

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

PARENTS, on behalf of
STUDENT,¹

Date Issued: December 12, 2021

Petitioners,

Hearing Officer: Peter B. Vaden

v.

Case No: 2021–0124

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Online Video Conference Hearing

Hearing Dates: November 22, 23 and 30, 2021

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the parents under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In this administrative due process proceeding, the parents seek private school tuition reimbursement from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied their child a free appropriate public education (FAPE) by failing to offer the child appropriate Individualized Education Programs (IEP) and educational placements for the 2019-2020, 2020-2021 and 2021-2022 school years.

¹ Personal identification information is provided in Appendix A.

Petitioners' Due Process Complaint, filed on August 24, 2021, named DCPS as Respondent. The undersigned hearing officer was appointed on August 25, 2021. On September 8, 2021, the parties met for a resolution session and were unable to resolve the issues in dispute. On September 2, 2021, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. By orders issued September 9, 2021 and December 1, 2021, I granted unopposed continuance requests of Petitioners and DCPS respectively. My final decision in this case is now due by December 20, 2021.

Due to the social distancing protocols in force in the wake of the Coronavirus outbreak, the due process hearing was held online with the parents' consent and recorded by the hearing officer, using the Microsoft Teams video conference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on November 22, 23 and 30, 2021. FATHER appeared online for the hearing and the parents were represented by PETITIONERS' COUNSEL and PETITIONERS' CO-COUNSEL. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL.

Petitioners' Co-Counsel made an opening statement. Petitioners called as witnesses EDUCATIONAL CONSULTANT, HEAD OF SCHOOL, Father and SPEECH-LANGUAGE DIRECTOR. DCPS called as witnesses DCPS SCHOOL PSYCHOLOGIST, SOCIAL WORKER, SLS PROGRAM MANAGER, CENTRAL IEP TEAM (CIEP) MANAGER, CIEP SPEECH-LANGUAGE PATHOLOGIST (CIEP SLP), SPECIAL

EDUCATION DIRECTOR and LEA Representative. Petitioners re-called Father as a rebuttal witness. Petitioners' Exhibits P-1 through P-45 were admitted into evidence, except Exhibits P-12, P-16, P-23 and P-24 which were withdrawn. Exhibits P-3, P-4, P-6, P-7, P-11, P-13, P-15, P-19, P-20, P-22, P-25 through P-27, P-28 (-A, -B and -C), P-31, P-34-A, P-35, P-36, P-40, and P-42 were admitted over DCPS' objections. DCPS' Exhibits R-1 through R-28 were all admitted into evidence without objection, except for Exhibit R-2-4, which was withdrawn.

On November 23, 2021, at the conclusion of Petitioners' case-in-chief, DCPS' Counsel made a motion for a directed finding that Petitioners had not made a *prima facie* showing that DCPS' November 2019 was inappropriate for Student. I took this motion under advisement. DCPS also moved for directed findings (1) that, based on Father's testimony, DCPS' not providing for Student's outside of general education placement in Specials classes, lunch and recess, was not inappropriate and (2) that the parents had not been denied meaningful participation in the decision making process regarding Student's educational placement/school location. I denied that motion.

On the last day of the hearing, after the taking of the evidence, counsel for the respective parties made oral closing arguments. The parties were granted leave until December 1, 2021 to submit, by email, citations to persuasive or controlling authority. Counsel for both parties timely submitted citations to authority.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The issues for determination in this case, as set out in the September 2, 2021 Prehearing Order are:

- A. Did DCPS deny Student a FAPE by failing to propose an appropriate IEP or placement, on November 7, 2019, for the 2019-2020 school year?
- B. Did DCPS deny Student a FAPE by failing to provide a reading intervention or reading program on the 2020 IEP?
- C. Did DCPS deny Student a FAPE by failing to allow the parents meaningful participation in the decision-making process regarding Student's educational placement/school location for the 2019-2020 school year?
- D. Did DCPS deny Student a FAPE by failing to propose an appropriate IEP or placement for the 2020-2021 school year?
- E. Did DCPS deny Student a FAPE by failing to provide a reading intervention or reading program on the 2021 IEP?
- F. Did DCPS deny Student a FAPE by failing to allow [REDACTED] parents meaningful participation in the decision-making process regarding [REDACTED] educational placement/school location for the 2020-2021 school year?
- G. Did DCPS deny Student a FAPE by failing to propose an appropriate IEP or placement for the 2021-2022 school year?
- H. Did DCPS deny Student a FAPE by failing to allow [REDACTED] parents meaningful participation in the decision-making process regarding Student's educational placement for the 2021-2022 school year?
- I. Did DCPS deny Student a FAPE by failing to provide any executive functioning goals and objectives on all of Student's IEPs?

J. Is NONPUBLIC SCHOOL a proper placement for Student?

For relief in this case, the parents request that DCPS be ordered reimburse them for Student's tuition and related services already paid to Nonpublic School for the 2019-2020 and 2020-2021 school years, and to place Student there for the 2021-2022 school year.

FINDINGS OF FACT

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

1. Student, an AGE youth, resides with the parents in the District of Columbia. Testimony of Father.
2. Student is eligible for special education as a student with Multiple Disabilities (MD) based upon coexisting Specific Learning Disability (SLD) and Other Health Impairment (OHI). Student was initially found eligible for special education in 2017 while he/she attended CITY SCHOOL 1, a DCPS public school. At that time, Student was offered specially designed instruction in the area of Reading. Exhibits R-11, R18.
3. Student's OHI disability is based upon a seizure disorder. Student is currently medicated for this condition and has been free of seizures for almost three years. Testimony of Father.
4. The parents unilaterally placed Student at Nonpublic School, a private

special education day school in the District of Columbia, at the beginning of the 2018-2019 school year. Student has remained enrolled at Nonpublic School, as a parentally-placed student, through the present 2021-2022 school year. Testimony of Father.

5. Nonpublic School's April 24, 2019 Individualized Education for Student Program (NS IEP) included Impact Statements for Reading, Math, Written Language and Behavior/Executive Functioning. According to the respective Impact Statements, the impacts on Student in the classroom were for Reading: The Reading needs/target areas named contribute to weak comprehension and/or decoding skills; for Math: The Math needs/target areas named affect Student's ability to acquire and apply these skills to real-life math situations, require specialized instruction, and interfere with the ability to access and progress in the general education curriculum and for Written Language: The Written Language needs/target areas named contribute to weak skill in writing sentences and paragraphs. Each of these academic needs was reported in the NS IEP to require specialized instruction and to affect Student's ability to access and make progress in the general education curriculum. According to the NS IEP, Student's Academic Behavior/Executive Functioning needs/target areas compromise the student's ability to engage in the learning process (maintain attention, organize materials and information, use effective independent learning skills, and develop relationships) in the general education curriculum. Exhibit P-3.

6. Prior to July 15, 2019, the parents filed a prior due process complaint on behalf of Student (Case No. 2019-0149). By a settlement agreement dated July 15, 2019,

the parties settled the dispute in the prior case. DCPS and the parents agreed, *inter alia*, that DCPS would reimburse the parents for one-half of Student's tuition costs for the 2018-2019 school year at Nonpublic School and that the parents released DCPS from all other claims preceding the settlement date. Exhibit R-3.

7. On August 7, 2019, Petitioners' Counsel wrote DCPS to request that DCPS place Student and fund his/her enrollment at Nonpublic School for the 2019-2020 school year. Petitioners' Counsel wrote that the parents did not believe that DCPS had offered Student an appropriate special education or placement for the 2019-2020 school year. Exhibit P-6.

8. On October 10, 2019, LEA Representative conducted an observation of Student in math class at Nonpublic School. LEA Representative observed that throughout the observation, Student's level of activity was appropriate and Student was alert and attentive; followed directions and routines without redirection; was intrinsically motivated; was organized and on task and was cooperative. Testimony of LEA Representative, Exhibit R-4.

9. DCPS convened an IEP team meeting for Student on November 7, 2021. Father, Petitioners' Counsel and Nonpublic School staff members attended the meeting. DCPS incorporated data on Student from Nonpublic School, including from the April 24, 2019 NS IEP, in its proposed IEP. After discussion of IEP annual goals, LEA Representative stated that based on Student's profile, he/she was a student with troubles in basic reading skills, and DCPS was proposing 10 hours of specialized

instruction outside of the general education setting. Petitioners' Counsel stated that Student required a full time special education program. LEA Representative stated that the DCPS IEP team could not consider other needs referenced by Petitioners' Counsel without holding an eligibility meeting for Student. DCPS agreed to add additional aids and services for Student recommended by Nonpublic School staff, including Preferential seating, Place marker, Color coding, Graphic organizer, Highlighting material, Graph paper and Multisensory presentation. Exhibit R-7.

10. DCPS' proposed November 7, 2019 IEP for Student included annual academic goals in the area of Reading only and provided for Student to receive 10 hours of Specialized Instruction outside general education specifically for Reading. Testimony of Educational Consultant. (In their case-in-chief, Petitioners did not offer the November 7, 2019 IEP into evidence. At the conclusion of Petitioners' case-in-chief, DCPS moved for a directed finding that Petitioners had not made a *prima facie* showing that November 7, 2019 IEP was inappropriate for Student and that therefore the burden of persuasion as to the appropriateness of that IEP should not fall on DCPS. I took DCPS' motion under advisement.)

11. After Petitioners completed their case-in-chief, DCPS offered the November 7, 2019 IEP into evidence. The November 7, 2019 IEP provided eight annual goals, all for Reading, and specified that Student would benefit from 10 hours per week of specialized instruction, specifically in the area of Reading, due to his/her weaknesses in vocabulary, sight words, reading fluency, comprehension and decoding. Exhibit R-6.

12. In December 2019, DCPS School Psychologist conducted a comprehensive psychological reevaluation of Student. In her December 16, 2020 report, DCPS School Psychologist reported that Student's cognitive abilities, using the Reynolds Intellectual Assessment Scales – Second Edition (RIAS) suggested that Student was struggling verbally and nonverbally. Student's RIAS Composite Intelligence Index (CIX) score of 67 indicated severe deficits in overall development of general intelligence relative to others at Student's age. Student's cognitive performance suggested that he/she may experience severe difficulties learning new information. Student's RIAS Verbal Intelligence (VIX) score of 72 and Nonverbal Intelligence Index (NIX) score of 70 indicated moderate deficits in the development of verbal cognitive and visual/spatial abilities. Student's academic functioning, assessed with the Woodcock-Johnson Test of Academic Achievement-Fourth Edition (WJ-IV), indicated significant challenges in all academic areas. Student's overall profile supported the presence of a learning disability in reading (Dyslexia), with a specific weakness in orthographic processing. In her report, DCPS School Psychologist noted that there had been a significant decline in Student's cognitive performance from the previous 2017 psychological evaluation. Exhibit P-8.

13. Based on an Independent Educational Evaluation (IEE) speech and language evaluation of Student conducted by an independent Speech-Language Pathologist from November 30, 2018 to December 21, 2018, CIEP SLP reported on

January 1, 2020, that Student presented with oral communication deficits that would prevent him/her from accessing or gaining benefit from the general education curriculum; that Student presented with relative strengths in hearing and speaking vocabulary, listening comprehension skills, and phonological awareness skills. While Student demonstrated deficits in receptive and expressive language skills, as well as, production and comprehension of narrative language, these deficits did not appear to be Student's primary disabling condition. Student also demonstrated notable literacy deficits. Student's weaknesses in integrative language functioning and weak language formulation skills would limit Student's ability to meaningfully participate in classroom discussions with varied and complex syntax and semantics. As academic language demands would increase, Student may have difficulty demonstrating knowledge and use of higher level language functions (inference, nonliteral language, multiple meanings, etc.). Testimony of CIEP SLP, Exhibit R-11.

14. At an eligibility meeting in January 8, 2020, the DCPS eligibility team confirmed Student's eligibility for special education under the MD (SLI and OHI) disability category. This disability was reported to impact Student's participation in the general education curriculum in Academic-Mathematics, Academic-Written Expression, Academic-Reading and Communication/Speech and Language. Exhibit R-12.

15. On March 9, 2020, DCPS convened an IEP team meeting to revise DCPS proposed IEP for Student. Father, Petitioners' Co-Counsel and staff from Nonpublic School attended the meeting by telephone. The IEP team identified Mathematics,

Reading, Written Expression and Communication/Speech and Language as areas of concern for Student. For special education and related services, the March 9, 2020 IEP provided for Student to receive 20 hours per week of Specialized Instruction and 240 minutes per month of Speech-Language Pathology, all outside general education. For Other Classroom Aids and Services, the proposed IEP provided for Student to have 100% extended time for tests as allowed by the parameters of the test; Calculator for mathematics testing; Extra time for processing information and formulating oral/written responses during testing, class discussion, and instruction; Individual administration as necessary; Large print test material; Location of testing with minimal distractions; Paraphrasing/simplification of oral and written directions; Repetition of oral and written directions, as needed; Small group setting and Verbatim reading of the entire test/selected sections of the test or vocabulary. For classroom and/or assessment accommodations the IEP provided for Clarification/Repetition of Directions; Markup Tools; Read Aloud for Literacy Assessments; Human Scribe; Speech-to-Text; Human Signer or External Assistive Technology for Selected Responses on Literacy Assessment; Graph paper; Graphic organizer; Preferential seating; Individual testing; Small group testing; Extended Time and Test Administered Over Several Days. Exhibit R-14.

16. The March 9, 2020 IEP provided that to make progress in the general education curriculum, Student would benefit from, *inter alia*,"multi sensory learning, evidence based reading fluency program (direct, explicit, multi sensory, structured, sequential, prescriptive), graphic organizers and story maps, extra time on reading

assignments, phonics and visualization.” Exhibit R-14.

17. At the March 9, 2020 IEP team meeting, Petitioners’ Co-Counsel stated that the parents agreed with the provision for 240 minutes per month of Speech-Language Pathology. Counsel stated that the IEP provision for research-based reading interventions, specifically multiple modalities and multisensory learning strategies, did not go far enough and suggested that the Orton-Gillingham program be specified in the IEP. Petitioners’ Co-Counsel stated that a 20 hour IEP would make it difficult for Student in other content areas and that, according to Nonpublic School, Student needed more support and it would not be appropriate to place him/her in general education because of Student’s reading deficit. Petitioners’ Co-Counsel also stated that the parents should be involved every stage of the school location process. Petitioners’ Co-Counsel stated that based on the proposed IEP, it was evident that DCPS was not going to propose that Student return to Nonpublic School. He stated that moving Student to another school would have all kinds of impact on Student. Father stated at the meeting that he would never consider moving Student from Nonpublic School for any reason whatsoever. Exhibit R-15.

18. On April 20, 2020, DCPS gave Prior Written Notice to the parents that the location of services for Student for the 2019-2020 school year had been identified as CITY SCHOOL 2 in the Specific Learning Supports (SLS) Program. Exhibit P-17.

19. On June 29, 2020, DCPS issued a Location of Services letter to the parents providing notice that the location of services for Student for the 2020-2021 school year

had been identified as CITY SCHOOL 3 in the Specific Learning Support (SLS) classroom. Exhibit R-16-A.

20. On August 17, 2020, Petitioners' Counsel provided written notice to DCPS that Student would attend Nonpublic School for the 2020-2021 school year and to request that DCPS place and fund Student at the private school. Petitioners' Counsel wrote that the parents did not believe that an appropriate special education program for Student had been identified or offered by DCPS for 2020-2021 school year and that, should DCPS refuse the request for funding, the parents reserved the right to seek funding for that placement [through a due process proceeding]. By letter of August 19, 2020, DCPS' Resolution Team Director acknowledged receipt of the parents' private school funding request and stated that it was DCPS's position that the District had made a FAPE available to Student with an appropriate IEP and placement in the least restrictive environment at the City School 3 SLS classroom. The Resolution Team Director gave notice that if the parents chose not to enroll Student at City School 3, DCPS would consider Student a parentally-placed private school student. Exhibit P-22.

21. On or about January 5, 2021, DCPS sent the parents a draft revised annual IEP for Student. This draft IEP omitted the number of hours of Specialized Instruction Services which Student would be provided. Educational Consultant provided feedback on the draft IEP which was forwarded to DCPS. Exhibit P-27.

22. On February 11, 2021, DCPS convened Student's annual IEP review meeting. Father, Petitioners' Co-Counsel, Educational Consultant and Nonpublic

School staff attended the meeting. DCPS' proposed February 11, 2021 IEP identified Mathematics, Reading, Written Expression and Communications/Speech and Language as areas of concern for Student. The proposed IEP provided for Student to receive 20 hours per week of Specialized Instruction and 240 minutes per month of Speech-Language Pathology outside the general education setting. Exhibit R-14. Educational Consultant said that the family team believed Student required direct instruction, including goals, for Executive Functioning. The DCPS representative stated that there was not an Executive Functioning section in the IEP, but DCPS would address Executive Functioning deficits in the IEP classroom aids section. Petitioners' Counsel stated that the family team did not agree with the proposed special education hours because Student's reading deficits would make participating in Specials classes and in the general education curriculum not possible for him/her. DCPS stated that the IEP team would have to reconvene to determine if Student required a Social, Emotional, Behavioral section in the IEP by having an Analysis of Existing Data (AED) meeting. Exhibit P-28-B.

23. On April 19, 2021, Social Worker observed Student on-line in two Nonpublic School virtual classes. Two Nonpublic School teachers completed a Strengths and Difficulties Questionnaire at Social Worker's request. Their responses indicated that Student did not indicate clinical significance in any domain. Impact on student life was slightly raised as it was noted that Student is inattentive at times. Social Worker reported that Student may benefit from use of techniques to have

him/her return to task and maintain focus. Exhibit P-32.

24. On May 5, 2021, the DCPS eligibility team met to review Student's special education eligibility. The team determined that Student continued to qualify for special education services as a student with Multiple Disabilities based on SLD and OHI and that Student continued to be eligible for Speech-Language services. Student was found ineligible for Social Emotional/Behavior services. Exhibit P-34.

25. On May 6, 2021, DCPS issued a Standard IEP Amendment Form to amend the February 11, 2021 IEP to provide that Assistive technology was considered for Student and Student would benefit from the following supports: calculator, graphic organizer and speech-to-text. Additionally, DCPS proposed to update the IEP Supplementary Aids and Services with the following additional supports: Teacher prompting, self-monitoring checklist, visible timers, peer modeling, built in routines for everyday activities, provide the student appropriate supportive signals to serve as reminders, increasing organization for a task, explicit problem solving instruction, pre-teaching big picture concepts to provide meaningful context, managing the rate of new information, additional processing time, time to rehearse, guided notes/outline of notes in advance, and complex tasks introduced one step at a time. Exhibit R-26.
Father overlooked this IEP amendment and did not sign it until August 4, 2021.

Testimony of Father.

26. On June 30, 2021, DCPS issued a Location of Services letter to the parents providing notice that CITY SCHOOL 4 had been identified as the school year 2021-2022

location of special education services for Student. Student's designated location was changed for the 2021-2022 school year because City School 4 was the feeder school for the SLS program at the in-boundary high school for Student's neighborhood. Exhibit P-33.

27. On August 4, 2021, Petitioners' Counsel provided written notice to DCPS that Student would attend Nonpublic School for the 2021-2022 school year and to request that DCPS place and fund Student at the private school. Petitioners' Counsel wrote that the parents did not believe that an appropriate special education program for Student had been identified or offered by DCPS for the 2021-2022 school year and that, should DCPS refuse the request for funding, the parents reserved the right to seek funding for that placement [through a due process proceeding]. By letter of August 13, 2021, DCPS' Resolution Team Director acknowledged receipt of the parents' private school funding request and stated that it was DCPS' position that the District had made a FAPE available to Student with an appropriate IEP and placement in the least restrictive environment at the City School 4 SLS classroom. The Resolution Team Director gave notice that if the parents chose not to enroll Student at City School 4, DCPS would consider Student to be a parentally placed private school student. Exhibit P- 39.

28. DCPS' SLS programs are based in a resource classroom with a maximum student to teacher ratio of 12 to 15 students to 1 teacher and 1 instructional aide. (SLS Program Manager testified that all SLS classrooms have a maximum of 12 students.

Special Education Director testified that the SLS classroom at City School 3 has a maximum of 15 students.) Students are instructed in core academic subjects – Math, ELA, Science, Social Studies and the Intervention Block in the SLS classroom. SLS students attend lunch, recess and Specials classes (*e.g.*, Art, Music and Physical Education) with regular education students. The instructional aide, or the special education teacher, accompanies the SLS students to all general education classes and activities. At the junior high school level, SLS students may be co-taught core subjects by the content teacher and the special education teacher. In the co-teacher setting, there are no general education students. Testimony of SLS Program Manager. (In her testimony, CIEP Manager stated that SLS students are not accompanied by an aide or special education teacher when they attend Specials classes, lunch and recess with general education students. Based on the testimony of SLS Program Manager and Special Education Director, who have first hand knowledge of the SLS program, I find that CIEP Manager was mistaken and that the evidence establishes that when placed with general education students for lunch, recess and Specials classes, SLS students are accompanied by the classroom instructional aide or the special education teacher.)

29. Nonpublic School is a private special education day school in the District of Columbia, which primarily serves students with learning disabilities, predominantly language-based, Attention Deficit-Hyperactivity Disorder, executive functioning challenges and dyslexia. Nonpublic School has a total enrollment of 380 students. Nonpublic School holds a current certificate of approval (COA) issued by the D.C. Office

of the State Superintendent of Education (OSSE). Testimony of Head of School.

30. For substantive academic classes at Nonpublic School, Student is in classes of 5 to 9 students. Most of Student's Nonpublic School teachers are not certified to teach special education. Student receives 1 on 1 reading instruction from a Speech-Language Pathologist for 45 minutes three days per week, and for 75 minutes one day per week. Student also receives speech and language therapy two times per week.

Testimony of Head of School.

31. Student is severely dyslexic student. When assessed in September 2019, Student was reading a mid-Kindergarten level. At present Student is reading at a late 2nd to early 3rd grade level. Student reads extremely slowly and in the classroom is not able to access text. Student's writing skills are closer to the 4th grade level. Student has shown steady progress, but remains significantly behind. Student is not close to being a fluent reader. Testimony of Speech-Language Director, Testimony of Head of School.

CONCLUSIONS OF LAW

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

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioners in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about

the appropriateness of the student's IEP or placement, or of the program or placement proposed by the public agency, in this case DCPS, the agency shall hold the burden of persuasion on the appropriateness of the proposed placement; provided that the Petitioners shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the agency. The burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

Analysis

In this proceeding, the parents seek reimbursement from DCPS for Student's private school tuition for the 2019-2020 school year, after November 7, 2019, and for the 2020-2021 and 2021-2022 school years. Student has attended Nonpublic School since the beginning of the 2018-2019 school year when the parents unilaterally placed him/her at the private school.

As U.S. District Judge Rosemary M. Collyer, explained in *R.B. v. District of Columbia*, No. CV 18-662, 2019 WL 4750410, (D.D.C. Sept. 30, 2019), the IDEA authorizes reimbursement to parents for private school expenses under certain circumstances:

School districts must "reimburse parents for their private-school expenses if[:] (1) school officials failed to offer the child a [FAPE] in a public or private school; (2) the private-school placement chosen by the parents was otherwise 'proper under the [IDEA]'; and (3) the equities weigh in favor of reimbursement." *Leggett v. District of Columbia*, 793 F.3d 59, 66-67 (D.C. Cir. 2015) (citing *Florence Cty. Sch. Dist. Four v. Carter By and Through Carter*, 510 U.S. 7, 15-16 (1993)).

R.B., *supra* at 7. See, also, *School Committee of Town of Burlington v. Department of*

Education of Massachusetts, 471 U.S. 359, 369, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985). These private school reimbursement criteria are often cited as the *Burlington-Carter* test.

Applying the *Burlington-Carter* test to this case, the first factor in deciding whether DCPS must reimburse the parents for Student's Nonpublic School tuition expenses is whether DCPS failed to offer Student a FAPE in a public or private school. The parents allege that DCPS failed to offer Student a FAPE with its allegedly inappropriate November 7, 2019, March 9, 2020 and February 11, 2021 (as amended) IEPs and proposed educational placements.

APPROPRIATENESS OF IEPs

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

In reviewing a challenge under the IDEA, courts conduct a two-part inquiry: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206–07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (footnotes omitted).

Middleton at 128.

Procedural Compliance

In this case, the parents allege that DCPS did not comply with the procedures set forth in the IDEA because the District did not allow them meaningful participation in

the decision-making process regarding Student's educational placement or school location for the three school years concerned. The parents hold the burden of proof on this issue.

As the U.S. District Court explained in *Doyle v. Arlington Cty. Sch. Bd.*, 806 F. Supp. 1253 (E.D.Va. 1992), *aff'd*, 39 F.3d 1176 (4th Cir. 1994), “[the Education of the Handicapped Act’s (predecessor statute of the IDEA)] procedural requirements are designed to insure that parents participate meaningfully in the decision-making process for their handicapped child. *Rowley*, 458 U.S. at 205–06, 102 S.Ct. at 3050. Thus, if the school system has already fully made up its mind before the parents ever get involved, it has denied them the opportunity for any meaningful input.” *Doyle*, 806 F. Supp at 1262. However, while school officials must come to the IEP table with an open mind, that does not mean they should come to the IEP table with a blank mind. *Id.* Parents’ participation does not mean control or veto power. *See Blackman v. Dist. of Columbia*, No. CV 97-1629 (PLF), 2014 WL 12946244, at *4 (D.D.C. Jan. 8, 2014).

The record in this case leaves no doubt that the parents were able to meaningfully participate in the November 7, 2019, March 9, 2020 and February 11, 2021 IEP team meetings, when Student’s IEPs were developed and his/her educational placements, for example, Student’s placement in DCPS’ SLS programs, were decided. Father, Petitioners’ Counsel or Co-Counsel and several Nonpublic School staff members attended all of the IEP team meetings. In addition, Educational Consultant attended the February 11, 2021 meeting. The meeting notes taken by DCPS’ representatives at these

meetings, and by Educational Consultant at the February 11, 2021 meeting, show that the parents' representatives actively participated in the meetings and that the DCPS representatives did not ignore their input, but made some of their requested changes to the proposed IEPs.

Petitioners' Counsel argues that after the IEPs were developed, DCPS improperly denied the parents participation in selecting the public school locations to implement the respective IEPs. However, as U.S. District Judge Colleen Kollar-Kotelly has explained, the IDEA does not explicitly require parental participation in site selection:

The IDEA requires that a student's parents be part of the team that creates the student's IEP and determines the student's educational placement. *See 20 U.S.C. § 1414(d)(1)(A)-(B)*. However, the IDEA does not explicitly require parental participation in site selection. Plaintiff has failed to cite any case, from this Circuit or another, requiring parental involvement in site selection.

Z.B. by & through Sanchez v. District of Columbia, 382 F. Supp. 3d 32, 47 (D.D.C. 2019), *aff'd sub nom. Sanchez v. District of Columbia*, 815 F. App'x 559 (D.C. Cir. 2020), *cert. denied sub nom. Z. B. By & Through Sanchez v. District of Columbia*, 141 S. Ct. 375, 208 L. Ed. 2d 97 (2020). Guided by the district court's decision in *Z.B.*, I conclude that the parents have not established that DCPS' not involving them in the school site selections for Student was a procedural violation which resulted in denial of FAPE.

IEP Appropriateness

I turn next to the substantive prong of the *Rowley* IEP inquiry – Were the IEPs

developed by DCPS for the 2019-2020, 2020-2021 and 2020-2022 school years appropriate for Student? In *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017). *supra*, the U.S. Supreme Court elaborated on the standard, first enunciated in *Rowley*, for what constitutes an appropriate IEP under the IDEA:

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. *Endrew F.*, 137 S.Ct. at 999. . . . The 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.* . . . Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. *Id.* (emphasis in original.) . . . The IEP must aim to enable the child to make progress. . . . [T]he essential function of an IEP is to set out a plan for pursuing academic and functional advancement. *Id.* . . . A focus on the particular child is at the core of the IDEA. The instruction offered must be "*pecially designed*" to meet a child's "*unique needs*" through an "*individualized education program.*" An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability and potential for growth. *Id.* (emphasis in original.) . . . A reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.

Endrew F., 137 S.Ct. at 1002. *See, also, Z. B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018).

November 7, 2019 IEP

Petitioners first allege that DCPS' proposed November 7, 2019 IEP for Student was inadequate. At the due process hearing, DCPS' Counsel made an oral motion for a directed finding that Petitioners failed to make a *prima facie* showing that the November 7, 2021 IEP was inappropriate, because Petitioners did not offer that IEP

document into evidence. However, Petitioners' expert, Educational Consultant, testified that she had reviewed the IEP and it had academic goals only in the area of Reading and provided for Student to receive a total of 10 hours per week of Specialized Instruction, outside general education, specifically for Reading. Educational Consultant opined that DCPS' failure to address Student's other disability-related needs in the November 7, 2019 IEP made the IEP inappropriate.

In determining the sufficiency of a *prima facie* case, a hearing officer must determine whether, after considering all of the parents' evidence, a reasonable trier of fact could find in favor of the parents. *See W.S. v. Dist. of Columbia*, 502 F. Supp. 3d 102, 121 (D.D.C. 2020). I find that even without offering the IEP document into evidence, Petitioners established the relevant content of the IEP, through Educational Consultant's testimony, sufficient for a trier of fact to find that the November 7, 2019 IEP was inappropriate. I, therefore, deny DCPS' motion for a directed finding and determine that DCPS holds the burden of persuasion as to the appropriateness of this IEP.

The IDEA requires that every IEP include a statement of annual goals designed to meet each of the child's educational needs that result from the child's disability and a statement of the special education and related services that will be provided to enable the child to advance appropriately toward attaining the annual goals. *See* 34 C.F.R. § 300.320(a). At the time of the November 12, 2019 IEP team meeting, DCPS had Student's April 24, 2019 Individualized Education Program from Nonpublic School (NS

IEP) as well as other Nonpublic School educational data for Student. The NS IEP reported that Student's educational challenges included weak comprehension and/or decoding skills in Reading, challenges to acquire and apply Math skills in real-life math situations and weak skills in writing sentences and paragraphs in Written Language. The NS IEP stated that Student required specialized instruction in each of these areas, as well as support for Academic Behavior/Executive Functioning.

Educational Consultant's testimony that the November 7, 2019 IEP included annual goals and Specialized Instruction only for Reading was confirmed by the IEP document, which was later introduced by DCPS (Exhibit R-6). The November 7, 2021 IEP provided eight annual goals, all for Reading, and specified that Student would benefit from 10 hours per week of specialized instruction, specifically in the area of Reading, due to his/her weaknesses in vocabulary, sight words, reading fluency, comprehension and decoding.

LEA Representative, who drafted most of the IEP, stated at the November 7, 2019 IEP team meeting that the Math and Written Language areas of concern identified in the NS IEP could not be addressed in the DCPS IEP because the District had not yet found Student eligible in those other areas of concern. That decision was incorrect. From the information provided in the NS IEP and other Nonpublic School data, in November 2019, DCPS knew, or should have known, that as a result of Student's MD disability, Student had educational needs in Math and Written Language, in addition to needs in Reading. However, DCPS did not propose annual goals or special education

services to meet Student’s Math or Written Expression needs until the March 9, 2020 IEP team meeting. I find that the failure of the DCPS IEP team to provide annual goals or special education services for Math and Written Expression in the November 7, 2019 IEP resulted in the proposed IEP’s not meeting “each of [Student’s] . . . educational needs” that resulted from his/her disability. *See* 34 C.F.R. § 300.320(a). This was a denial of FAPE.

March 9, 2020 IEP

By the time the DCPS IEP team convened on March 9, 2020, DCPS had conducted a comprehensive psychological reevaluation of Student and a speech and language assessment review. At an eligibility meeting on January 8, 2020, DCPS determined that Student’s Multiple Disabilities impacted his/her participation in the general education curriculum – not only in Reading, but also in Mathematics, Written Expression and Communication/Speech and Language. At the March 9, 2020 meeting, the IEP team identified Mathematics, Reading, Written Expression and Communication/Speech and Language as areas of concern for Student. The IEP team doubled Student’s proposed special education services and changed his/her educational placement to the more restrictive environment of the Specific Learning Support (SLS) classroom. For special education and related services, the proposed March 9, 2020 IEP provided for Student to receive 20 hours per week of Specialized Instruction outside general education and added 240 minutes per month of Speech-Language Pathology. The March 9, 2020 IEP also provided for a host of Other Classroom Aids and Services.

Notwithstanding these major enhancements to Student's IEP, Father stated at the meeting that he would never consider moving Student from Nonpublic School for any reason whatsoever.

SLS Program

Petitioners' expert, Educational Consultant, opined in her testimony that the SLS Program offered in the March 9, 2020 IEP was not appropriate because it would have resulted in Student's having to be in the general education setting for part of the school day and because Student would not receive "integrated speech and language services" throughout the school day. (Whether Student needed integrated speech and language services is not an issue in this case.) Petitioners' second expert witness, Speech Language Director, opined, more generally, that Student requires the level of support he/she is currently receiving at Nonpublic School, that is, full-time special education.

Under DCPS' proposed March 9, 2020, Student would have been placed in the SLS classroom at City School 2, with a maximum of 12 to 15 students taught by a special education teacher and an instructional aide. Core academic subjects – Reading, Mathematics, Science and Social Studies – would have been taught exclusively in the SLS classroom. Student and his/her SLS classmates have attended Specials classes (art, music and physical education), as well as lunch and recess, with general education students, always accompanied by their SLS classroom instructional aide or the special education teacher.

In their testimony, DCPS' experts focused on the benefit to Student of interacting

with his/her general education peers for part of the school day. LEA Representative asserted that there is not near as much academic rigor in Specials classes and opined that for social and academic performance, it was very important for students with disabilities to be with typically developing peers for part of the school day. School Psychologist opined that Student would benefit from the opportunity for peer modeling with typically developing peers and being able to socialize and engage with general education schoolmates. Social Worker also opined that Student would benefit from placement with nondisabled peers for lunch, recess and electives classes. She endorsed the opportunity for students with disabilities to mimic the behaviors of nondisabled peers. CIEP SLP opined that given Student's communication difficulties, it would not be appropriate to place him/her in the general education classroom for core academics, but that providing Student access to general education peers for lunch, recess and elective classes would be beneficial and appropriate.

On balance, as to the appropriateness of allowing Student to attend Special classes with nondisabled peers and to go to lunch and recess in the general education setting, I found the DCPS experts' opinions more credible. In *Jackson v. Dist. of Columbia*, No. CV 19-197 TJK/DAR, 2020 WL 3318034, (D.D.C. June 2, 2020), *report and recommendation adopted*, No. CV 19-197 (TJK/DAR), 2020 WL 3298538 (D.D.C. June 18, 2020), the plaintiff parents had similarly objected to DCPS' proposal to place their child with nondisabled peers in Specials classes, lunch, and recess. U.S. Magistrate Judge Deborah Robinson found for DCPS on this issue because, *inter alia*, the parents

did not sufficiently explain how their child being outside the general education setting over 80% of the time, exacerbated any purported lack of progress, or why the IEP team should have concluded that a “full-time special education day school” was the only way of achieving progress. *See id.* at *14 (D.D.C. June 2, 2020). As the D.C. Circuit pronounced in *Z. B.*, in *Andrew F.*, “[t]he Supreme Court . . . affirmed that the IDEA requires that children with disabilities receive education in the regular classroom whenever possible.” *Z. B.*, 888 F.3d at 528 (internal quotations and citations omitted.)

Whether in March 2020, a full-time special education days school was the *only* way for Student to achieve progress is problematic. Because Student has been attending Nonpublic School since the 2018-2019 school year, none of the witnesses at the due process hearing, except for Father, had ever observed Student in any other educational setting. Petitioners’ expert, Educational Consultant, opined, summarily, that the March 9, 2020 IEP was not appropriate because it would have resulted in Student’s being in the general education setting for part of the school day, but Father testified that he would not have too much concern about Student’s being in a middle school general education setting for Specials classes, such as art, physical education or music.

Considering the IDEA’s imperative that, to “the maximum extent appropriate,” public schools provide students with disabilities an education in the “least restrictive environment” possible and the opinions of DCPS’ experts, including DCPS School Psychologist and LEA Representative who had observed Student at Nonpublic School, that Student would benefit from some interaction with typically developing peers in

Specials classes and at lunch and recess, I conclude that DCPS offered a “cogent and responsive explanation” for the March 9, 2020 IEP team’s decision to place Student in the SLS classroom and still allow Student to attend Specials classes, lunch and recess with typically developing peers.

Reading Methodology

Petitioners allege that the March 9, 2020 IEP was also inappropriate because it did not provide a specific reading intervention or reading program. I disagree. It has long been the guidance of the U.S. Department of Education that there is no general requirement that IEPs address instructional methodology:

Other students’ IEPs may not need to address the instructional method to be used because specificity about methodology is not necessary to enable those students to receive an appropriate education. There is nothing in the definition of “specially designed instruction” that would require instructional methodology to be addressed in the IEPs of students who do not need a particular instructional methodology in order to receive educational benefit. In all cases, whether methodology would be addressed in an IEP would be an IEP team decision.

Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities, 64 FR 12406, 12552 (OSERS March 12, 1999) (emphasis supplied). *See, also, L.C. on behalf of A.S. v. Issaquah Sch. Dist.*, 2019 WL 2023567 (W.D. Wash. May 8, 2019) (School districts need not specify an instructional methodology in an IEP unless that methodology is necessary to enable the student to receive a FAPE.)

DCPS’ proposed March 9, 2020 IEP provided that to make progress in the

general education curriculum, Student would benefit from “multi sensory learning, evidence based reading fluency program (direct, explicit, multi sensory, structured, sequential, prescriptive), graphic organizers and story maps, extra time on reading assignments, phonics and visualization. Although the IEP discussed methodology (“direct, explicit, multi sensory, structured, sequential, prescriptive”) it did not specify a reading program by name. CIEP Manager, who qualified as an expert witness in the provision of reading instruction, explained that DCPS does not specify reading programs in IEPs because the District wants its reading instructors to have the flexibility to change reading interventions according to what works or does not work for individual students.

In light of the OSERS guidance above, and according some deference to the exercise of judgment by school authorities, *see Andrew F., supra*, 137 S. Ct. at 1001, I am persuaded by CIEP Manager’s testimony that not specifying a particular reading intervention program in the March 9, 2020 IEP did not make the IEP inappropriate or deny Student a FAPE. The March 9, 2020 IEP’s provision for an evidence-based reading fluency program – direct, explicit, multi sensory, etc., provided instructional methodology individualized to Student, without unnecessarily prescribing a particular program *e.g.*, Orton-Gillingham, that might have needed to be altered over the period of the IEP.

Executive Functioning Goals and Services

The parents contend that the March 9, 2020 IEP was also inappropriate because it did not include goals or objectives for executive functioning. Petitioners’ expert,

Educational Consultant, opined that Student required direct services on the IEP for attention and executive functioning issues. DCPS' expert, LEA Representative, testified that at the March 9, 2020 IEP team meeting, the DCPS representatives did not feel that Student needed Specialized Instruction for executive functioning challenges, but provided in the IEP for Student's executive functioning needs to be supported throughout the school day.

In *Z. B. v. Dist. of Columbia, supra*, the D.C. Circuit held that the IEP at issue had not denied the student an appropriate education for want of an executive functioning goal because DCPS addressed executive functioning skills in different areas of the IEP. ("The district court correctly concluded that the 2015 IEP did not deny Z.B. an appropriate education for want of an executive functioning goal, because DCPS addressed executive functioning skills within the IEP's treatment of other areas of concern." *Id.*, 888 F.3d at 527.)

Here, I similarly find that DCPS has shown that it adequately addressed Student's executive functioning needs within the Other Aids and Services and Classroom Accommodations sections of the March 9, 2020 IEP. These supports included, *inter alia*, extra time for processing information and formulating oral/written responses during testing, class discussion, and instruction; large print test material; location of testing with minimal distractions; paraphrasing/simplification of oral and written directions; small group setting; clarification/repetition of directions; markup tools; graphic organizer; preferential seating and individual and small group testing.

In summary, for the foregoing reasons, I conclude that DCPS has met its burden of persuasion that the proposed March 9, 2020 IEP was reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances. *See Andrew F., supra*, 137 S.Ct. at 1002.

February 11, 2021 IEP, as Amended on May 6, 2021

On February 11, 2021, DCPS convened Student's DCPS IEP team for an annual review of Student's IEP. The February 11, 2021 IEP generally maintained the IEP services proposed for Student in the March 9, 2020 IEP – namely 20 hours per week of Specialized Instruction in the SLS program classroom and 240 minutes per month of Speech-Language Pathology. Student's executive functioning deficits were again addressed in the Other Aids and Services and Classroom Accommodations sections of the IEP – not with specific annual goals or direct services. The February 11, 2021 IEP was amended on May 6, 2021 to provide Assistive Technology supports, including a calculator, graphic organizer and speech-to-text, and additional Aids and Services for executive functioning. The parents rejected the proposed IEP and kept Student enrolled at Nonpublic School for the 2021-2022 school year.

Petitioners contend that the proposed February 11, 2021 IEP, as amended on May 6, 2021 (the 2021 IEP), was inappropriate for the same reasons they claim that the March 9, 2020 IEP was deficient, namely, failure to provide for full-time special education services, omission of a specified reading intervention methodology or program and the lack of annual goals and direct services for Student's executive

functioning deficits. My analysis of the March 9, 2020 IEP is equally applicable to the proposed 2021 IEP. I find that DCPS has established, by the preponderance of the evidence, that its proposed 2021 IEP was reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances.

TUITION REIMBURSEMENT

Under the D.C. Circuit's holding in *Leggett v. Dist. of Columbia, supra*, school districts must reimburse parents for their private-school expenses if: (1) school officials failed to offer the child a FAPE in a public or private school; (2) the private-school placement chosen by the parents was otherwise proper under the IDEA; and (3) the equities weigh in favor of reimbursement. *Id.*, 793 F.3d at 66-67. In this decision, I have found that DCPS failed to offer Student a FAPE with its proposed November 7, 2019 IEP because that IEP did not address Student's educational needs in the areas of Math and Written Expression. DCPS did meet its burden of persuasion as to the appropriateness of the proposed March 9, 2020 IEP and the February 11, 2021 IEP, as amended. I conclude, therefore, that DCPS failed to offer Student a FAPE, with an appropriate IEP, for the period November 7, 2019 until the March 9, 2020 was developed.

I turn, next, to the other two requirements for tuition reimbursement pronounced in the *Leggett* decision – that the private school chosen by the parents, Nonpublic School, was proper and that the parents did not otherwise act unreasonably. Analogizing to the standard for IEP appropriateness from the U.S. Supreme Court's decision in *Bd. of Ed. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*,

458 U.S. 176 (1982), the D.C. Circuit held in *Leggett* that for the private school chosen by the parents to be proper, it need be “reasonably calculated to enable the child to receive educational benefits.” *Leggett, supra*, at 71.

In *L.H. v. Hamilton Cty. Dep’t of Educ.*, 900 F.3d 779 (6th Cir. 2018), the Sixth Circuit Court of Appeals explained the requirements which a private school must satisfy to be found appropriate for reimbursement purposes after the *Andrew F.* decision:

[E]ven though the IDEA’s requirements do not apply to private schools, *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. at 13-14, for reimbursement purposes, the private school must satisfy the substantive IEP requirement, *i.e.*, it must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*, 137 S.Ct. at 999. . . . *see also C.B. v. Garden Grove Unified Sch. Dist.*, 635 F.3d 1155, 1159 (9th Cir. 2011) (“To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child’s potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.”) (quoting with approval *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 365 (2d Cir. 2006)).

L.H., 900 F.3d at 791. Drawing on guidance in the *Leggett* and *L.H.* decisions, I conclude that for the parents’ private school placement to be proper, the parents must show their school choice was reasonably calculated to enable their child to make progress appropriate in light of the child’s circumstances.

Nonpublic School is a private special education day school in the District of Columbia, which primarily serves children, like the student in this case, with predominantly language-based learning disabilities, executive functioning challenges

and dyslexia, as well as students with Attention Deficit-Hyperactivity Disorder. According to Petitioners' experts, Head of School, Speech-Language Director and Educational Consultant, Student, a severely dyslexic child, has made appropriate progress at Nonpublic School. When assessed in September 2019, Student was reading at mid-Kindergarten level. At present although not close to being a fluent reader, Student is reading at a late 2nd to early 3rd grade level. Student's writing skills are closer to the 4th grade level.

DCPS' Counsel argues that Nonpublic School was not an appropriate parental placement because the private school allegedly does not comply with OSSE regulations for schools serving children with disabilities. For example, many of Student's teachers at Nonpublic School are not certified to teach special education. However, Nonpublic School holds a current Certificate of Approval from OSSE to enroll children with Student's disabilities and it is not the place of this Hearing Officer to assess the standards used by OSSE in its private schools approval process. Moreover, a parental placement may be found to be appropriate by a hearing officer even if the private school does not meet the state standards that apply to education provided by local education agencies. *See* 34 C.F.R. § 300.148(c). I find that Nonpublic School provides educational instruction specially designed to meet the unique needs of Student and that Student has benefitted from the instruction there. *See L.H., supra*. I conclude that Petitioners have shown that their choice of Nonpublic School for Student was proper under the *Leggett/L.H.* standards.

Lastly, the *Leggett* decision requires that the “equities weigh in favor of reimbursement — that is, the parents did not otherwise act ‘unreasonabl[y].” *Leggett*, 793 F.3d at 67. Reimbursement may be “reduced or denied” if the parents failed to notify school officials of their intent to withdraw the child or otherwise acted unreasonably. *Leggett, supra*, 793 F.3d at 63. Petitioners’ counsel gave notice to DCPS on August 7, 2019 that Student would attend Nonpublic School for the 2019-2020 school year and requested DCPS funding for Student to continue to attend the private school because the parents did not believe that DCPS had offered Student a FAPE. *See* 34 C.F.R. § 300.148(d). DCPS has not shown that the parents acted unreasonably in unilaterally placing Student at Nonpublic School.

At the due process hearing, Petitioners’ Counsel clarified that in this proceeding, the parents seek tuition reimbursement from November 7, 2019, when the first IEP at issue was developed. Although I hold in this decision that DCPS “cured” the inappropriate November 7, 2019 IEP with its proposed March 9, 2020 IEP, I find that it would have been unduly disruptive to have required Student to transfer from Nonpublic School to the proposed DCPS school in the middle of the 2019-2020 spring semester. *Cf. Branham v. Government of the Dist. of Columbia*, 427 F.3d 7, 12-13 (D.C. Cir. 2005) (Asking whether setting aside placement order might disrupt child’s education.) Therefore, I will order DCPS to reimburse the parents for their expenses for Student to attend Nonpublic School beginning November 11, 2019 (the first school day after November 7, 2021) through the end of the 2019-2020 school year. The parents are not

entitled to reimbursement from DCPS for their private school expenses for the 2020-2021 or 2021-2022 school years.

ORDER

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

ORDERED:

1. Upon receipt of documentation of payment by the parents as may be reasonably required, DCPS shall, without undue delay, reimburse the parents their costs for covered tuition and related expenses for Student's enrollment at Nonpublic School from November 11, 2019 through the end of Nonpublic School's regular 2019-2020 school year;
2. All other relief requested by the Petitioners herein is denied.

Date: December 12, 2021

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

NOTICE OF RIGHT TO APPEAL

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

Case No. 2021-0124
Hearing Officer Determination
December 12, 2021

cc: Counsel of Record
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