

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parents, on behalf of Student,¹)	
Petitioners,)	
)	Hearing Dates: 4/9/25; 4/10/25; 4/11/25
)	Case No. 2025-0023
)	Hearing Officer: Michael Lazan
District of Columbia Public Schools,)	
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This case involves an X-year-old student who is currently eligible for services as a student with emotional disturbance (the “Student”). A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on February 3, 2025. The Complaint was filed by the Student’s parents (“Petitioners”). A resolution meeting was held on February 12, 2025. The matter was not settled. On February 14, 2025, Respondent filed a response.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R.

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

Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-A, Chapter 30.

III. Procedural History

A prehearing conference was held on March 18, 2025. Attorney A, Esq., and Attorney C, Esq., counsel for Petitioners, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order summarizing the rules to be applied in the hearing and identifying the issues in the case was issued on March 25, 2025.

The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioners were again represented by Attorney A, Esq., and Attorney C, Esq. Respondent was again represented by Attorney B, Esq. This was a closed proceeding. Hearings were held on April 9, 2025, April 10, 2025, and April 11, 2025. During the proceeding, Petitioners moved into evidence exhibits P-1 through P-86 without objections being filed or raised. Respondent moved into evidence exhibits R-8 through R-15, R-22, R-23, R-25, R-26, R-28, R-31, R-32, R-35, and R-38 through R-41. An objection to exhibit R-32 was overruled. Exhibits R-8 through R-15, R-22, R-23, R-25, R-26, R-28, R-31, R-32, R-35, and R-38 through R-41 were admitted.

Petitioners presented as witnesses, in the following order: the Student's mother ("Mother"); Witness A, executive director at School B; and Witness B, a therapist (expert in therapy and counseling). Respondent presented as witnesses, in the following order: Witness C, a monitoring specialist with DCPS; Witness D, a non-public school monitoring specialist with DCPS; and Witness E, a program specialist with DCPS (expert

in special education programming and placement). The parties presented oral closing statements at the end of testimony on April 11, 2025.

IV. Issues

As identified in the Prehearing Conference Order and in the Complaint, the issues to be determined in this case are as follows:

1. Did DCPS deny the Student a Free Appropriate Public Education (“FAPE”) by failing to provide him/her with an appropriate Individualized Education Program (“IEP”) in June 2023 (finalized and sent to Petitioners on July 18, 2023) because the IEP: a) included verbatim goals from the prior IEP; b) failed to describe the Student’s placement and needs adequately; and c) included behavioral support services which would be harmful or unnecessary?

Petitioners alleged that Respondent is collaterally estopped from litigating these issues due to a Hearing Officer Determination (“HOD”) by Hearing Officer Keith Seat.

2. Did DCPS deny the Student a FAPE by failing to provide him/her with an appropriate IEP in June 2023 (finalized and sent to Petitioners on July 18, 2023) because the IEP: a) included verbatim goals from the prior IEP; b) failed to describe the Student’s placement and needs adequately; c) included behavioral support services which would be harmful or unnecessary; d) was not a product of parent participation (since DCPS failed to adequately prepare/gather data/evaluate the Student as necessary to properly update the IEP, and any and all changes to the IEP were made after the meeting without Petitioners being able to review or participate in the IEP’s creation)?

3. Did DCPS deny the Student a FAPE by failing to offer any placement or location of services capable of implementing the Student’s IEP or offering a FAPE during the entirety of the 2023-2024 school year?

As relief, Petitioners seek an order that requires DCPS to reimburse Petitioners for: a) any out-of-pocket costs related to School B application fees, deposits, tuition, other fees, and transportation during the 2023-2024 school year, and b) the cost of paying Witness B for the report issued June 28, 2023.

V. Findings of Fact

1. The Student is an X-year-old who is currently eligible for services as a student with emotional disturbance. The Student functions at grade level academically. The Student has a history of school-based anxiety and school refusal. P-40; P-41; Testimony of Witness B; Testimony of Mother.

2. The Student was diagnosed in 2017 with a benign bone tumor, which was surgically removed. The Student has had subsequent surgeries to remediate issues resulting from repeated infections, and s/he required psychiatric hospitalization following one of the surgeries due to an acute episode of anxiety, panic, anger, and sadness. P-1.

3. In or about the 2020-2021 school year, the Student was placed at School A, a residential school that assisted with the Student's transition home. The Student finished the 2020-2021 school year with good grades. P-40.

4. DCPS conducted a psychological evaluation of the Student in May 2021 while s/he was at School A. The Student scored in the very high range in full-scale IQ testing and in the average to high average range (reading, academic applications) in academic achievement. On the Behavior Assessment Scales for Children-Third Edition ("BASC-3"), one of the two teacher ratings found "clinically significant" concerns for the Student's anxiety and "at-risk" concerns for somatization and leadership. P-1.

5. An IEP meeting was held for the Student on June 2, 2021. The team recommended that the Student receive twenty-nine hours of specialized instruction per week, with sixty minutes of behavior support services and 240 minutes of behavior support consultation services per month. Under "Other Classroom Aids and Services," the IEP recommended graphic organizers and checklists; check-ins with staff members; delivery of information in smaller units or portions; multimodal presentation of

information (visual, tactile, and auditory); “rehearsal strategies” like rhymes, acronyms, anagrams, and associations; re-telling, paraphrasing, and summarizing; lists, notes, checklists, and memory plans; chunking strategies; repetition of facts; computerized math programs that focus on increasing the automaticity of math facts; allowing the Student time to prepare for a question before calling on him/her and also time to respond orally; self-monitoring strategies to let the Student set goals and rate his/her success related to the timely completion of tasks; and extended time for assignments. The IEP described the Student as a risk-taker who was active and fun to be around but who had symptoms of anxiety and depression and required behavior support services in the school environment to support his/her social emotional needs and ensure the continuity of his/her care. P-2.

6. During the 2021-2022 school year, Petitioners placed the Student at School B, which has about 200 general education and special education students. About twenty percent of the students at School B are neurotypical, and eighty percent have learning challenges. The school focuses on student strengths and provides small class sizes (about thirteen students per class with one teacher for every classroom), scheduled daily tutorial periods, opportunities for additional class hours, and extra time on tests. The school assigns college counselors to students, and students meet with advisers twice a week. Each member of the teaching staff must have a bachelor’s degree. Seventy percent of teaching staff have a master’s degree or a doctorate, but School B has no certified teachers. Testimony of Witness A.

7. The Student achieved good grades at School B during the 2021-2022 school year. The Student was placed in honors and Advanced Placement (“AP”) classes. Testimony of Mother. The Student received counseling during this time from an outside

therapist, Witness B. This treatment was extensive, up to three hours per week.

Testimony of Witness B.

8. Witness E observed the Student at School B for about thirty-five to fifty mins in the spring of 2022. Witness E did not observe any behavior supports or specialized instruction being provided in the classroom, which was a history or English class where the children practiced lines from a play and did research on a class project.

Testimony of Witness E.

9. On May 12, 2022, an IEP meeting was held for the Student. The team again recommended twenty-nine hours of specialized instruction per week and 240 minutes of behavior support services per month, with sixty minutes per month of consultation services. The IEP recommended the same “Other Classroom Aids and Services” as the prior IEP. The Student was again described as a risk-taker who was active and fun to be around but who had symptoms of anxiety and depression and required behavior support services in the school environment to support his/her social emotional needs and ensure the continuity of his/her care. P-9.

10. The Student continued at School B for the 2022-2023 school year. The Student’s final grades were all in the “A” and “B” range, though the Student’s quarterly reports did have some grades in the “C” range. The Student was characterized by School B staff as “insightful” and a “great student” who “excels in vocabulary and grammar.” Still, the Student had issues with absences and struggled to catch up on material, which depressed his/her grades. P-47. By the end of the 2022-2023 school year, the Student was going to therapy once every other week, for about thirty to sixty minutes per session.

Testimony of Witness B.

11. In June 2023, an IEP meeting was held for the Student. The Student was reportedly doing well at School B, with good grades and extensive school participation. The Student's favorite classes were chemistry and history. Petitioners expressed displeasure that some of the sections of the IEP were not updated. Petitioners were concerned that the whole document was based on data from 2021 and 2022. Respondent explained that it could not update the Student's data because it had not received updated data from the school. Petitioners expressed that the annual goals in the IEP were inappropriate, and Witness E expressed that the team would consider updates from School B if the school sent the information to DCPS promptly. Petitioners sought to remove behavior support services from the IEP, but DCPS staff said it would be unethical to remove the behavior support services from the IEP without data. The team recommended twenty-nine or thirty hours of specialized instruction per week outside general education, with 120 minutes of behavior support services per month and sixty minutes of behavior support consultation services per month. The team agreed on the "Other Classroom Aids and Services." When asked if the Student still used extra time and related accommodations, Petitioners indicated that the Student still used accommodations, including a recent accommodation allowing the Student to stand or walk during testing due to his/her back pain. Testimony of Mother; P-38; P-46.

12. The final June 2023 IEP (issued in July, 2023) was similar to the previous IEP, recommending the same program with the same academic goals, the same mandated related services, the same mandate of specialized instruction, and the same "Other Classroom Aids and Services." However, this IEP did not include language from the earlier IEP indicating that the Student's behavioral needs affected the academics of

him/her and others. This IEP also removed one social, emotional and behavioral goal and updated some of the sections that described the Student's present levels of performance.

The June 2023 IEP also reflected data from the Student's 2022-2023 report cards at School B, which Petitioners sent to the team after the IEP meeting. Testimony of Mother; P-38; P-41.

13. On June 28, 2023, Witness B wrote a report on behalf of the Student indicating that s/he was progressing emotionally. The report recommended that the Student continue at School B to ensure academic progression, stability, and to allow the Student to continue to be educated in an environment where s/he was motivated. P-40.

14. A Prior Written Notice was issued with respect to the Student on July 18, 2023. The notice indicated that the IEP team recommended a "full-time" IEP with twenty-nine hours of specialized instruction per week outside general education in a non-public setting. R-9.

15. DCPS indicated that no DCPS school could satisfy this mandate. DCPS and the Office of the State Superintendent of Education ("OSSE") therefore searched for non-public schools for the Student. Petitioners did not hear anything specific about potential non-public schools for the Student for the 2023-2024 school year. Petitioners accordingly sent a DCPS a ten-day notice on August 10, 2023, expressing an intent to again place the Student in School B. P-48.

16. In August 2023, Petitioners participated in two interviews for prospective school placements for the Student. These interviews were arranged at the behest of DCPS. Neither of these schools accepted the Student for admission. Testimony of Mother.

17. The Student continued at School B for the 2023-2024 school year. The Student's classes for the 2023-2024 school year included AP literature, AP environmental science, honors pre-calculus, and several courses on history, culture, and music. The Student received visual and/or verbal cues to stay on task; repeated or rephrased instructions to aid in understanding; repeated instructions; extended breaks during testing; a quiet, distraction-free area for testing; written assignments/directions to supplement orally presented information; oral assignments/directions to supplement written information; audiobooks and/or text-to-speech software to supplement assigned reading; a scribe for testing; a reader or audio version for tests; speech-to-text technology; a peer or teacher note-taker; a computer/word processor for written assignments and testing; a calculator for mathematics computation; material with large print; and a word bank. The Student received all "A" and "B" grades. The Student was named dance captain for the school musical multiple times, served as a school ambassador, and was one of five or six students invited to serve on the school administration's disciplinary committee. The Student was also active in the school's theater and rock-climbing programs. The Student benefited emotionally from being similar to the other students in the school, who also had some degree of anxiety. The student population at School B was unlike anything the Student had ever been part of. The Student felt that peers at the school were consistently kind, supportive, accepting, and not disruptive in class. P-38; Testimony of Witness A; P-35-9; P-40. During the 2023-2024 school year, the Student went to therapy once or twice a month because his/her anxiety had stabilized. Testimony of Witness B.

18. Petitioners participated in seven or eight more interviews with prospective school placements for the Student after the 2023-2024 school year had started at School

B. All these schools refused to admit the Student, at least in part because they could not offer the academics or accommodations that s/he required. Testimony of Mother.

19. Some other schools in the District of Columbia area, other than School B, could possibly have serviced the Student with challenging academics and access to special education services, if they had accepted the Student. Testimony of Witness C; Testimony of Witness D.

VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following: “Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement” provided that “the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency.” D.C. Code Sect. 38-2571.03(6)(A)(i). Accordingly, on Issue #1 and Issue #2 in this case, relating to the Student’s IEP, the burden of persuasion is on Respondent if Petitioners presented a *prima facie* case. On Issue #3, the burden of persuasion is on Petitioners.

1. Did DCPS deny the Student a FAPE by failing to provide him/her with an appropriate IEP in June 2023 (finalized and sent to Petitioners on July 18, 2023) because the IEP: a) included verbatim goals from the prior IEP; b) failed to describe the Student’s placement and needs adequately; and c) included behavioral support services which would be harmful or unnecessary?

Petitioners alleged that Respondent is collaterally estopped from litigating these issues due to an HOD issued by Hearing Officer Keith Seat.

Collateral estoppel, or issue preclusion, means that the determination of a question directly involved in one action is conclusive as to that question in a second suit. B&B Hardware, Inc. v. Hargis Indus., Inc., 575 U.S. 138, 147 (2015). This doctrine protects against the expense and “vexation” attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent verdicts. Montana v. United States, 440 U.S. 147, 153–54 (1979).

For issue preclusion to apply, three conditions are required. First, the issue currently being raised must be the same issue that was contested by the parties and submitted for judicial determination in the prior case. Second, the issue must have been actually and necessarily determined by a court of competent jurisdiction in that prior case. Third, preclusion in the current case must not work a basic unfairness to the party bound by the first determination. The party invoking collateral estoppel bears the burden of establishing that its conditions have been satisfied. In re Subpoena Duces Tecum Issued to Commodity Futures Trading Comm’n, 439 F.3d 740, 743 (D.C. Cir. 2006).

The case before Hearing Officer Seat involves similar issues to the issues in this case. Like here, the case before Hearing Officer Seat involves a claim by Petitioners that DCPS denied the Student a FAPE, and Petitioners requested that DCPS pay for the Student’s tuition at School B. The cases involve similar IEPs, with much overlapping language, including in the goals sections, and both IEPs recommended the same, or similar, amount of services. Both complaints contended that the Student was denied a FAPE by an IEP that offered the Student twenty-nine hours of specialized instruction per

week outside general education with virtually identical “Other Classroom Aids and Services” sections. In the case before Hearing Officer Seat, Petitioners also argued that the Student should not have been recommended for behavior support services in the subject IEP and, like here, that the IEP was not updated properly.

But issues about the 2023-2024 IEP and the Student’s performance at School B during the 2023-2024 school year were not raised in the due process complaint assigned to Hearing Officer Seat. Hearing Officer Seat’s jurisdiction was limited to claims relating to the 2022-2023 school year. The issues raised before this Hearing Officer were not submitted for judicial determination in the prior case and were not determined by a court of competent jurisdiction in that prior case. Moreover, preclusion would work a basic unfairness to DCPS, which would not be given a fair opportunity to contest the claims for the 2023-2024 school year. To the extent that the language in the Seat HOD is relevant to the case before this Hearing Officer, it must be characterized as *obiter dictum*, which does not have preclusive effect. United States v. Crawley, 837 F.2d 291, 292 (7th Cir., 1988). Writing for the court in Crawley, Judge Richard Posner enumerated some of the reasons which militate against giving weight to *dictum* in these circumstances, including that all claims should be refined by the “fires of adversary presentation.” Crawley, 837 F.2d at 292–93. This claim must be dismissed.

2. Did DCPS deny the Student a FAPE by failing to provide him/her with an appropriate IEP in June 2023 (finalized and sent to Petitioners on July 18, 2023) because the IEP: a) included verbatim goals from the prior IEP; b) failed to describe the Student’s placement and needs adequately; c) included behavioral support services which would be harmful or unnecessary; d) was not a product of parent participation (since DCPS failed to adequately prepare/gather data/evaluate the Student as necessary to properly update the IEP, and any and all changes to the IEP were made after the meeting without Petitioners being able to review or participate in the IEP’s creation)?

The IDEA was enacted to “ensure that children with disabilities have available to them free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” M.G. v. Dist. of Columbia, 246 F. Supp. 3d 1, 7 (D.D.C. 2017) (citing 20 USC 1400(d)(1)(A); 34 CFR 300.300). Toward that end, school districts must develop a comprehensive plan, known as an IEP, for meeting the special educational needs of each disabled student. 20 USC 1414(d)(2)(A). In Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the Court explained that an IEP must be formulated in accordance with the terms of the IDEA and “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Id. at 204.

The Court’s decision in Andrew F. v. Douglas County School District, 137 S. Ct. 988 (2017), elaborated on the doctrines established in Rowley. The Court stated that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that the IEP should be “appropriately ambitious,” a standard “markedly more demanding than the ‘merely more than de minimis’ test applied by the Tenth Circuit.” Id. at 1000-1002. Finding that “instruction that aims so low” would be tantamount to “sitting idly...awaiting the time when they were old enough to drop out,” the Court held that IDEA “demands” a higher standard. Id. (citing to Rowley). The District of Columbia Circuit Court of Appeals has accordingly found that Andrew F. raised the bar on what counts as adequate education under the IDEA. Z. B. v. District of Columbia., 888 F.3d 515, 517 (D.C. Cir. 2018). Still, the Andrew F. Court cautioned that

its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001.

Goals/Description of Placement/Needs

Petitioners contended that the goals in the June 2023 IEP were improperly repeated from the prior IEP. The record indicates that the Student’s academic goals in the June 2023 IEP were identical to the academic goals in both his/her June 2022 IEP and June 2021 IEP. Petitioners also contended that the present levels of performance sections of the June 2023 IEP needed to be updated to present a clear picture of the Student.

An IEP must contain a “statement of measurable annual goals, including academic and functional goals” designed to “meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum,” and to meet “each of the child’s other educational needs that result from the child’s disability.” 34 CFR 300.320(a)(2)(i). Each IEP must contain a “statement of the child’s present levels of academic achievement and functional performance” including “how the child’s disability affects the child’s involvement and progress in the general education curriculum.” 34 CFR 300.320 (a)(1).

A procedural violation of the IDEA is not a per se harm, leading inexorably to a finding of FAPE denial. J.T. v. District of Columbia, 496 F. Supp. 3d 190, 203 (D.D.C. 2020). Rather, “an IDEA claim is viable only if those procedural violations affected the student’s substantive rights.” Lesesne ex rel. B.F. v. District of Columbia, 447 F.3d 828, 834 (D.C. Cir. 2006). Accordingly, in matters alleging a procedural violation, a student has been denied a FAPE only if the procedural inadequacies impeded the child’s right to

a free appropriate public education, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent's child; or caused a deprivation of educational benefit. 20 USC 1415(f)(3)(E)(ii).

There is no statutory requirement that an IEP must change from school year to school year. J.B. by & through Belt v. District of Columbia, 325 F. Supp. 3d 1, 16 (D.D.C. 2018). However, IEP goals should ordinarily reflect a student's year-to-year progress, or lack thereof. Damarcus S. v. District of Columbia, 190 F. Supp. 3d 35, 52-53 (D.D.C. 2016) ("the wholesale repetition" of goals and objectives "indicates an ongoing failure to respond to [a student's] difficulties"). Additionally, the team must review goals yearly to determine whether the goals are still meaningful for the student. Belt, 325 F. Supp. 3d at 8 (rejecting goals claim because goals were modified once the student had made documented progress in certain areas). Therefore, as here, if goals are repeated, Respondent is obligated to present a "cogent and responsive explanation" for its choice to repeat the goals.

Respondent, through Witness E, agreed that the academic goals in the June 2023 IEP were the same as the academic goals in both the June 2021 and June 2022 IEPs. There is also no dispute in this record that the Student made academic progress at School B during the 2021-2022 and 2022-2023 school years. DCPS defended the IEP by contending that goals should be a collaborative effort and that the IEP team needed more knowledge about the Student's performance at School B in order to write a more complete IEP. DCPS said that it did not have any data to know if the Student had met his/her earlier goals. Witness E contended that the Student's report cards with teacher

comments did not provide enough information for DCPS to work on the goals, and that DCPS needed assessment data and work samples. Witness E also said that she emailed representatives at School B, including Witness A, for this kind of data but never received a response.

However, Witness E did not go through the goals and explain why each goal could not be updated because of the lack of information, and DCPS did not clearly explain why the report cards with teacher comments did not provide enough information to write new goals. Moreover, DCPS did not point to any authority to suggest that the failure to update goals can be excused by the failure of a private school to provide academic assessments and work samples. This is because a student's "current teacher" should be invited to the IEP meeting so that the team can update goals (and present levels of performance) at the meeting itself. 34 CFR Sect. 300.321(a). There is nothing in the record to suggest that the Student's teachers at School B were invited to the IEP meeting, or that the goals were carefully reviewed to make sure that they continued to be relevant. Also, no observation was conducted of the Student prior to the development of the IEP, even though DCPS could have conducted an observation of the Student at School B if it were genuinely of the opinion that it needed more information to formulate this Student's IEP. Like Hearing Officer Seat, this Hearing Officer finds that Respondent's complete failure to update the Student's academic goals over the course of two years was a substantive IDEA violation, because the goals were based on the Student's performance back in 2021 and there is no dispute that the Student has made progress since then.

Insofar as the description of the Student's placement is concerned, the Student's 2022-2023 report card was incorporated into the math section of the Student's IEP, and

the social, emotional and behavioral section of the IEP was updated through information provided by Witness B. Though the June 2023 IEP reported on “WIAT” testing from April 2021 and an observation of the Student from May 2022, which were both lifted entirely from the June 2022 IEP, this Hearing Officer does not believe that this failure rises to the level of FAPE denial, given caselaw finding that defects in the “present levels of performance” sections of an IEP are ordinarily considered to be procedural in nature. Clear evidence must show that this kind of procedural shortcoming led to some substantive denial in the form of a lower-quality education. While Hearing Officer Seat did find liability on this issue because the IEP did not reflect the Student’s recent progress, the June 2023 IEP has been updated to show that progress. Belt, 325 F. Supp. 3d at 6. This Hearing Officer finds that DCPS denied the Student a FAPE only by failing to update his/her academic goals.

Behavior Support Services

With the June 2023 IEP, DCPS removed the entry indicating that the Student’s behavior impeded the learning of the Student or others, and the total behavior support services were reduced from 300 minutes per month (including 240 minutes of behavior support consultation services) to 180 minutes per month (including sixty minutes of behavior support consultation services). Petitioners argued that they did not want the behavior support services in the IEP because they would impede the Student’s counseling outside of school, and Petitioners called Witness B, the Student’s therapist, to substantiate this point.

Hearing Officer Seat agreed with this argument. But for the 2023-2024 school year, the Student’s total behavior support services decreased, and Witness B did not

clearly explain why counseling in school would have damaged the impact of the Student's therapy outside of school, which, by then, occurred less than during the 2022-2023 school year. During the 2023-2024 school year, the Student received counseling only once or twice per month outside of school. Also, nothing in the record clearly explains why the in-school and outside-of-school therapists could not have collaborated on the Student's needs. While the Student may not have needed the 120 minutes of direct monthly behavior support services and sixty minutes of behavioral support services on a consultation basis as provided by the June 2023 IEP, this Hearing Officer is not convinced that the inclusion of these services, by themselves, denied the Student a FAPE. This claim should be dismissed.

Parent Participation

The IDEA requires the Local Educational Agency ("LEA") to establish and maintain procedures in accordance with the statute to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a FAPE. 20 USC 1415(a). The IDEA requires that school districts offer "[a]n opportunity for the parents of a child with a disability ... to participate in meetings with respect to the ... educational placement of the child." 20 USC 1415(b)(1). The IDEA emphasizes the importance, and indeed the necessity, of parental participation in the development of the IEP and any subsequent assessments of its effectiveness. Honig v. Doe, 484 U.S. 305, 311 (1988). The IDEA requires LEAs to provide "[a]n opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such

child, and to obtain an independent educational evaluation of the child.” Id. Sect.

1415(b)(1); Malloy v. D.C., No. 20-CV-03219 (DLF), 2022 WL 971208, at *1 (D.D.C. Mar. 30, 2022).

Petitioners contended that, to the extent that DCPS made changes to the Student’s IEP, the changes were made after the IEP meeting. Witness E testified that she did review documentation that Petitioners provided to DCPS after the IEP meeting, and this information, from the Student’s report card, was then put into the Student’s IEP after the meeting. However, Petitioners did not explain how this late addition might have impacted the Student, and nothing in the record suggests that any such failure impeded Petitioners’ right to express themselves in the IEP meeting. The record indicates that Petitioners have been represented by counsel for years and have been active participants in the IEP process for this Student. This claim must be dismissed.

3. Did DCPS deny the Student a FAPE by failing to offer any placement or location of services capable of implementing the Student’s IEP or offering a FAPE during the entirety of the 2023-2024 school year?

School districts are required to have an IEP in place for each disabled student at the start of each school year. 34 CFR Sect. 300.323(a); Alfonso v. District of Columbia, 422 F. Supp. 2d 1 (D.D.C. 2006) (awarding tuition reimbursement because DCPS failed to finalize a student’s IEP before the start of the school year). Moreover, the IDEA requires school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student’s IEP. Middleton v. District of Columbia, 312 F. Supp. 3d 113, 143 (D.D.C. 2018); Johnson v. District of Columbia, 962 F. Supp. 2d 263, 267 (D.D.C. 2013).

DCPS's last IEP for the Student recommended that s/he be placed at a school that could offer him/her twenty-nine hours of specialized instruction per week outside general education for the 2023-2024 school year. There is no dispute that DCPS did not provide the Student with any school, or any location of services, by the start of the 2023-2024 school year. DCPS suggested that this was because Petitioners did not cooperate, but the record indicates that Petitioners did cooperate by going to ten different private school interviews on behalf of the Student, and two of these interviews occurred before the 2023-2024 school year started. The Student was not accepted at these schools or any of the schools that gave Petitioners an interview. DCPS accordingly did not provide the Student with a school or location of services that could implement the Student's IEP by the start of the 2023-2024 school year, or even during the 2023-2024 school year. DCPS therefore denied the Student a FAPE during the 2023-2024 school year.

RELIEF

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

ordered reimbursement “where the public agency violated [the IDEA] and the parents made an appropriate placement”).²

Additionally, in Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005), the circuit court laid forth rules for determining when it is appropriate for independent hearing officers to order funding of non-public placements. First, the court indicated that “(i)f no suitable public school is available, the [school system] must pay the costs of sending the child to an appropriate private school.” Id. At 9 (citing Jenkins v. Squillacote, 935 F.2d 303, 305 (D.C.Cir.1991)). The circuit then explained that such relief “must be tailored” to meet a student’s “unique needs.” Id. At 11-12 (citing to Carter, 510 U.S. at 16. To inform this individualized assessment, courts must consider “all relevant factors” including the nature and severity of the student’s disability, the student’s specialized educational needs, the link between those needs and the services offered by the private school, the placement’s cost, and the extent to which the placement represents the least restrictive educational environment. Id. at 12.

Virtually all of the testimony and evidence presented in this case indicated that School B was appropriate for the Student. The Student has worked hard and been a well-liked member of the school. The Student has received “A” and “B” final grades, and the school has certainly been competitive enough for this high-functioning Student, who took classes in AP literature and AP environmental science. School B has also helped the Student’s with his/her anxiety issues. Most of the school’s students also suffer from

² In the District of Columbia, the burden of persuasion is on the parents to establish that the parental placement is proper. D.C. Code Sect. 38-2571.03(6)(A)(ii).

school-based anxiety, and the Student has benefitted from instruction alongside these other students. Indeed, the record indicates that School B's student population is unlike anything the Student has been a part of. These fellow students have been supportive and accepting, and are all college-bound. None of these students have exhibited a pattern of unhealthy behaviors or choices. The Student has also received accommodations in class, like visual or verbal cues to stay on task, repeated or rephrased instructions, a quiet/distraction-free environment, oral assignments/directions to supplement written-presented information, and the like. The Student has also been active in extracurricular activities at the school and has earned leadership roles. The Student has clearly thrived in this atmosphere, and Respondent's closing argument did not clearly explain why it felt that School B was inappropriate. Petitioners have met their burden to show that School B was "proper under the act" for the Student during the 2023-2024 school year.

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

148(d)(i), (ii). Under 20 USC Sect. 1412(a)(10)(C)(iii), a denial or reduction in reimbursement is discretionary.

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

Respondent argued that Petitioners and School B were uncooperative, contending that School B did not respond to requests for data and suggesting that Petitioners did not offer DCPS information about their interviews with possible schools for the Student. However, Petitioners did encourage the school to provide DCPS with records. P-27. The record also indicates that Petitioners went on every interview that DCPS requested, notified DCPS about the interviews, complied with all requests for data, and were otherwise cooperative throughout the process. Petitioners must be awarded tuition reimbursement and related expenses for School B for the 2023-2024 school year.

Finally, Petitioners also seek reimbursement for a report written by the Student’s social worker in connection with the June 2023 IEP meeting. P-43. However, Petitioners did not clearly explain why they are entitled to reimbursement for this report, which was not an expense associated with the Student’s placement. Instead, this report effectively advocated for Petitioners’ claims in this case. In tuition reimbursement or payment cases,

Petitioners are not entitled to reimbursement for non-educational expenses. Leggett v. District of Columbia, 793 F.3d 59, 73 (D.C. Cir. 2015) (although the District of Columbia had to reimburse a parent for a student’s placement in an out-of-state boarding school, it did not have to pay for non-educational services such as horseback riding); J.T. by & through Renee T. v. Dep’t of Educ. Hawai’i, No. CV 11-00612 LEK-RLP, 2018 WL 2449190, at *11 (D. Haw. May 31, 2018) (school district did not have to reimburse parents for the non-educational components of their child’s therapeutic day program, which included cooking, ceramics, filmmaking, dolphin interaction, and water sports).

VII. Order

As a result of the foregoing:

1. Respondent shall reimburse Petitioners for their costs for covered tuition and related expenses for the Student’s enrollment at School B for the 2023-2024 school year, including application fees, deposits, tuition, other education-related fees, and transportation;
2. All other requests for relief are denied.

Dated: April 19, 2022

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
Attorney C, Esq.
OSSE Division of Specialized Education

VIII. Notice of Appeal Rights

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

Dated: April 19, 2025

Michael Lazan
Impartial Hearing Officer