wrote that it was DCPS' position that the LEA had

made, and would continue to make, a Free Appropriate Public Education available to Student and that DCPS did not agree to bear the cost of a private placement for Student. Exhibit P-19.

16. DCPS convened an annual IEP review meeting for Student on October 10, 2024. Both parents, Educational Advocate and Petitioners' Counsel attended the meeting. At that meeting, DCPS continued to propose an IEP for Student with an educational placement in the regular education setting at City School 2, with 7 hours per week of Specialized Instruction Services, including 2 hours outside the general education setting. For the October 10, 2024 IEP, the DCPS team reduced Student's proposed Behavioral Support Services from 4 hours to 2 hours per month. The team used progress reports from Private School, observations and other data to develop this IEP. The parents and Educational Advocate attended the IEP meeting. They disagreed with the IEP proposal and with allowing Student to attend his/her neighborhood public school. They stated at the meeting that Student would benefit from a small, individualized environment and that he/she could not participate in a large general education environment. Exhibit P-21.

17. Private School is a small independent school in the District of Columbia serving middle and high school students who have struggled in traditional school settings. The enrollment is 65 to 70 student total, including 22 students in middle school. There are no more than 10 students in a class. The school offers a project-based curriculum with shortened courses and internships. In a school year, students may earn

a full-year's academic credit. Private School is accredited by the Association of Independent Maryland Schools. Private School does not hold a Certificate of Approval from the DC Office of the State Superintendent of Education (OSSE) to serve students with disabilities. None of its teachers is certified in special education and the school does not implement IEPs. The annual tuition is around \$43,000. Testimony of Private School Dean.

18. At Private School, Student has made enormous progress. Student is very curious and wants to learn. He/she is very responsible regarding doing his/her work. He/she works very hard. Student's English skills are slightly below grade level, but he/she is closing the gap. He/she has become a real leader in the school. Student still needs to work on impulsivity, confidence in his/her ability and managing him/herself in class. Student is very social and staff are working to get him/her not to engage with peers so much. Student has some confidence issues and asks a lot of questions for affirmation. Student is benefitting from the supports he/she receives at Private School. Testimony of Private School Dean. Since the 2023-2024 school year, Student's report card grades at High School have been all A's. Exhibits P-23, P-24.

19. Beginning in December 2023, the parents sought to schedule a visit to City School 2 to observe how City School 2 would implement DCPS' proposed November 13, 2023 IEP. After postponing the visit due to a snow closing, the parents' visit was scheduled for February 2, 2024. On that visit, the parents were able to meet with Specialized Instruction Director and ask questions about the program. That day, the

parents were only allowed to look into a general education and a special education classroom through the doorways. Testimony of Mother.

20. A second parent visit to the school was set for April 10, 2024. On the April 10, 2025 school visit, after some delays, Specialized Instruction Director took the parents to a math inclusion classroom to observe. Inside the classroom the parents started asking questions aloud to Special Education Director. Special Education Director tried to get the parents to hold their questions until after they left the classroom. After the parents asked a multitude of questions, Specialized Instruction Director asked them to leave the classroom because she felt the parents were disrupting the learning environment. Outside the classroom, Specialized Instruction Director felt she was being abused by Father's comments. She told the parents to exit the school building and the parents complied. Testimony of Mother, Testimony of Specialized Instruction Director.

21. Following the October 10, 2024 IEP team meeting, on October 28, 2024, Educational Advocate wrote Specialized Instruction Director by email to request to coordinate an observation at City School 2 to observe the learning environment and resources available at the school. On November 11, 2024, Educational Advocate sent a follow-up email to Specialized Instruction Director. DCPS never responded to Educational Advocate's request to observe the program proposed for Student at City School 2. Exhibit P-22, Testimony of Educational Advocate.

22. City School 2 is a DCPS Middle School for grades 6 through 8. Currently there are about 505 students enrolled, divided equally among the three grades. In Grade 6, there are about 40 students receiving special education services. City School 2 would have been able to implement the November 13, 2023 and October 10, 2024 IEPs proposed for Student. Testimony of Specialized Instruction Director.

### **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, the parents in this case, 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

In this proceeding, the parents seek reimbursement from DCPS for their tuition expenses for Student to attend Private School in the 2023-2024 and 2024-2025 school years, on the grounds that DCPS allegedly denied Student a FAPE (1) by failing to timely determine Student's special education eligibility and provide an IEP before the start of the 2023-2024 school year; (2) by not offering Student appropriate IEPs for the 2023-2024 or 2024-2025 school years and (3) by not allowing the parents and their educational advocate to make meaningful observations of the program proposed for Student at City School 2. For the reasons explained below, I find that the parents are not entitled to tuition reimbursement from DCPS.

Reimbursement for Private School Expenses

In the Court's decision in *E.W.-G. v. District of Columbia*, No. CV 20-2806 (CKK), 2023 WL 2598680 (D.D.C. Mar. 22, 2023), U.S. District Judge Colleen Kollar-Kotelly explained the private school tuition reimbursement remedy under the IDEA:

[P]arents who "unilaterally" place a child with a disability in a private school, without consent of the school system, "do so at their own financial risk." *Florence Cty. Sch. Distr. Four v. Carter*, 510 U.S. 7, 15 (1993) (quoting *School Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 373-74 (1996)). To qualify for tuition reimbursement under the IDEA, a plaintiff must demonstrate that: (1) the school district failed to provide a FAPE; (2) the plaintiff's private placement was suitable; and (3) the equities warrant reimbursement for some or all of the cost of the child's private education. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 247 (2009).

*E.W.-G.* at \*2 (D.D.C. Mar. 22, 2023). “[I]f there is an ‘appropriate’ public school program available . . . the District need not consider private placement, even though a private school might be more appropriate or better able to serve the child.” *Jenkins v. Squillacote*, 935 F.2d 303, 305 (D.C. Cir. 1991). *See, also, Leggett v. District of Columbia*, 793 F.3d 59, 63 (D.C. Cir. 2015) (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; (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 unreasonably.) The first, indispensable, requirement for private school reimbursement is that the District failed to offer the child a FAPE. In this case, I find that this requirement is not met.

#### 2023-2024 School Year

- Did DCPS deny Student a FAPE by failing to timely make an eligibility decision and propose an IEP and placement, that is, in time for the start of the 2023-2024 school year?

The parents claim that DCPS denied Student a FAPE because it did not find him/her eligible for special education and offer him/her an IEP before the start of the 2023-2024 school year. The IDEA requires that school officials must have an IEP in place for each student with a disability at the beginning of each school year. *See, e.g., Leggett, supra* 793 F.3d at 67. That requirement, of course, only applies to children who have an IDEA disability. Student was determined eligible for special education on October 12, 2023. The parents do not allege that DCPS failed to timely develop the

initial IEP once Student was determined eligible. The issue here, therefore, is whether DCPS failed to timely make the initial special education eligibility determination for Student.

On May 2, 2023, while the parents' prior due process complaint in Case No. 2022-0083 was pending before Hearing Officer Banks, DCPS received a parental referral for Student to be evaluated for special education eligibility. DCPS convened an AED meeting on July 14, 2023 and agreed to evaluate Student. On July 15, 2023, Hearing Officer Banks issued his HOD. On July 21, 2023, the parents gave their consent for DCPS to evaluate Student. On October 12, 2023, the evaluation was completed and Student was determined eligible. (Student's initial DCPS IEP was developed on November 13, 2023.)

The federal IDEA regulations require that an initial eligibility evaluation must be conducted within 60 days of receiving parental consent for the evaluation. *See* 34 C.F.R. § 300.301(c). *See also* 5A DCMR § 3005.4(b). DCPS received parental consent to evaluate Student on July 21, 2023. The 60-day initial evaluation period ended on September 19, 2023, well after the start of the school year. When DCPS' 2023-2024 school year started on or about August 28, 2023, it was only 38 days after parental consent was given. I find that the parents have not shown that DCPS' not completing Student's eligibility determination (or not proposing an initial IEP) in time for the start of the 2023-2024 school year violated the IDEA or denied Student a FAPE.<sup>3</sup>

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<sup>3</sup> The failure to timely complete an initial eligibility evaluation would be a procedural violation of the IDEA. *See Leggett, supra*, 793 F.3d at 67. Procedural violations may only be deemed a denial of FAPE if the procedural inadequacies—

The parents also appear to argue that DCPS should have started Student's eligibility evaluation when they forwarded Clinical Psychologist's February 2023 IEE evaluation of Student to DCPS in spring 2023. The IEE evaluation was considered by Hearing Officer Banks in reaching his determination in Case No. 2022-0083. Whether Clinical Psychologist's February 2023 evaluation triggered a duty by DCPS to evaluate Student is an issue that should have been litigated in the prior proceeding. *See Drake v. F.A.A.*, 291 F.3d 59, 66 (D.C. Cir. 2002). (Thus, under *res judicata*, "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or *could have been raised* in that action." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980) (emphasis added)).

– Did DCPS deny Student a FAPE by failing to provide an appropriate IEP and placement/location of services for the 2023-2024 school year, including that the November 13, 2023 IEP failed to provide appropriate specialized instruction, was in a setting too large and was not supportive enough for him/her?

After Student was determined eligible for special education on October 12, 2023, on November 13, 2023, DCPS convened the Central Office IEP team to develop Student's initial IEP. The November 13, 2023 IEP provided for Student to receive 5 hours per week of Specialized Instruction in the general education setting, 2 hours per

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- (i) Impeded the child's right to a FAPE;
  - (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
  - (iii) Caused a deprivation of educational benefit.

34 C.F.R. § 300.513(a)(2). In this case, the parents had already given DCPS notice on August 4, 2023 that Student would return to Private School for the 2023-2024 school year. It does not appear that the timing of the initial eligibility evaluation affected Student's substantive rights. *See Leggett, supra*.

week of Specialized Instruction outside general education and 4 hours per month of Behavioral Support Services outside general education. The IEP also provided for 1 hour per month of consultation Specialized Instruction Services and 2 hours per month of consultation Behavioral Support Services. At the November 13, 2023 IEP meeting, the parents and their representatives disagreed with the proposed service hours because they believed Student should remain at Private School and be placed in a full-time small group setting with supports. At the meeting, Father requested a full-time IEP for student.

In *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 (D.D.C. 2018), U.S. District Judge Rudolph Contreras explained 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. In this decision, I have already considered the allegation that DCPS failed to comply with IDEA procedures when it did not complete Student’s eligibility evaluation in time for the start of the 2023-2024 school year, and found that Petitioners did not establish that DCPS was required to complete the initial evaluation in that timeframe. Otherwise, Petitioners have not alleged a procedural violation with respect to the November 13, 2023 IEP (or the October 10, 2024 IEP). Therefore, I turn to the

second prong of the *Rowley* inquiry. Was the November 13, 2023 IEP “reasonably calculated to enable [Student] to make progress appropriate in light of the child’s circumstances”? See *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017).

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 Cnty. 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. “[A]n IEP’s adequacy thus ‘turns on the unique circumstances of the child for whom it was created,’ and a reviewing court should defer to school authorities when they ‘offer a cogent and responsive explanation’ showing that an IEP ‘is reasonably calculated to enable the child to make progress appropriate in light of [her] circumstances.’” *A.D.* at \*7, *quoting Endrew F.*, *supra*, 137 S. Ct. at 1001-02.

After the IEP is developed, the school district must provide the child with an appropriate educational placement that comports with the IEP. *See* 34 C.F.R. § 300.116(b)(2); *Hinson ex rel. N.H. v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 99 (D.D.C. 2008).

At the due process hearing, Petitioners' expert, Educational Advocate, opined, *inter alia*, that the November 13, 2023 IEP proposed by DCPS, with five hours per week of Specialized Instruction support in the general education setting and two hours per week outside general education was inadequate, "given [Student's] demonstrated need for consistent, intensive support throughout the school day." Educational Advocate similarly opined that Student required more services than DCPS offered with the October 10, 2024 IEP. I find that through Educational Advocate's testimony, the Petitioners established a *prima facie* case that the November 13, 2023 IEP, as well as the October 10, 2024 IEP, proposed for Student by DCPS, were inappropriate. Therefore, the burden of persuasion as to the appropriateness of both IEPs falls on DCPS.

In her hearing testimony and her May 23, 2024 written report (Exhibit P-17), Educational Advocate based her opinions heavily on Clinical Psychologist's February 6, 2023 IEE psychological report which, "highlights the need for a highly structured classroom environment, special education services, and a Behavior Intervention Plan (BIP)." Educational Advocate also opined that the November 13, 2023 IEP did not adequately address Student's specific needs related to Clinical Psychologist's diagnoses of ODD, ADHD, and Unspecified Mood Disorder.

DCPS' experts, CIEP Specialist 2 and School Psychologist 2, defended the appropriateness of the District's proposed IEPs for Student. CIEP Specialist 2, who observed Student at Private School, testified that in fall 2023, Student was performing

at average and low average levels across academics and did not have big academic deficits. She noted that Student had never received special education before the November 2023 IEP meeting, and opined that starting Student with 20 to 30 hours per week of special education in the initial IEP would have been “completely inappropriate.” She testified that under the DCPS IEPs, besides receiving Specialized Instruction for 5 hours per week in the regular classroom and 2 hours per week outside general education, Student would receive individualized classroom aids and services throughout the school day. She also emphasized that the DCPS social worker had stated at the November 2023 IEP meeting that with Student’s mental health diagnoses, the IEP provision for 4 hours per month of Behavioral Support Services was extremely important. CIEP Specialist 2 opined that Student’s direct special education and counseling services should be provided by a special education teacher and a licensed social worker.

School Psychologist 2, who is a neuropsychologist in private practice in the District, also observed Student at Private School and reviewed Student’s records. School Psychologist 2 testified that Student had a mild to moderate level of need and that the best practice would be to support him/her in the least restrictive environment. She opined that Student has a complex emotional profile and the ability for a social worker to have access to Student was critical. This expert opined that it was very important that Student be able to be alongside typically developing peers in class and that Student would do much better with access to trained special education professionals. School

Psychologist 2 opined that it would be far better to place Student in a DCPS public school than in a full-time, small setting because it was so important for Student to have the richness of school special education teachers.

On this evidence, I found DCPS' experts more persuasive. As they testified, Student's need for academic support is limited. Hearing Officer Banks found in the July 15, 2023 HOD that Student displayed almost uniformly strong academic performance up until the first term of the 2021-2022 school year. After the parents enrolled Student in Private School in January 2022, Student continued to do very well academically without any Specialized Instruction or Behavioral Support services.

As noted, in her opinion. Educational Advocate adopted Clinical Psychologist's recommendation that Student needed a "[s]mall, highly structured classroom environment." But in the July 15, 2023 HOD, Hearing Officer Banks found Clinical Psychologist's opinion that Student qualified for special education "not persuasive." Hearing Officer Banks noted that Clinical Psychologist had never reviewed Student's academic records at City School 1. It also does not appear from Clinical Psychologist's report that she ever observed Student in a classroom setting or interviewed Student's teachers. While Educational Advocate did observe Student at Private School, she, likewise, never observed Student in a general education setting. Given Student's strong academic performance in both the public school and private school settings, I discount Educational Advocate's opinion that Student required a full-time small classroom environment.

Educational Advocate's opinion that DCPS' initial IEP was "insufficient in addressing [Student's] specific needs related to [his/her] diagnoses of ODD, ADHD, and Unspecified Mood Disorder," *see* Exhibit P-27, was also unpersuasive. The proposed November 13, 2023 IEP provided for Student to receive 4 hours per month of Behavioral Support Services as well as behavioral support consultative services. At Private School, Student receives no behavioral support services.<sup>4</sup> Yet, Educational Advocate opined that Student was doing very well there.

DCPS' experts were persuasive that at the time the November 13, 2023 IEP was developed, Student did not require a separate school educational setting. As the D.C. Circuit pronounced in *Leggett, supra*, IEPs must comply with the IDEA's requirement that students "be educated in the least restrictive environment possible." *Leggett*, 793 F.3d at 74. As the D.C. Circuit recently pronounced,

The [IDEA], as noted, requires states to ensure that:

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<sup>4</sup> Following her observation of Student at Private School on May 2, 2024, Educational Advocate recommended that Student would benefit from:

- Behavioral Support Plan: Consider developing a plan that includes specific strategies to help Student maintain focus in class, such as scheduled breaks or a designated quiet area for work.
- Social Skills Training: Although Student is socially adept, training could help refine his/her skills in understanding when and how to engage in social interactions during class time.
- Consistency in Classroom Management: Ensure that all teachers and substitutes are aware of and use consistent behavioral expectations and management strategies, which could help Student better adapt to different teaching styles.

Exhibit P-16. This is consistent with the opinion of DCPS' experts that Student requires IEP Behavioral Support Services.

[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A). That command to “mainstream” disabled students is a central feature of the IDEA’s design.

*K.N. v. Bridges Pub. Charter Sch.*, 113 F.4th 970, 982 (D.C. Cir. 2024) (Citation omitted). I found CIEP Specialist 2's opinion credible that it would have been inappropriate in the initial November 13, 2023 IEP for DCPS to have placed Student in a separate school away from his/her non-disabled peers, without first affording Student the opportunity to be educated primarily in regular classes, with the support of special education, behavioral support and supplementary aids and services.

Educational Advocate also opined that Student’s alleged history of being bullied at City School 1 and his/her resulting anxiety were not adequately addressed by DCPS in the November 13, 2023 IEP. However, Hearing Officer Banks determined in the July 15, 2023 HOD that while Student was bullied by one of his/her classmates in the 2021-2022 school year, the bullying did not result in a denial of FAPE. Moreover, the alleged bullying occurred at City School 1. DCPS proposed school location for Student for the 2023-2024 and 2024-2025 school years was City School 2. Petitioners provided no creditable evidence at the due process hearing that by the time of the November 13, 2023 IEP meeting, bullying of Student by classmates remained a likely concern.

Of course, there is no guarantee that Student would have made appropriate progress in the general education curriculum at City School 2, supported by the special education and related services, as proposed in the November 13, 2023 IEP. But that is not required of an IEP. “An IEP must be likely to produce progress, not regression or trivial educational advancement; the IDEA does not guarantee the best possible education, nor one that will maximize the student’s educational potential, but rather, provides a basic floor of opportunity for students.” *N.G. v. District of Columbia*, No. 20-cv-2777, 2022 WL 188403, at \*1 (D.D.C. Jan. 20, 2022), *R. & R. adopted*, No. 20-cv-2777, 2022 WL 969964 (D.D.C. Mar. 31, 2022) (internal quotation marks omitted).

While Private School could be in some respects, and overall, a better place for Student than City School 2, the IDEA does not place the comparative question before the hearing officer. *See, e.g., D.W. v. District of Columbia*, No. 23-CV-0165-JDB-ZMF, 2024 WL 1541116, at \*7 (D.D.C. Feb. 13, 2024), *report and recommendation adopted*, No. CV23165JDBZMF, 2024 WL 1342772 (D.D.C. Mar. 29, 2024); *Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C. Cir. 1988) (“[P]roof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act.”) I conclude that DCPS has met its burden of persuasion that its proposed November 13, 2023 IEP was reasonably calculated to enable Student make appropriate progress.

October 10, 2024 IEP

DCPS convened an annual IEP review meeting for Student on October 10, 2024. At that meeting, DCPS continued to propose an IEP for Student with an educational placement in the regular education setting at City School 2, with 7 hours per week of Specialized Instruction Services, including 2 hours outside the general education setting. The team used Student's progress reports from Private School, classroom observations at Private School and other data to develop this IEP. For the October 10, 2024 IEP, the DCPS team reduced Student's proposed Behavioral Support Services from 4 hours to 2 hours per month based on Student's reported behavior progress at Private School. (While the parents disagreed with the October 10, 2024 IEP, they have not objected to the proposed reduction in Behavioral Support Services.)

As with the November 13, 2023 IEP, Educational Advocate opined that the October 10, 2024 IEP was inappropriate because the IEP allegedly lacked sufficient targeted, proactive interventions to address Student's emotional, self-regulation, executive functioning and impulsivity needs. DCPS' expert, CIEP Specialist 2, opined that October 10, 2024 IEP was appropriate, based on the available data, because Student needed the level of support provided in the IEP, but not more. For the same reasons explained in my consideration of the November 13, 2023 IEP, I find that DCPS met its burden of persuasion that the October 10, 2024 IEP was reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances.

School Observations

- Did DCPS deny Student a FAPE by denying the parents a meaningful observation of the proposed placement at City School on February 2, 2024 and April 10, 2024?
- Did DCPS deny Student a FAPE by failing to allow the parents’ educational consultant to observe the proposed program at City School 2?

After developing the November 13, 2023 initial IEP for Student, DCPS identified City School 2 as the DCPS school location to implement the IEP. The parents allege that DCPS violated their rights, and denied Student a FAPE, by not affording them a “meaningful” observation of the special education program proposed for Student at City School 2 and not allowing their designee, Educational Advocate, to observe the program. For the reasons below, I find that the parents did not establish that DCPS denied their right to observe the City School 2 placement proposed for Student. DCPS’ failure to approve Educational Advocate’s 2024 visit request violated District of Columbia special education requirements, but this violation did not rise to a denial of FAPE.

The D.C. Special Education Student Rights Act of 2014 (DC Act) provides, *inter alia*, that,

Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child’s current or proposed special educational 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 . . .

D.C. Code § 38–2571.03(5)(A). The parent, or the parent’s designee, shall be allowed to view the child’s instruction in “the setting where the child’s instruction will occur if the child attends the proposed program.” *Id.*, Subsection (5)(C).

Parents’ Observation at City School 2

Beginning in December 2023, the parents sought to schedule a visit to City School 2 to observe how City School 2 would implement DCPS’ proposed November 13, 2023 IEP. On February 2, 2024, the parents were able to visit City School 2 and met with Specialized Instruction Director to ask questions about the program. On that visit, after meeting with Specialized Instruction Director, the parents were only allowed to look through the doorways into a general education classroom and a special education classroom. A second school visit for the parents was set for April 10, 2024. Specialized Instruction Director took the parents into a math inclusion classroom to observe. After the parents had asked a multitude of questions aloud inside the classroom, Specialized Instruction Director asked them to leave the classroom because she felt the parents were disrupting the learning environment. Outside the classroom, Specialized Instruction Director felt she was being abused by Father’s comments and made the parents leave the school building.

Petitioners’ Counsel argues that because the April 10, 2024 classroom visit was thus shortened, their program observation was not meaningful. I disagree. The D.C. Act provides that the time allowed for the parents to observe the proposed program “shall be of sufficient duration to enable the parent or designee to evaluate . . . the ability

of a proposed program to support the child.” D.C. Code § 38–2571.03(5)(B). In this case, the parents were able to meet with Specialized Instruction Director on February 2, 2024 to ask questions about the City School 2 program and to make a classroom observation on April 10, 2024 during which they asked a multitude of questions.

On this evidence, I find that the parents have not established that their visits to City School 2, including the April 10, 2024 classroom observation, were not of sufficient duration to enable them to evaluate the ability of the City School 2 program to support Student. In fact, in her hearing testimony, Mother was clear that her evaluation from the parents’ observation was that City School 2 program could not appropriately support Student. She testified that the classroom they visited was too large, not organized and did not always have two teachers in the room. In sum, I find that the parents have not established that DCPS denied them a meaningful observation of the proposed placement for Student at City School 2.

Educational Advocate’s Request to Observe at City School 2

On October 28, 2024 and November 11, 2024, Educational Advocate wrote Specialized Instruction Director by email to request to observe the special education program proposed by DCPS for Student in the October 10, 2024 IEP. Specialized Instruction Director never responded to the observation request. She testified at the hearing that she did not recall receiving Educational Advocate’s emails, but also that she had reached out to a DCPS attorney and been told that a DCPS central office staff member would accompany the parents if they wanted to observe at City School 2 again.

DCPS has not denied receiving Educational Advocate’s observation request. In closing argument, DCPS’ Counsel argued that Educational Advocate was not entitled to observe the City School 2 program because her request was made when the parties were in litigation and the request was created for litigation. This argument is unpersuasive. The DC Act “allows for observations by parents’ designees with expertise in special education ‘provided . . . the designee is neither representing the parent’s child in litigation . . . nor has a financial interest in the outcome of such litigation.’ D.C. Code § 38-2571.03 (A).” *See Woodson v. District of Columbia*, No. 118CV01824CRCDAR, 2019 WL 3431154, at \*8 (D.D.C. July 30, 2019), *report and recommendation adopted sub nom. D.W. v. District of Columbia*, No. 18CV1824CRCDAR, 2019 WL 3713524 (D.D.C. July 30, 2019). When Educational Advocate requested to visit City School in October 2024, Educational Advocate was not representing the parents in litigation. In fact, the parents’ due process complaint in the present case had not yet been filed. It is true that at the time of the observation request, the U.S. District Court was considering the parents’ appeal of the July 15, 2023 HOD in Case No. 2022-0083, but Educational Advocate was not involved in that case.

In *Woodson, supra*, the court rejected the District’s argument that in a due process hearing a parent “would either be forbidden from bringing in her own expert who had evaluated the adequacy of the student’s education or could bring them in if they did not testify about the observation they conducted.” *See id.* at \*9. I, likewise, find that DCPS may not bar the parents’ designee from observing a proposed special

education placement because DCPS anticipates that the designee will testify for the parents in a future due process hearing. As the court explained in *Woodson*, this would allow the LEA to bring in its employees who had developed the IEP to testify, but the parents' expert would be barred – or would have to testify without observing the program. This would create an additional burden on parents rather than put them on the same playing field as the local education agency. *Id.* I find that DCPS' failure to allow Educational Advocate to observe the proposed program at City School 2 violated the DC Act and was a procedural violation of the IDEA. *See B.B. v. District of Columbia*, No. CV 20-2467 (CKK), 2022 WL 834146, at \*13 (D.D.C. Mar. 21, 2022).

Procedural violations may only be deemed a denial of FAPE if the procedural inadequacies—

- (i) Impeded the child's right to a FAPE;
- (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- (iii) Caused a deprivation of educational benefit.

34 C.F.R. § 300.513(a)(2). Here, I find that DCPS' failure to permit Educational Advocate to observe the special education program at City School 2 did not affect Student's substantive rights. *See Leggett, supra*, 793 F.3d at 67. At the time Educational Advocate's observation request was made, the parents had already rejected the October 10, 2024 IEP. By that point, Student had been attending Private School for almost two years and weeks before, the parents had notified DCPS that Student would remain at Private School for the 2024-2025 school year.

Also, although Educational Advocate never visited City School 2, she acknowledged in her testimony that she was “very familiar” with the DCPS middle school model and had talked with the parents about their observation at the school. On that basis, at the due process hearing, she was able to offer her opinion that City School 2 was not appropriate for Student because it did not provide a small structured classroom setting with appropriate adult support and behavior support, as recommended in Clinical Psychologist’s February 2023 evaluation report. Denying Educational Advocate’s observation request did not significantly impede the parents’ opportunity to participate in decision-making or impede Student’s right to a FAPE. For those reasons, I find that DCPS’ failure to allow Educational Advocate to visit the proposed program at City School 2 did not rise to a denial of FAPE.

In summary, I have concluded in this decision that DCPS established the appropriateness of its November 13, 2023 and October 10, 2024 IEPs proposed for Student and that the Petitioners have not established that DCPS denied Student a FAPE. As explained above, to qualify for tuition reimbursement under the IDEA, the Petitioners must demonstrate first that DCPS failed to offer their child a FAPE. Because I have determined that DCPS established that it offered Student a FAPE with the November 13, 2023 and October 10, 2024 IEPs, I do not reach the remaining considerations for private school reimbursement. *See, e.g. H.S.*, 2025 WL 1019300, at \*15, n.5.

**ORDER**

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

ORDERED:

All relief requested by the Petitioners herein is denied.

Date: April 15, 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