



## **JURISDICTION:**

The hearing was conducted, and this decision was made in accordance with the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17, the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter 5-A30.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student who is the subject of this due process hearing (“the Student”) and the Student’s parents (“Petitioners”) are residents of the District of Columbia. The District of Columbia Public Schools (“DCPS”) serves as the Student’s local education agency (“LEA”). The Student has been found eligible for special education and related services pursuant to IDEA, classified with a disability of with multiple disabilities (“MD”), including (“SLD”), other health impairment (“OHI”), and autism.

DCPS developed an individualized education program (“IEP”) for the Student on March 18, 2022, while the Student was attending a non-public special education day school (“School A”) with DCPS funding. The Student transitioned to School A from another non-public special education day school (“School B”), where the Student attended from 4th grade to 8th grade. The Student attended School A for the school year (“SY”) SY 2021-2022 and the start of SY 2022-2023 with DCPS funding until November 2022, when Petitioners unilaterally placed the Student in a non-public general education setting (“School C”) and sought DCPS funding for School C.

DCPS did not agree to place and fund the Student at School C. Petitioners and DCPS agreed to continue the Student’s March 18, 2002, IEP while evaluations were being conducted, which were subsequently completed and reviewed. DCPS convened an eligibility meeting in December 2023 and developed a new IEP for the Student on March 21, 2024, which DCPS proposed to implement at the Student’s neighborhood DCPS school (“School D”). Petitioners rejected the proposed IEP and placement and filed a due process complaint (“DPC”), which Petitioners ultimately withdrew without prejudice.

On November 12, 2024, the Petitioners filed the DPC, which initiated this proceeding. Petitioners amended the DPC on February 3, 2025, alleging, inter alia, that the Student was denied a free appropriate public education (“FAPE”) because DCPS failed to provide the Student with an appropriate IEP and educational placement for SY 2023-2024 and SY 2024-2025.

The Student has continued to attend School C initially in person and then remotely, with intermittent pauses, due to the Student’s attendance at an out-of-state wilderness program (“the WP”). When Petitioners filed their amended DPC, the Student was residing at an out-of-state residential housing program (“the RHP”) and attending School C remotely.

Petitioners seek as relief that DCPS be ordered to reimburse them for the costs they incurred for the Student’s attendance at School C since his/her enrollment in November 2022 for SY 2022-2023, SY 2023-2024, and SY 2024-2025, including the summers of 2023 and 2024. Petitioners also seek reimbursement for the Student’s attendance at the WP and the RHP until the Student’s

graduation from School B.

**LEA Response to the DPC:**

DCPS submitted a response to the amended DPC on February 13, 2025. In its response, DCPS noted, among other things, the following:

An annual IEP was created for Student on March 18, 2022, with Petitioners' participation. During the meeting, it was determined that the Student's least restrictive environment ("LRE") was a separate special education day school. At that time, the Student was attending School A and continued to do so after the IEP was finalized. The Student performed well at School A, making progress toward his/her IEP goals and earning nearly all A's and B's. The Student received direct behavioral support and speech-language therapy, along with specialized instruction.

On October 27, 2022, DCPS received a unilateral notice from Petitioners. DCPS responded to that notice on November 14, 2022, stating that "It is DCPS's position that the LEA has made a FAPE available to you with an appropriate IEP and a placement in the LRE at [School A], and suggested the Petitioners contact DCPS to convene an IEP meeting at [School A]."

In December 2023, the IEP team met to review evaluations that had been completed as part of a reevaluation. DCPS explained to Petitioners that DCPS could not place Student at School C due to the school not having a certificate of approval ("COA") from OSSE. DCPS presented Petitioners with a letter of acceptance from another non-public school and explained that this non-public day school could implement the Student's IEP as written in her/his LRE. Petitioners disagreed with this offer of FAPE and continued to request that DCPS fund School C.

Petitioner filed a DPC on January 23, 2024, alleging an inappropriate educational program and placement and/or location of services for SY 2022-2023 and SY 2023-2024 and seeking reimbursement for School C.

On March 21, 2024, the IEP team met and proposed an IEP with a placement of specialized instruction and related services. DCPS made a FAPE available for the Student SY 2024-2025 at the Student's in-boundary DCPS school ("School D"), which could implement the IEP. Petitioners withdrew their DPC on April 11, 2024, and on July 19, 2024, filed another DPC, alleging similar and additional issues. On August 23, 2024, Petitioners withdrew their July 19, 2024, DPC and then filed the current DPC.

Petitioners were allowed to observe the proposed special education program at School D. In the summer of 2024, Petitioners sent DCPS an independent assessment. A meeting was held on August 26, 2024, and the team members agreed to proceed with an evaluation of the Student, and DCPS sought consent to evaluate and to get information from the WP and observe the Student. DCPS attempted to complete the evaluation process by observing the Student at the WP, which is neither a school nor a proper educational setting.

On November 19, 2024, the eligibility meeting was held for the Student, and less than 24 hours later DCPS received a unilateral placement notice from Petitioners' counsel that the Student was

expected to complete the WP in early December 2025 and move to a residential program specializing in working with young adults with autism (the WHP) and resume online courses with School C in early January 2025. The letter requested DCPS place and fund the Student at the RHP and School C. The RHP is not a school and is not proper or appropriate, and School C is not a “school”, is not a “placement”, does not have a COA, and is not appropriate or proper. Petitioners also failed to provide the required notice for a private placement reimbursement demand.

On January 21, 2025, the IEP team met and proposed an IEP with a placement of 30 hours per week of specialized instruction outside of general education and related services, making a FAPE available for the Student for SY 2024-2025. DCPS has provided the Student with a FAPE and asserts that all Petitioners’ claims in the DPC should be dismissed, and all relief requested should be denied.

### **Resolution Meeting and Pre-Hearing Conference:**

The original DPC was filed on November 12, 2024. Petitioners and DCPS participated in a resolution meeting on November 26, 2024, on the original DPC. Petitioners filed a motion to amend their DPC, which was granted. Petitioners filed their amended DPC on February 3, 2025. The new 75-day timeline commenced from that date. The parties did not mutually agree to shorten the 30-day resolution period. The 45-day period for the amended DPC began on March 5, 2025, and ended, and the HOD was originally due on April 19, 2025. The parties filed motions to continue and extend the HOD due date to accommodate hearing dates and to file written closing arguments. The HOD is now due on August 9, 2025.

The undersigned impartial hearing officer (“IHO”) conducted a pre-hearing conference (“PHC”) on March 3, 2025, and issued a pre-hearing order (“PHO”) on March 17, 2025, and a revised PHO on May 1, 2025, outlining, inter alia, the issues to be adjudicated.

### **ISSUES:<sup>2</sup>**

The issues adjudicated are:

1. Did DCPS deny the Student a FAPE by failing to provide the Student with an appropriate educational program and placement and/or location of services for SY 2022-2023 and SY 2023-2024 because it (a) grouped the Student with inappropriate peers, (b) did not provide challenging academics, (c) had staffing issues, (d) inappropriate classes, (e) improperly focused on students with emotional and behavioral needs, and (e) was not in the Student’s LRE?
2. Did DCPS deny the Student a FAPE by failing to propose a placement and/or location of services for the Student before the start of SY 2023-2024?
3. Did DCPS deny the Student a FAPE by failing to provide the Student with an appropriate educational program and placement and/or location of services from March 21, 2024,

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<sup>2</sup> The IHO restated the issues from the PHO at the outset of the due process hearing, and the parties agreed that these were the issues to be adjudicated.

through the end of SY 2023-2024 and summer 2024, and SY 2024-2025, because (a) the setting and class sizes were too large, and (b) it was not the Student's LRE?

4. Did DCPS deny the Student a FAPE by failing to allow Petitioners' educational consultant to observe the proposed program at School D alongside the Student's parents?
5. Did DCPS deny the Student a FAPE by failing to convene a meeting to review the private neuropsychological evaluation and incorporate it into the Student's educational programming?
6. Is School C a proper placement?
7. Is the wilderness program ("the WP") a proper placement?
8. Is the residential housing program ("the RHP") a proper placement?

#### **DUE PROCESS HEARING:**

The Due Process Hearing was held on June 10, 2025, June 11, 2025, June 12, 2025, June 23, 2025, and July 14, 2025, using a video teleconference on the Microsoft Teams platform. On July 28, 2025, the parties submitted written closing arguments.

#### **RELEVANT EVIDENCE CONSIDERED:**

The IHO considered the testimony of witnesses<sup>3</sup> and the documents submitted in each party's disclosures (Petitioners' Exhibits 1 through 52, DCPS's Exhibits 1 through 14, which were admitted into the record and are listed in Appendix 2.

#### **SUMMARY OF DECISION:**

Once Petitioners presented a prima facie case on issues #1, #2, and #3, Respondent held the burden of persuasion on those issues. Respondent sustained the burden of persuasion by a preponderance of the evidence on issue #1 as it relates to the IEP and placement that DCPS developed for the Student on March 14, 2022. DCPS did not sustain the burden of persuasion by a preponderance of the evidence on issues #2 and #3. Petitioners held the burden of persuasion on the remaining issues. Petitioners sustained the burden of persuasion as to issue #6. The IHO dismissed Petitioners' claims regarding issues #4, #5, #7, and #8. The IHO ordered DCPS to reimburse Petitioners for the Student's attendance at School C for SY 2023-2024 and SY 2024-2025.

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<sup>3</sup> Petitioner presented four witnesses: (1) the Student's mother; (2) a private neuropsychologist who testified as an expert; (3) the director of education at the non-public general education setting that the Student attended (School C) who testified as an expert; (4) the Student's therapist at the wilderness program the Student attended. DCPS presented six witnesses, all of whom testified as experts: (1) the DCPS placement monitor for School A; (2) a DCPS occupational therapist; (3) a DCPS social worker; (4) a DCPS psychologist; (5) the education director of School A, and (6) a DCPS LEA representative who is a special and a general educator. The IHO found the witnesses credible unless noted otherwise in the conclusions of law. Any material inconsistencies in the testimony of witnesses identified by the IHO are discussed in the conclusions of law.

## FINDINGS OF FACT: <sup>4</sup>

1. The Student and his/her parents, Petitioners, reside in the District of Columbia. DCPS serves as the Student's LEA. The Student has been determined to be eligible for special education and related services pursuant to IDEA, with a recent MD disability classification, including SLD, and autism. The Student was age \_\_\_\_\_ at the time that Petitioners' DPC was filed and was attending School C. (Mother's testimony, Respondent's Exhibit 13)
2. The Student was initially found eligible for special education services while attending a public charter school located in the District of Columbia, first with the disability classification of developmental delay and then, in 2013, other health impairment ("OHI"), after being diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"). (Mother's testimony, Petitioners' Exhibit 21)
3. The Student transitioned to the non-public special education day school ("School B") in 2017 and attended there from \_\_\_th grade to \_\_\_th grade. The School B staff reported that the Student demonstrated academic growth across all subjects, as well as marked progress in social, organizational, and motor skills development. (Petitioners' Exhibit 21)
4. The Student was diagnosed with autism based on a reevaluation in 2019, and his/her disability classification was changed to autism. (Petitioners' Exhibit 21)
5. The Student enrolled at School A in September 2021 and attended from \_\_\_th grade, and started \_\_\_th grade with DCPS funding. (Mother's testimony, Petitioners' Exhibit 21)
6. School A had approximately 100 students at the time the Student attended. The two most prevalent disability classifications of School A students are autism and emotional disability, but School A also serves other disability classifications. School A is a year-round school, and student's behavior and social-emotional issues are addressed along with providing educational programming. (Witness 8's testimony)
7. When the Student first started at School A, he/she was quiet and kept to himself/herself. She/He wore a hood to cover his/her head most times, but followed her/his class schedule and got his/her work done. Over time, the Student built a rapport with many of the teachers and came out of his/her shell. The Student would not usually start a conversation, but if it were a topic that the Student found interesting, she/he would join in class discussions. School A faculty and staff thought the Student was doing well both academically and socially at School A. (Witness 8's testimony, Respondent's Exhibit 8)

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<sup>4</sup> The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained or the PDF page number of the entire disclosure document. When citing an exhibit that has been submitted by more than one party separately, the Hearing Officer may only cite one party's exhibit.

8. DCPS updated the Student's IEP at School A on March 14, 2022. Petitioners participated in the IEP meeting, and all members of the IEP team, including Petitioners, agreed with the IEP and the Student's placement at School A. The Student attended School A for the remainder of SY 2021-2022 and started \_\_\_<sup>th</sup> grade at School A for SY 2022-2023. (Mother's testimony, Witness 5's testimony)
9. At the start of SY 2022-2023, School A staff believed they were meeting the Student's needs and effectively implementing the Student's IEP. The Student was not defiant, had no acting-out behaviors or fights with other students. There were some instances of the Student shutting down and not engaging, but the School A staff were addressing that with the services being provided to the Student. There was no concern about the Student's academic performance. The Student made progress on IEP goals and mastered one occupational therapy goal while at School A. However, it was reported that the Student continued to struggle with attention and self-regulation, requiring a significant level of teacher prompting and support. (Witness 8's testimony, Respondent's Exhibit 9, Petitioners' Exhibit 21)
10. On October 17, 2022, the Student's mother had a conversation with School A's education director about her concerns of whether the Student should remain at School A. She expressed concern that the Student was more outgoing with teachers but not with peers. The Student's math teacher showed her where the Student sat in the classroom, which to her indicated the Student was isolating herself/himself and not engaging with the class. The Student liked the School A teachers and would talk about them often to his/her parents. (Mother's testimony, Petitioners' Exhibits 6)
11. On October 27, 2022, Petitioners' counsel served a notice on DCPS of Petitioners' intent to enroll the Student at School C beginning on November 15, 2022. Prior to the notice, Petitioners had expressed no concerns about School A to DCPS, and School A had provided no communication to DCPS indicating that it could not meet the Student's needs. The Student was making progress. The Student could have returned to School A at any time. (Witness 8's testimony, Petitioner's Exhibit 7 )
12. Petitioners moved the Student from School A to School C because they believed that there was not enough intellectual engagement for the Student, and a lack of creativity. The Student was drawing, writing stories, creating animation, and working with computer 3D modeling. The Student's mother was concerned that the Student could only take one art class at School A. Petitioners wanted a setting in which the Student could take as many art classes as possible. In addition, Petitioners believed that the Student lacked friends at School A. The Student still had friends from School B, but was not making friends at School A. The Student's mother believed that other School A students were differently impacted by their autism than the Student was, and there was no opportunity for the Student to get together with peers after school. School A did not have a parent organization and did not organize any social events with other parents. Petitioners also wanted the Student to have freedom and independence in the school environment. For instance, the Student's

mother pointed out that the bathrooms at School A were locked and the Student would have to ask for a key when she/he needed to use the bathroom. She also mentioned that the Student also had a one-hour bus ride each way to and from home and School A. (Mother's testimony))

13. On November 14, 2023, DCPS responded to the unilateral letter stating the following:

*“DCPS confirms receipt of your letter dated October 27, 2022. While DCPS recognizes the parents’ right to choose a private placement, DCPS does not agree to bear the cost of a private placement in this case. To better assist the LEA in understanding your letter, please provide the following information: when did you decide on placement at the [School C]? When was the deposit made at the school? When was the financial agreement signed between you and the school? Have you received any scholarships from the school? Also note, the [School C] does not have a Certificate of Approval (COA) with the OSSE or appear to provide any type of specialized instruction or related services. It is DCPS’s position that the LEA has made a FAPE available to you with an appropriate IEP and a placement in the LRE at [School A]. If you choose not to enroll your child at [School A], DCPS will consider the student a parentally placed private school student.”* (Petitioner’s Exhibit 7-2)

14. On February 28, 2023, DCPS reached out to Petitioners to schedule an IEP review meeting for the Student and proposed meeting dates. The IEP meeting was initially scheduled for March 30, 2023, but was rescheduled due to Petitioners’ counsel’s unavailability and rescheduled until May 12, 2023. The parties agreed for DCPS to conduct evaluations of the Student and scheduled an analysis of existing data (“AED”) meeting on October 16, 2023. (Respondent’s Exhibit 3-28, 3-31, 3-38, Petitioner’s Exhibit 16))

15. Petitioners’ counsel sent a communication to DCPS stating the following: “As discussed in our IEP meeting, this confirms that we agree with leaving the current draft IEP open while we go through the data gathering and evaluative process for [the Student]. We shall raise no issue in any subsequent proceeding alleging that DCPS is liable for not having its new IEP finished during this time. Thank you.” (Respondent’s Exhibit 7A)

16. On May 12, 2023, DCPS convened an IEP meeting to update the Student’s IEP and provided Petitioners with a draft IEP. The team agreed to leave the current draft IEP open until more data was collected from School C and the re-evaluation planning process commenced. Following the meeting, School C provided the Student’s data to DCPS, including assessment scores and the Student’s report card. (Respondent’s Exhibit 3-30,

17. On August 4, 2023, Petitioners served notice on DCPS of their intent to maintain the Student’s enrollment at School C for the SY 2023-2024. On August 23, 2023, DCPS declined to fund her/his placement at School C and asked that the parents “continue to work with DCPS to update the IEP as expeditiously as possible...” (Petitioners’ Exhibit 13)

18. DCPS submitted the Student for admission to another non-public day school for the Student to attend for SY 2023-2024; however, the school was unable to offer the Student admission

and communicated this to Petitioners in a letter dated September 1, 2023. (Petitioner's Exhibit 16)

19. On October 16, 2023, DCPS convened an analysis of existing data ("AED") meeting, and the team determined that updated assessments were necessary, for which Petitioners provided consent. (Respondent's Exhibit 3-25, 3-26, 3-27)
20. On November 29, 2023, DCPS completed a speech/language evaluation. The evaluator found that the Student continued to demonstrate strengths in vocabulary, receptive and expressive language, while showing growth in pragmatic skills. Therefore, based on the testing and informal data collected, the evaluator concluded that the Student does not have a disabling communication disorder that would prevent her/him from accessing and/or benefiting from the general education curriculum. (Petitioners' Exhibit 19)
21. On December 1, 2023, DCPS completed an occupational therapy evaluation. The evaluator found that the Student's visual motor integration and visual perception had declined since a previous evaluation, and the Student's fine motor precision and fine motor integration remained below average. The evaluator concluded that these deficits negatively affect the Student's functional independence and progress in the educational environment, especially in producing age-appropriate written communication and participating and performing in an age-appropriate manner in the classroom setting. (Petitioners' Exhibit 20)
22. On December 1, 2023, DCPS completed a psychological evaluation. The psychologist administered the Wechsler Intelligence Scale for Children, Fifth Edition. The Student's overall Full-Scale IQ fell in the Low-Average range (standard score of 88), but she/he demonstrated an above-average performance on the Verbal Comprehension Index (standard score of 118), which indicated that language skills were the Student's strongest area of functioning. However, his/her scores on the Visual Spatial Index (standard score of 86), the Fluid Reasoning Index (standard score of 82), and the Working Memory Index (standard score of 82) all fell in the Below-Average range. The Student's weakest performance was on the Processing Speed Index (standard score of 72), but the evaluator concluded that it did not appear to interfere with his/her capacity to perform complex verbal tasks. (Petitioners' Exhibit 21)
23. The psychologist administered the Wechsler Individual Achievement Test - Fourth Edition, to assess the Student's academic progress. The Student's performance on the Word Reading subtest fell within the High Average range, and his/her performance on the Reading Comprehension subtest fell within the Average range. The Student's overall performance on writing tasks fell within the Below Average range, and his/her overall performance in math also fell below age and grade expectations, with significant challenges in math fluency, calculation, and problem-solving. The psychologist also administered behavior and autism rating scales to the Student's teachers and concluded he/she continued to meet the criteria for Autism. (Petitioners' Exhibit 21)
24. On November 19, 2024, the eligibility meeting was held for the Student, and on December 18, 2023, the DCPS IEP team met with the Petitioners to review the evaluations,

determining that the Student continued to meet the criteria for the eligibility classification of Autism. Petitioners shared the Student's progress at School C and requested that DCPS fund the Student's placement there. DCPS indicated that it could not place the Student at School C due to the school not having a COA. The team shared that it had received a letter of acceptance from another non-public special education day school and proposed the Student's placement there for the remainder of SY 2023-2024. Petitioners agreed to seek more information about the placement, but disagreed with DCPS's decision to decline their request for funding at School C. The Student continued attending School C. (Mother's testimony, Petitioners' Exhibits 22, 24, 33)

25. On March 21, 2024, DCPS convened a meeting to update the Student's IEP. DCPS proposed 7.5 hours per week of specialized instruction outside of the general education setting, 4 hours per week of written expression specialized instruction inside the general education setting, 4 hours per week of math specialized instruction inside the general education setting, 3 hours per month of behavioral support services, and two hours per month of occupational therapy. DCPS shared that the IEP would be implemented at School D, the Student neighborhood DCPS school. (Petitioner's Exhibit 25)
26. In April 2024, Petitioners had an independent neuropsychological evaluation conducted for the Student. The psychologist administered assessments that, among other things, revealed weaknesses in attention and executive functioning, planning/organization, flexibility, emotional control, task monitoring, self-monitoring, initiation, and working memory. The psychologist recommended that the Student's educational instruction be delivered in either a one-to-one or very small group (2-3 students) setting, because of the Student's deficits in attention, executive functioning, social cognition, and sensory and emotional sensitivities. The psychologist opined that it was highly unlikely that the Student would be able to access the educational curriculum in a traditional classroom setting. On June 14, 2024, Petitioners submitted a copy of the neuropsychological evaluation to DCPS. (Witness 3's testimony, Petitioners' Exhibits 26, 27)
27. On July 28, 2024, Petitioners' attorney provided DCPS with a notice that the Petitioners would be placing the Student at School C for SY 2024-2025 and requesting that DCPS fund the Student's placement at School C, which DCPS again refused. (Petitioner's Exhibit 28)
28. In April 2024, the Student had a paid internship at a non-profit organization two days per week, and in the summer of 2024, the Student took classes at School C three days per week. Petitioners were exploring two possible out-of-state settings for the Student to attend after \_\_\_\_\_ in June 2025, and identified the WP and the RHP. After the Student finished summer school in August 2024, Petitioners took the Student to tour both programs. The WP is a 3- to 4-month program that provides individual and group therapy, as well as a course in social-emotional learning. The RHP is designed for individuals with autism, providing residents with training in adult skills, including financial planning, meal preparation, and career exploration. The Student wanted to attend the programs immediately instead of waiting \_\_\_\_\_. Upon returning home, the week before the Student was to return to School C, the Student expressed suicidal ideations and was hospitalized. The Student was kept in the hospital emergency room for four days because

the hospital could not locate an inpatient bed for the Student. During this time, Petitioners, in consultation with a psychiatrist, decided that the Student would go directly to the WP from the hospital and put the Student's classes at School C on hold. (Mother's testimony)

29. On August 26, 2024, DCPS convened an AED meeting, at which Petitioners informed DCPS that the Student was at the WP. The team reviewed the independent neuropsychological evaluation and determined that no further evaluations were necessary. The DCPS team members requested to observe the Student at the WP, to which Petitioners consented. The observation of the Student at WP took place on October 28, 2024. (Petitioners' Exhibit 29)
30. On November 19, 2024, DCPS convened an eligibility meeting. Petitioners shared the Student's progress in the WP, and that the Student would complete \_\_\_\_ school online through School C. The IEP team agreed that the Student was eligible for special education services as a student with multiple disabilities, including SLD, OHI, and autism. (Petitioners' Exhibits 32, 33)
31. On November 20, 2024, Petitioners' attorney provided DCPS notice that the Student would be completing the WP program in December 2024, transitioning to the RHP, and returning to remote classes at School C, and requested that DCPS fund both the RHP and School C. (Petitioner's Exhibit 34)
32. The Student did not receive direct behavior support services from a social worker or psychologist at School C. The Student had an outside psychologist he/she saw once or twice a week, who continued working with the Student until he/she transferred to the WP. However, the therapist never provided the Petitioners with any written progress reports they could submit to DCPS. The Student remained at the WP until completing the program in December 2024, by which time the Student began to show more confidence and improved hygiene. Petitioners then enrolled the Student in the RHP, and the Student resumed remote classes with School C in January 2025. (Mother's testimony)
33. On January 21, 2025, DCPS convened an IEP meeting and proposed an IEP with a placement of 30 hours per week of specialized instruction outside of general education and related services. Petitioners requested that DCPS support placement at School C and the RHP, expressing concern about the Student moving to another program so near the end of \_\_\_\_ school. As of the date that Petitioners filed their amended DPC, DCPS had not proposed a non-public school location; however, DCPS ultimately proposed that the IEP be implemented at School A on February 10, 2025. School A determined that, based on a review of the Student's record, that School A could implement his/her IEP and meet the Student's needs. (Witness 8's testimony, Respondent's Exhibits 13, 13A, 13B, 14)
34. The Student remained at the RHP until March 2025, when he/she expressed suicidal ideations and was again hospitalized for one week. Petitioners chose to return the Student to the WP for two weeks, during which the Student received therapy from the therapist who had worked with the Student while he/she was at the WP in fall 2024. The Student then returned to the RHP and resumed online courses with School C, until \_\_\_\_ June 2025. (Mother's testimony, Witness 1's testimony, Witness 2's testimony)

35. School C is an accredited private \_\_\_\_\_ school that provides instruction in a one-to-one setting. Each core classroom has one teacher and one student. The school customizes the curriculum for each student's unique strengths and learning style. School C has 60 students. School C has a social and silent homework café where students gather and can interact. School C operates on a trimester system, with each course lasting approximately four months. While attending School C, the Student demonstrated agency and autonomy, helping to start one of the student clubs. (Witness 1's testimony)

#### CONCLUSIONS OF LAW:

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

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

34 C.F.R. § 300.17 provides:

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

Pursuant to 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). The burden of persuasion shall be met by a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii). DCPS held the burden of persuasion on issues #1, #2, and #3, once Petitioners presented a prima facie case on those issues. 5 Petitioners held the burden of persuasion on the remaining issues.

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<sup>5</sup> DC Code § 38-2571.03 (6) provides:

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

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

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the

**ISSUE 1:** Did DCPS deny the Student a FAPE by failing to provide the Student with an appropriate educational program and placement and/or location of services for SY 2022-2023 and SY 2023-2024 because it (a) grouped the Student with inappropriate peers, (b) did not provide challenging academics, (c) had staffing issues, (d) inappropriate classes, (e) improperly focused on students with emotional and behavioral needs, and (e) was not in the Student's LRE?

**Conclusion:** DCPS sustained the burden of persuasion by a preponderance of the evidence that the IEP and placement that it provided to the Student for SY 2022-2023 were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

DCPS and Petitioners agreed that the Student's March 14, 2022, IEP would remain in effect while the Student was being evaluated. Ultimately, DCPS did not complete the evaluation process and develop another IEP for the Student until March 21, 2024. However, the evidence demonstrates that the IEP that DCPS developed for the Student on March 21, 2024, for the remainder of SY 2023-2024 was not reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special education and related services that' are 'provided at public expense, under public supervision ...;' and that 'meet the standards of the State educational agency;' as well as 'conform[ ] with [each disabled student's] individualized education program.'" *Charles H. v. District of Columbia*, 2021 WL 2946127 (D.D.C. June 16, 2021) (quoting 20 U.S.C. § 1401(9)) (alterations in original). "Special education" is defined as "specially designed instruction, at no cost to parents, [that] meet[s] the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services," on the other hand, are defined as "such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." *Id.* § 1401(26)(A).

"Under [the] IDEA and its implementing regulations, students with disabilities ... are entitled to receive [a] FAPE through an Individualized Education Program (or IEP)." *Charles H.*, 2021 WL 2946127 (quoting 20 U.S.C. § 1401(9)(D)). An IEP is a written document that lays out how the student will obtain measurable annual goals and that mandates specific special education and related services that the student must receive. 20 U.S.C. § 1414(d)(1)(A)(i). It is created for each student by a special "IEP Team," consisting of the child's parents, at least one regular-education teacher, at least one special-education teacher, and other specified educational experts. *Id.* § 1414(d)(1)(B). An IEP is the main tool for ensuring that a student is provided a FAPE. See

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unilateral placement, provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

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

*Charles H.*, 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

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

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

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

The key inquiry regarding an IEP's substantive adequacy is whether taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP offered was reasonably calculated to enable the specific student's progress...."Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra, 137 S. Ct. 988.

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

"The IDEA requires that children with disabilities receive education in the regular classroom whenever possible" *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*,

supra, 137 S. Ct. at 999 (quoting Rowley, 458 U.S. at 202)

Pursuant to 34 C.F.R. § 300.323(a) (“At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.”)

Under the IDEA, parents who unilaterally decide to place their disabled child in a private school without obtaining the consent of local school officials, “do so at their own financial risk.” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993) (quoting *Sch. Comm. of the Town of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)). “As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise “proper under the Act”; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act “unreasonabl[y].” *Leggett v. District of Columbia*, 793 F.3d 59, 66–67 (D.C. Cir. 2015) (citing *Carter*, supra, 510 U.S. at 15–16, 114 S.Ct. 361; 20 U.S.C. § 1412(10)(C)(iii)(III)).

Petitioners assert that the IEP that was in effect during SY 2022-2023 and the Student’s placement at School A were inappropriate for the following reasons, all of which, save the LRE, relate to the Student’s placement at School A and not the Student’s IEP. Petitioners alleged that at School A, the Student was grouped with inappropriate peers, was not provided challenging academics, had inappropriate classes, and that School A had staffing issues and improperly focused on students with emotional and behavioral needs.

The evidence demonstrates that, prior to the Student attending School A, the Student attended School B, a non-public special education day school with which the Petitioners were apparently satisfied. The Student brought an IEP with him/her from School B to School A that was implemented during most of the Student’s first year at School A.

DCPS updated the Student’s IEP at School A on March 14, 2022. Petitioners participated in the IEP meeting, and all members of the IEP team, including Petitioners, agreed with the IEP and the Student’s placement at School A. The Student attended School A for the remainder of SY 2021-2022 and started \_\_\_\_ grade at School A for SY 2022-2023. There is no indication from the Petitioners at the time the March 14, 2022, IEP was developed that they, or any other IEP team member, had any concerns about the IEP or the Student’s placement at School A. The IEP was designed to provide the Student with appropriate specialized instruction and related services, with goals to be implemented from March 14, 2022, until March 2023, when the Student’s annual IEP review ideally should have been held and the IEP updated.

As stated above, pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must “focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits.” Based on the evidence presented, the IHO concludes that at the time the Student’s March 14, 2022, IEP was developed was reasonably calculated to enable the Student to make progress appropriate in light of the Student’s circumstances and remained so, at least through the end of SY 2022-2023.

Petitioners apparently seek to challenge the March 14, 2022, IEP, at least as of the date they filed the current DPC, as the IEP no longer represented the Student's LRE and School A was no longer an appropriate placement for the Student. As noted above, Petitioners assert that the Student's placement at School A was inappropriate for the following reasons: the Student was grouped with inappropriate peers, was not provided with challenging academics, had inappropriate classes, and that School A had staffing issues and improperly focused on students with emotional and behavioral needs.

Although there was testimony, that School C had students with other disability classifications and focused on student's social and emotional and behavior needs, there was no evidence, including none from the Student's mother that supports a finding that the Student was grouped with inappropriate peers, not provided challenging academics, had inappropriate classes, and that School A had staffing issues and improperly focused on students with emotional and behavioral needs.

On October 17, 2022, the Student's mother had a conversation with School A's education director about her concerns of whether the Student should remain at School A. She expressed concern that the Student was more outgoing with teachers but not with his/her peers, and was isolating and not engaging with the class. However, School A believed that the Student needs were being met at School A, that the Student was making progress on IEP goals, and improving both academically and socially. The mother's concern was never expressed to DCPS directly by Petitioners or School A, and within days of the October 17, 2022, meeting, Petitioners unilaterally moved the Student to School C and sought DCPS funding for School C.

The educational director credibly testified that when the Student first started at School A, he/she was quiet and kept to himself/herself. He/She wore a hood to cover her/his head most times, but followed her/his class schedule and got his/her work done. Over time, the Student built a rapport with many of the teachers and came out of his/her shell, joining in class discussions. School A faculty and staff thought the Student was doing well both academically and socially at School A. This witness's testimony contradicted the Student's mother's testimony about the Student's progress at School A.

The IHO finds his testimony more credible because he was in the school regularly and observed and interacted with the Student, and conferred with the Student's teachers and related service providers regularly. The Student's IEP progress reports also demonstrated that the Student was making progress on IEP goals. Although this witness testified that there were some instances of the Student shutting down and not engaging, the School staff addressed this with the services being provided to the Student. There was no concern about the Student's academic performance.

Petitioners assert that the March 14, 2022, IEP and School A no longer represented the Students LRE and the Student was more appropriately placed at School C as of the date of Petitioner's unilateral placement. However, the evidence demonstrates that although the Student may have been in an environment at School C with non-disabled peers, the Student's educational instruction at School C was perhaps more restrictive than at School A, because the Student was in classes with no other students and provided one-to-one instruction from teachers. There was no testimony from any witnesses that supported a conclusion that the Student's LRE was a general education setting.

The IHO concludes that DCPS presented a cogent explanation during the hearing as to why the March 14, 2022, IEP prescribed 30 hours of specialized instruction outside the general education setting and related services. Consequently, the IHO concludes that DCPS sustained the burden of persuasion that the Student's March 14, 2022, IEP and the resulting LRE and educational placement at School A at least through March 13, 2023, were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

**ISSUE 2:** Did DCPS deny the Student a FAPE by failing to propose a placement and/or location of services for the Student before the start of SY 2023-2024?

**Conclusion:** DCPS did not sustain the burden of persuasion by a preponderance of the evidence that it had both an IEP and placement available to the Student for SY 2023-2024.

Pursuant to 34 C.F.R. § 300.323(a) (“At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.”)

5A DCMR 3020.1 provides that an LEA shall ensure an IEP is in effect for each enrolled child who has been determined eligible for special education and related services throughout the calendar year, including the summer months.

The starting point in this analysis is that “the IEP is the vehicle through which school districts typically fulfill their statutory obligation to provide a free appropriate public education and that officials must have an IEP in place for each student with a disability “[a]t the beginning of each school year. U.S.C. § 1414(d)(2)(A)); 34 C.F.R. 300.322(a), 300.323(a). *See also Dist. of Columbia v. Wolfire*, 10 F. Supp. 3d 89, 95 (D.D.C. 2014) (“there is no requirement that the child be currently enrolled in a public school in order to trigger the LEA’s obligation to develop an IEP for that child”); *Dist. of Columbia v. Oliver*, 2014 WL 686860, at 6 (D.D.C. 2014).

The evidence demonstrates that on February 28, 2023, DCPS reached out to Petitioners to schedule an IEP review meeting for the Student and proposed meeting dates. The IEP meeting was initially scheduled for March 30, 2023, but was rescheduled due to Petitioners’ counsel’s unavailability and rescheduled until May 12, 2023. Petitioners’ counsel sent a communication to DCPS stating that Petitioners agreed with the draft IEP that DCPS provided while the evaluations were in progress. It is reasonable based on this communication to conclude that at least through the end of SY 2023-2023, there was an IEP in effect for the Student, and the evidence demonstrates that the Student’s placement at School A remained available through the end of SY 2022-2023.

On August 4, 2023, Petitioner served notice on DCPS of their intent to maintain his/her enrollment at School C for the SY 2023-2024. On August 23, 2023, DCPS declined to fund her/his placement at School C and asked that Petitioners continue to work with DCPS to update the IEP as expeditiously.

DCPS submitted the Student for admission to another non-public day school for the Student to attend for SY 2023-2024; however, the school was unable to offer the Student admission and communicated this to Petitioners in a letter dated September 1, 2023.

At the December 18, 2023, IEP team meeting, Petitioners shared the Student's progress at School C and requested that DCPS fund the Student's placement there. DCPS indicated that it could not place the Student at School C due to the school not having a COA. DCPS shared with Petitioners that the Student had been accepted to another non-public special education day school and proposed the Student's placement there for the remainder of SY 2023-2024. Petitioners agreed to seek more information about the placement but disagreed with DCPS's decision to decline their request for funding at School C. The Student continued attending School C through the remainder of SY 2023-2024.

Based on the evidence that DCPS was unable to provide an appropriate educational placement in a non-public special education day school where at least the Student's draft IEP could be implemented at the start of SY 2023-2024 up until nearly half the school year was over, and given that DCPS ultimately did not complete and finalize the Student's IEP until March 21, 2024, the IHO concludes that DCPS denied the Student a FAPE.

**ISSUE 3:** Did DCPS deny the Student a FAPE by failing to provide the Student with an appropriate educational program and placement and/or location of services from March 21, 2024, through the end of SY 2023-2024 and summer 2024, and SY 2024-2025, because (a) the setting and class sizes were too large, and (b) it was not the Student's LRE?

**Conclusion:** DCPS did not sustain the burden of persuasion by a preponderance of the evidence that the IEP the DCPS developed on March 21, 2024, and placement at School D were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

As noted above, in *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the "educational benefits" requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.

The evidence demonstrates that after DCPS had conducted several evaluations of the Student in the fall of 2023, on March 21, 2024, DCPS convened a meeting to update the Student's IEP. DCPS ultimately proposed 7.5 hours per week of specialized instruction outside of the general education setting, 4 hours per week of written expression specialized instruction inside the general education setting, 4 hours per week of math specialized instruction inside the general education setting, 3 hours per month of behavioral support services, and two hours per month of occupational therapy. DCPS shared that the IEP would be implemented at School D, the Student's neighborhood DCPS school of the Student.

Petitioners presented expert testimony from the psychologist who evaluated Student and was familiar with School D, credibly stating that the Student's placement at School D was inappropriate because the school is so large and has so many students that the Student would have significant difficulty navigating such a big environment, resulting in a decrease in the Student's progress toward independence. DCPS presented witnesses who testified that the March 21, 2024, IEP and placement at School D was appropriate, however, their testimony in this regard was unconvincing. There was no cogent explanation from these witnesses why there was such a significant reduction the level of specialized instruction and instruction outside the general education setting that the Student had been provided in the Student's previous IEP. The apparent reason was that the Student seemed to be progressing well at School C where he/she was with non-disabled peers.

However, as noted previously, the evidence did not demonstrate that the Student was receiving instruction with non-disabled peers. To the contrary, the Student was actually receiving all instruction at School C in a one-to-one setting with no other students in the classroom. Based on this evidence, the IHO concludes that DCPS did not present a cogent and responsive explanation during the hearing as to why the March 21, 2024, IEP prescribed reduced hours of specialized instruction and specialized instruction delivered outside general education, or effectively explain why in the Student's subsequent DCPS IEP developed on January 21, 2025, the Student's LRE was again a non-public special education day school. Consequently, the IHO concludes that DCPS did not sustain the burden of persuasion by a preponderance of the evidence that the IEP the DCPS developed on March 21, 2024, and placement at School D were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

As noted, DCPS developed an IEP for the Student on January 21, 2025, that again provided for a placement in a non-public special education day school. However, DCPS did not provide a placement where that IEP could be implemented until February 10, 2025, after Petitioners' amended DPC had been filed. Consequently, based on the evidence, as of the date that Petitioners alleged the violation in their amended DPC, the IHO concludes that DCPS denied the Student a FAPE because it had not provided the Student with an appropriate placement where his/her IEP could be implemented.

**ISSUE 4:** Did DCPS deny the Student a FAPE by failing to allow Petitioners' educational consultant to observe the proposed program at School D alongside the Student's parents?

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

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

In 2014, the District of Columbia passed the Student Rights Act. The Act "provides district parents with additional procedural safeguards to help make sure parents have the tools they need to stay informed, engaged, and empowered throughout the special education process." See D.C. Council Comm. Rep. on B 20-723 (D.C. 2014) at 1. Recognizing that "parents who do not have a specific

background in the subject area ... often cannot adequately evaluate whether their child's instruction is sufficient [and that] parents are concerned that an LEA may limit such access to the point that the observation is unable to provide meaningful input into their child's educational progress," the Student Rights Act expanded on a parent's "right to observe" under the IDEA...<sup>6</sup>

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

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

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

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

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

- (i) Ensure the safety of the children in the program;
- (ii) Protect other children in the program from disclosure by an observer of confidential and personally identifiable information in the event such information is obtained in the course of an observation by a parent or a designee, or
- (iii) Avoid any potential disruption arising from multiple observations occurring in a classroom simultaneously.

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

(F) The LEA may require advance notice and may require the designation of a parent's observer to be in writing.

(G) Each LEA shall make its observation policy publicly available.

The protections of the Student Rights Act have been further clarified in the DCMR:

5A DCMR §3041.1 provides:

Upon request, the LEA shall provide timely classroom access, either together or separately, to the following persons for the purpose of observing a child's current or proposed special educational program:

- (a) The parent of a child with a disability;

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<sup>6</sup> *Woodson, et al., v. District of Columbia*, 119 LRP 28316

(b) A designee appointed by the parent of a child with a disability, that is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation, and:

(1) Who has professional expertise in the area of special education being observed so long as the LEA has written consent of the parent on file prior to the parent's designee's observation of a child;

or

(2) Who is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent.

5A DCMR §3041.2 provides:

The LEA shall develop and issue a written policy regarding child observation as follows:

(a) The LEA shall not impose any conditions or restrictions on such observations except those necessary to ensure that:

(1) The safety of the children in a program is maintained;

(2) The confidentiality of the other children in the program is protected by prohibiting observers from disclosing confidential and personally identifiable information in the event such information is obtained in the course of an observation by the parent or a designee; and

(3) Any potential disruption to the learning environment arising from multiple observations occurring in a classroom simultaneously is avoided;

(b) The LEA policy may require advance notice of parent observation;

(c) The LEA policy may require the designation of a parent's observer to be in writing; and

(d) The LEA shall make its written policy regarding child observation publicly available.

As previously stated, pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused Student a deprivation of educational benefits. There was no evidence presented by Petitioners from which that IHO conclude that DCPS failing to allow Petitioners' educational consultant to observe School D impeded Petitioners' opportunity to participate in the decision-making process regarding the provision of FAPE, or caused Student a deprivation of educational benefits. The IHO concludes that Petitioners did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

**ISSUE 5:** Did DCPS deny the Student a FAPE by failing to convene a meeting to review the private neuropsychological evaluation and incorporate it into the Student's educational programming?

**Conclusion:** At the outset of the hearing, Petitioners' counsel stated that Petitioners were abandoning this claim and presented no evidence on this claim. As a result, the IHO dismissed this claim with prejudice.

**ISSUE 6:** Is School C a proper placement?

**ISSUE 7:** Is the wilderness program ("WP") a proper placement?

**ISSUE 8:** Is the residential housing program ("RHP") a proper placement?

**Conclusion:** Petitioner sustained the burden of persuasion by a preponderance of the evidence that School A is a proper placement for the Student for reimbursement.

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

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

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

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

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

Under the IDEA, parents who unilaterally decide to place their disabled child in a private school without obtaining the consent of local school officials "do so at their own financial risk." A school district may be required to pay for educational services obtained for a student by the student's parent, if the services offered by the school district are inadequate or inappropriate, the services selected by the parent are appropriate, and equitable considerations support the parents' claim, even if the private school in which the parents have placed the child is unapproved. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993) (quoting *Sch. Comm. of the Town of Burlington v. Dep't of Educ.*, 471 U.S. 359, 374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)).

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. *Branham v. District of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005).

“As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise “proper under the Act”; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act “unreasonabl[y].” *Leggett v. District of Columbia*, 793 F.3d 59, 66–67 (D.C. Cir. 2015) (citing *Carter*, supra, 510 U.S. at 15–16, 114 S.Ct. 361; 20 U.S.C. § 1412(10)(C)(iii)(III)).

A residential placement is appropriate where a student's educational needs are inseparable from social, emotional and mental health needs, and the student will not be able to benefit academically without the therapeutic aspects of these programs, this type of programming is considered to be intrinsic to the student's education. See: *Kruelle v. New Castle County Sch. Dist.* 552 IDELR 350 (3<sup>rd</sup> Cir. 1981) and *North v. District of Columbia Bd of Educ.* 551 IDELR 157 (D.D.C. 1979).

Petitioners have asserted that School C is a proper placement for the Student for SY 2024-2025. Although there was testimony that the Student has made progress at School C, by the time that hearing was conducted and concluded the Student had \_\_\_\_\_ from School C. Consequently, the IHO concludes that a discussion of whether the Student’s prospective placement for whatever may be left of the SY 2024-2025 extended school year is moot. The only salient issue regarding the Student’s placement at School C is whether Petitioners presented sufficient evidence to warrant their reimbursement for the Student’s placement at School C.

The IHO has concluded in the issues above that DCPS provided an appropriate IEP and placement and made an appropriate non-public school available where the Student’s IEP could be implemented through the end of SY 2022-2024. The IHO concluded that as of the start of SY 2023-2024, DCPS denied the Student a FAPE by not providing an appropriate placement and did not provide an appropriate IEP and location of services where the Student’s IEP could be implemented through the period that Petitioners filed their amended DPC. The evidence demonstrates that although School C did not have a COA and was not a special education day school, the Student did receive differentiated instruction at School C and made significant progress and ultimately \_\_\_\_\_ school. Considering 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 School C, the IHO concludes that School C is a proper placement for reimbursement purposes.

Although Petitioners also assert that they should be reimbursed for the Student’s attendance at the WP and the RHP, there was insufficient evidence that the Student's educational needs were inseparable from social, emotional, and mental health needs, and that the Student would be unable to benefit academically without a residential program.

The evidence demonstrates that the Student was functioning well and making progress at School C during the summer of 2024 and until Petitioners took the Student to visit the WP and the RHP in August 2024. The Student wanted to attend one of these programs immediately, and upon the Student's return home and anticipated return to School C for SY 2024-2025, the Student needed to

be hospitalized and, in lieu of an inpatient hospitalization, sent the Student to the WP. It is understandable that Petitioner acted in what they believed to be the best interest of their child, however, Petitioner did so without any input from or communication with DCPS.

Although Petitioners presented the testimony of the Student's therapist at the WP, who testified about the progress that the Student made there, the WP was not a residential school, and there was little indication that the Student was provided any academic instruction while he/she was there.

Likewise, there was no evidence that the Student was being provided any academic instruction at the RHP; instead, the Student was receiving his/her education remotely through School C while at the RHP.

Although there was testimony that the Student has made social and emotional progress at both the WP and the RHP, no evidence was presented to explain why the Student could not return home and receive similar therapeutic services while attending School C in person. Additionally, no testimony was provided from which the IHO could conclude that the Student's therapeutic needs are so intertwined with his/her educational needs that a residential program is justified. The IHO finds that the Petitioners' reimbursement for the WP and the RHP is unwarranted and that the circumstances surrounding Petitioners' placement of the Student in these programs, without DCPS input and participation in assessing whether a residential program was necessary, do not support reimbursement.

**ORDER:**

1. The Petitioners' claims that DCPS denied the Student a FAPE in issues #1, #4, and #5 are hereby dismissed with prejudice.
2. Within thirty (30) calendar days of Petitioners presenting DCPS with appropriate documentation of their payment(s) to School C, DCPS shall reimburse Petitioners for the payment(s) they personally made to School C for the Student's attendance at School C for SY 2023-2024 and SY 2024-2025.
3. All other relief requested by Petitioner is denied.

**APPEAL PROCESS:**

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

*/S/ Coles B. Ruff*

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**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: August 9, 2025**

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