

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

OSSE  
Office of Dispute Resolution  
December 16, 2023

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PARENT, on behalf of STUDENT, <sup>1</sup>	)	Date Issued: December 16, 2023
	)	
Petitioner,	)	Hearing Officer: Peter B. Vaden
	)	
v.	)	Case No: 2023-0162
	)	
DISTRICT OF COLUMBIA	)	Online Videoconference Hearing
PUBLIC SCHOOLS,	)	
	)	
Respondents.	)	Hearing Dates:
	)	December 4, 5 and 6, 2023
	)	
	)	

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner parent (MOTHER) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the parent seeks private school tuition reimbursement from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied her child a free appropriate public education (FAPE) by failing to offer him/her an appropriate special education program and educational placement with the District’s proposed May 8, 2023 Individualized Education Program (IEP).

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

Petitioner's Due Process Complaint, filed on August 23, 2023, named DCPS as Respondent. The undersigned hearing officer was appointed on August 24, 2023. The parties met for a Resolution Session Meeting on September 5, 2023 and did not resolve the issues in dispute. On August 31, 2023, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. The hearing dates were set for December 4, 5 and 6, 2023. On September 6, 2023, I granted Petitioner's unopposed continuance request to extend the final decision due date to December 22, 2023.

On September 14, 2023, Petitioner, by counsel, filed a "stay-put" motion seeking designation of NONPUBLIC SCHOOL 1 as Student's current educational placement and requesting that DCPS be ordered to fund Student's placement there for the pendency of this administrative proceeding. The motion was opposed by DCPS and, by order issued September 27, 2023, I denied the stay-put motion.

With the parent's consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on December 4, 5 and 6, 2023. MOTHER appeared online for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by PROGRAM SPECIALIST and by DCPS' COUNSEL. Petitioner's Counsel made an opening statement. Petitioner called as witnesses MOTHER, PSYCHOLOGIST,

EDUCATIONAL ADVOCATE and PRIVATE SCHOOL DIRECTOR. DCPS called as witnesses RESOLUTION SPECIALIST, SOCIAL WORKER, Program Specialist and MONITORING SPECIALIST.

Petitioner's Exhibits P-1, P-3 through P-9, P-13 through P-17, and P-23 through P-29 were admitted into evidence, including Exhibits P-4, P-6, P-7, P-9, P-14, P-23 and P-24 admitted over DCPS' objections. I sustained DCPS' objections to Exhibits P-37 and P-38. DCPS' Exhibits R-1, R-2, R-12 through R-22 and R-24 through R-33 were admitted into evidence, including Exhibits R-1, R-12 through R-16, R-18 through R-22 and R-24 admitted over DCPS' objections. Following completion of the presentation of evidence on December 6, 2023, Petitioner's Counsel and DCPS' Counsel made oral closing arguments. There was no request to file written closings.

### **JURISDICTION**

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

### **ISSUES AND RELIEF SOUGHT**

The issues for determination in this case, as set out in the August 31, 2023 Prehearing Order, are:

- A. Did DCPS deny Student a FAPE by illegally predetermining his/her educational programming and placement for the 2023-2024 school year?
- B. Did DCPS deny Student a FAPE by failing to propose an appropriate IEP and placement for the 2023-2024 school year?

C. Did DCPS deny Student a FAPE by failing to allow the parent and her educational consultant to visit the proposed program at CITY SCHOOL 2?

For relief, Petitioner requests that the hearing officer order DCPS to fund Student's tuition and expenses at NONPUBLIC SCHOOL for the 2023-2024 school year and to reimburse the parent for private school expenses already paid for the current school year.

**FINDINGS OF FACT**

**April 16, 2023 Hearing Officer Determination**

On January 6, 2023, the parent brought a prior due process complaint against DCPS (Case No. 2023-0002) seeking reimbursement for Nonpublic School expenses for Student. In that proceeding, Impartial Hearing Office Coles B. Ruff held a four-day due process hearing March 28 through 31, 2023 and issued a Hearing Officer Determination on April 16, 2023 (the April 16, 2023 HOD). The Petitioner and DCPS have agreed that I may adopt relevant findings of fact from the April 16, 2023 HOD.

I adopt the following findings of fact made by Hearing Officer Ruff in the April 16, 2023 HOD:

A. Student resides with Petitioner in the District of Columbia. DCPS is Student's local education agency (LEA). Student has been determined eligible for special education and related services pursuant to IDEA with a disability classification of Specific Learning Disability (SLD).

B. Prior to the 2016-2017 school year, Student attended PUBLIC CHARTER

SCHOOL, an independent LEA in the District of Columbia.

C. For the 2016-2017 school year. Petitioner unilaterally placed Student at Nonpublic School, a nonpublic special education school. Nonpublic School is a private day school for students with language-based disabilities, typically students with learning disabilities and Attention Deficit-Hyperactivity Disorder (ADHD), and other mild disabilities. Students at Nonpublic School have average to above average intelligence with some weaknesses in academic functioning with some other condition such as ADHD and/or executive functioning difficulties. There are no non-disabled students at Nonpublic School.

D. Student attended Nonpublic School until the end of the 2016-2017 school year, when Petitioner's family moved to New York City. Petitioner unilaterally placed Student at a nonpublic school in New York, for the 2017-2018 school year. Petitioner then sought reimbursement from the New York City Department of Education ("NYC-DOE") for Student's attendance at the private school in New York City. Petitioner and NYC-DOE entered into a settlement agreement that reimbursed Petitioner for Student's New York City private school attendance for the 2017-2018 school year.

E. On March 6, 2018, Petitioner filed a due process complaint against Public Charter School seeking reimbursement for the cost of Student attendance at Nonpublic School for SY 2016-2017. The complaint resulted in an HOD issued on July 23, 2018, in

which this Hearing Officer concluded that Public Charter School had not denied Student a FAPE and denied Petitioner's requested reimbursement for Student's attendance at Nonpublic School in the 2017-2018 school year.

F. Student continued to reside with Petitioner in New York City and attended private school there for the 2018-2019 and 2019-2020 school years. Petitioner reached settlement agreements with NYC-DOE, that reimbursed Petitioner for Student's unilateral private placement for the 2018-2019 and 2019-2020 school years.

G. Petitioner had an independent neuropsychological evaluation conducted of Student in November/December 2019. Student's intellectual functioning was assessed using the Wechsler Intelligence Scale for Children, 5th Edition (WISC-V), which measures abilities in five discrete domains, including the ability to reason with verbal and nonverbal information, understand visual-spatial relationships, working memory, and processing speed. These five index scores yielded a measure of Student's overall intelligence in the average range with a Full Scale IQ of 97 at the 42nd percentile. Student's verbal expression and reasoning skills were commensurate with same-age peers and in the average range (106, 66th percentile). Student's nonverbal reasoning abilities were also within normal limits (100, 50th percentile). Student's understanding of visual-spatial relationships fell in the high average range (111, 77th percentile). Student's working memory, or the ability to attend to information, hold it in mind, and manipulate it, was average and commensurate to same-age peers (91, 27th percentile).

Student's visual processing speed, or ability to perceive, process, and respond to incoming visual information, was weaker and in the low average range (80, 9th percentile). Student's basic reading skills were well below age expectations. Student's ability to decode unfamiliar words and recognize single words were borderline relative to same-age peers. Student's silent reading fluency was in the borderline range. When Student was tasked to read passages aloud, Student's overall reading fluency was impaired. Student's difficulties with decoding words in conjunction with inattention made it more challenging for Student to infer meaning from text. Student's reading comprehension fell in the impaired range. When Student was asked to read a passage aloud and then answer questions without referring back to the passage, Student's reading comprehension fell within the borderline range. Student's spelling skills were consistent with decoding abilities and in the borderline range. Likewise, Student was slow to generate simple written sentences with performance below age expectations. Student's ability to communicate effectively in writing using proper conventions, grammar, and syntax was borderline. A qualitative review revealed that Student was able to formulate simple sentences. However, Student struggled to write complex sentences, incorporate details and use punctuation and capitalization. Additionally, it was difficult to decipher Student's handwriting due to poor letter formation and alignment and spelling difficulties. Student exhibited relative strengths in math. Student's performances ranged from low average to average. Student's untimed math

computation skills were low average. Student's ability to solve word problems requiring more applied problem-solving was commensurate to same-age peers. Student's automaticity for math facts was low average, as Student completed fewer problems in the time frame relative to same-age peers. The evaluator concluded that overall, the evaluation results were consistent with a diagnosis of Autism Spectrum Disorder ("ASD"). She noted that Student displayed social-communication deficits, including difficulties sustaining reciprocal conversations and inconsistent nonverbal social-communication behaviors. The evaluator noted that Student exhibited several hyperactive and impulsive behaviors consistent with a diagnosis of ADHD, predominantly inattentive presentation. Student's emotional and behavioral dysregulation were also areas of concern. The evaluator noted that Student was easily angered when asked to engage in non-preferred tasks and had difficulties using appropriate coping mechanisms. Also, Student's social communication and executive functioning difficulties impacted Student's ability to express emotions and resolve frustrations. The evaluator noted that Student exhibited clinically significant depressive symptoms, which presented as irritability, social stress, poor self-esteem, and feeling little control over life. The evaluator recommended that Student continued to need a "special education placement with a balance of academic instruction, language-based intervention, behavioral supports, and social instruction infused throughout the curriculum." The evaluator noted that the school program should provide a low

student-teacher ratio and a supportive and structured classroom setting where concepts could be further broken down and reviewed, and instructions scaffolded, yet with students with similar cognitive abilities so that Student would continue to be challenged intellectually.

H. Petitioner's family returned to the District of Columbia in 2020, and Petitioner re-enrolled Student in Nonpublic School for the 2020-2021 school year.

I. Petitioner submitted a child-find referral form to DCPS dated October 26, 2022, seeking an offer of special education services from DCPS. DCPS received the referral on November 5, 2022. On December 11, 2020, DCPS convened an initial screening meeting. Petitioner provided DCPS with the 2019 neuropsychological evaluation but did not initially provide DCPS with the portion of the evaluation report noting the ASD diagnosis. The DCPS team determined that more information was needed before confirming Student's eligibility for special education services and agreed that DCPS would conduct updated psychological, speech/language, and OT assessments. DCPS completed its speech-language and psychological testing in February 2021, and the evaluation reports were completed on March 3, 2021, and March 8, 2021, respectively.

J. The speech-language evaluation revealed areas of weakness for Student with an educational impact that required speech-language as a related service.

K. The DCPS psychologist conducted a virtual assessment of Student's cognitive

ability and academic functioning. The DCPS psychologist assessed Student for consideration of ASD, SLD, and Other Health Impairment (OHI) disabilities. She assessed Student's cognitive functioning using the Reynolds Intellectual Assessment Scales, Second Edition (RIAS-2). Student earned a Composite Intelligence Index or CIX of 89, within the Below Average range, which exceeds the performance of 23% of individuals at Student's age. Student earned a Verbal Intelligence Index (VIX) of 82, within the Below Average range. On the Nonverbal Intelligence Index (NIX), Student earned a NIX of 99, within the Average range. Student earned a Composite Memory Index (CMX) of 89, within the Average range of working memory skills. Student's performance on nonverbal tasks was a relative strength. Although Student's CIX was a reasonable estimate of general intelligence, a statistically significant discrepancy existed between Student's NIX of 99 and VIX of 82, generally demonstrating better-developed nonverbal intelligence or spatial abilities. Student's academic functioning was assessed with the Woodcock-Johnson Test of Academic Achievement-Fourth Edition (WJ-IV). Student's academic performance was variable. Student displayed challenges in oral reading, decoding, spelling, and reading comprehension. Student's performance in math was a relative strength. The DCPS psychologist noted the following regarding Student's social-emotional presentation: Student may experience a level of depression consistent with the findings of Student's previous evaluation. Student's mother reported to the psychologist that Student is sometimes withdrawn, pessimistic, and/or sad. She

also noted that Student displayed some behaviors that suggested somatic concerns.

Student's teachers shared with the psychologist Student's challenges with attention. The DCPS psychologist recommended that Student be considered for eligibility as a student with OHI.

L. On March 20, 2021, Petitioner signed a contract with Nonpublic School for Student to attend Nonpublic School for the 2021-2022 school year.

M. On March 25, 2021, DCPS observed Student at Nonpublic School in a virtual writing class. DCPS conducted Occupational Therapy (OT) testing on April 8, 2021. The OT evaluation revealed areas of weakness for Student with an educational impact that required OT as a related service.

N. DCPS convened an eligibility meeting for Student on June 14, 2021, at which the team reviewed the updated assessments. The team discussed that Student met the criteria for OHI, as noted in the DCPS psychologist's evaluation report. The team determined that Student did not meet the criteria for ASD. Petitioner asked that the team consider Student's previous classification of SLD. Although there was no significant discrepancy between Student's cognitive and academic performance, after reviewing all the data, the IEP team agreed to confirm Student's primary disability classification as SLD and noted Student's attentional challenges. The team agreed that Student would receive specialized instruction in math, reading, written language, and the related services of speech-language and OT.

O. On August 2, 2021, Petitioner provided DCPS notice of her intent to continue Student's placement at Nonpublic School for the 2021-2022 school year and her continued desire that DCPS offer a program and placement that could meet Student's needs. DCPS denied Petitioner's request for funding Student's placement at Nonpublic School in a response letter dated August 27, 2021.

P. On September 7, 2021, DCPS developed an IEP for Student, which prescribed the services, including 12.5 hours per week of specialized instruction, with five of those hours outside general education. It also prescribed speech-language, OT, and Behavioral Support Services. Petitioner, her attorney, and Nonpublic School staff participated in the IEP meeting with the DCPS staff. Petitioner and her attorney agreed with all aspects of the IEP except the number of hours and the setting of the specialized instruction. They believed that Student needed an IEP with 30 hours per week of special education services.

Q. DCPS proposed implementing the IEP at City School 1, Student's then neighborhood DCPS school.

R. On June 9, 2022, DCPS held Student's annual IEP meeting. The June 9, 2022, IEP had the same number of hours of specialized instruction as the previous IEP. Petitioner, her attorney, and her consultant agreed with all aspects of the IEP except the number of hours of specialized instruction. DCPS proposed implementing the IEP at City School 2, Student's DCPS neighborhood school. Petitioner disagreed with the IEP.

She also expressed concern about the number of transitions Student had in recent years and explained that Student required significant support to assist with the jump to the next school level setting.

S. On July 14, 2022, Petitioner notified DCPS of Student's continued placement at Nonpublic School for the 2022-2023 school year and her continued request that DCPS offer Student a program and placement that met Student's needs. DCPS denied Petitioner's request for private school funding in its response letter. Petitioner contacted City School 2 to visit and learn more about the special education program at the school. When Petitioner filed her January 6, 2023 DPC, she had received no response from City School 2 regarding her request to schedule a visit.

Hearing Officer's Additional Findings of Fact

After considering all of the evidence received at the due process hearing in this Case No. 2023-0162 on December 4 through 6, 2023, as well as the argument of counsel, my additional findings of fact are as follows:

1. Student, an AGE youth, resides with the parent in the District of Columbia.

Testimony of Mother.

2. Student is eligible for special education as a student with a Specific Learning Disability (SLD). Exhibit P-8.

3. Hearing Officer Ruff determined in the April 16, 2023 HOD that in the prior proceeding, DCPS did not sustain its burden of persuasion that its September 7,

2021 and June 9, 2022 IEPs were reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. Specifically, Hearing Officer Ruff concluded that the September 7, 2021 and June 9, 2022 IEPs, which both provided for 12.5 hours per week of Specialized Instruction Services, of which 5 hours per week would be outside the general education setting, were insufficient because based on Student's deficits, he/she should have been "provided specialized instruction outside general education in any course or subject with significant reading and writing, which would cover most of Student's instructional day." Exhibit P-5.

4. With regard to Student's least restrictive environment (LRE), Hearing Officer Ruff concluded in the April 16, 2023 HOD that there was insufficient evidence that Student was in need of a setting as restrictive as a separate special education school. Hearing Officer Ruff explained that Petitioner's witnesses' testimony that Student would need special education services throughout the school day did not convince the IHO "that Student could not successfully function in a setting with typically developing non-disabled peers in classes that did not involve significant reading and writing, and much less settings like lunch and recess." Exhibit P-5.

5. With regard to whether Nonpublic School, where Student was totally removed from non-disabled peers, was a proper placement for Student, Hearing Officer Ruff did not conclude that Student's appropriate LRE was or is a separate special education day school like Nonpublic School, and that despite the progress Student had

made at Nonpublic School, the private school was not a placement that DCPS was obligated to place or fund Student beyond reimbursing the parent for costs for Student for the 2021-2022 and 2022-2023 school years. Exhibit P-5.

6. In his order of relief in the April 16, 2023 HOD, Hearing Officer Ruff ordered as follows:

1. DCPS shall, within thirty (30) calendar days of the issuance of this order, convene an IEP meeting and review and revise Student's IEP consistent with the conclusions of law in this HOD. The team shall review the available data of Student's academic and social-emotional progress as well as progress in related service areas and consider and determine the special education services, including the specific number of hours of specialized instruction and the setting of same that meets Student's individual needs particularly considering Student's attentional issues, tendency to isolate, low peer interaction, and need for low student to teacher ratio in courses that involve significant reading and writing.
2. The team shall specifically discuss and determine Student's LRE and the courses that Student will be required to and is likely to take during the grade level in SY 2023-2024, determine the placement and have a fulsome discussion and consideration of the location of service, have a representative of the location attend and participate in that meeting so that Petitioner is fully and timely informed of the specifics of the offer of FAPE that is being made such that she can make a reasoned choice of her preference of an educational setting for her child.
3. Petitioners shall promptly provide the requisite consent(s) and/or release(s) for DCPS to facilitate DCPS's compliance with the provisions above.
4. Within thirty (30) calendar days of Petitioners providing DCPS appropriate documentation of payment, DCPS shall, consistent with DCPS and/or OSSE published procedures, reimburse Petitioner for the costs for Student attending [Nonpublic School] from the start of SY 2021-2022 and SY 2022-2023, until the end of SY 2022-2023.
5. All other relief requested by Petitioners is denied.

Exhibit P-5 [sic]. Neither party appealed the April 16, 2023 HOD. Representation of

Counsel.

7. Upon receipt of the April 16, 2023 HOD, Resolution Specialist was charged with convening the IEP meeting for Student ordered by Hearing Officer Ruff. She reached out to City School 2 to have a school representative attend the meeting. Since Student was then attending Nonpublic School, a non-DCPS school, Resolution Specialist requested data from the private school on Student's academic and social-emotional progress and progress in related service areas. Resolution Specialist also used records disclosed by the parent for the March 2023 due process hearing. Prior to or at the IEP meeting, Nonpublic School submitted some of Student's records including work samples, a report card and a February 2023 report by Student's Nonpublic School psychologist. Testimony of Program Specialist, Testimony of Resolution Specialist.

8. A videoconference IEP team meeting for Student was convened on May 8, 2023. The meeting lasted about 1 hour and 20 minutes. Exhibit R-30. In attendance were Mother and her advocates, Educational Advocate and Petitioner's Counsel. Attendees from Nonpublic School were the school's head psychologist, its OT director and Private School Director. DCPS' representatives who attended were Resolution Specialist, Program Specialist, Social Worker, an Occupational Therapist and a Speech Language Pathologist. ASSISTANT PRINCIPAL from City School 2 also participated. Testimony of Resolution Specialist, Exhibit R-30.

9. In advance of the May 8, 2023 IEP meeting, Program Specialist sent two

draft proposed IEPs to the parent. The first draft contained the same service hours as the June 9, 2022 IEP, which Hearing Officer Ruff determined in the April 16, 2023 HOD to be inadequate. The second draft included new information and provided for Student to receive, *inter alia*, 20 hours per week of Specialized Instruction Services outside general education. At the beginning of the IEP team meeting on May 8, 2023, Program Specialist asked the participants if they had received a copy of the 20-hour draft IEP to ensure that the participants has received the most recent draft. Testimony of Program Specialist.

10. At the May 8, 2023 IEP meeting, the IEP team considered data for Student from the entire 2022-2023 school year. The parent's representatives, Educational Advocate and Petitioner's Counsel, as well as Private School Director provided significant contributions and input to the team discussions. Educational Advocate shared at the meeting that the proposal for 20 hours per week of specialized instruction did not meet Student's needs, that Student required specialized programming throughout all of his/her classes – not just for content classes and that Student needs a small program throughout the entire school day. Testimony of Educational Advocate. Periodically during the meeting, Petitioner's Counsel and Private School Director shared their views that 20 hours per week of specialized instruction was not sufficient to meet Student's needs. Private School Director spoke to what programming and the equivalent of hours Student was then currently receiving, in that Student was in a full-

day program at Nonpublic School. Petitioner's Counsel stated that Student needed a non-public placement. Private School Director did not disagree with the proposed IEP provision for 180 hours per month of Behavioral Support Services. Testimony of Private School Director.

11. Assistant Principal provided information about the Specific Learning Support (SLS) program at City School 2 proposed for Student. All core academic areas in the SLS program are taught by a certified special educator and each class is also staffed with a classroom aide. SLS classrooms are capped at 15 students total. Exhibit R-31.

12. Assistant Principal stated that in elective classes at City School 2, there are up to 25 students and sometimes classes are smaller with less than 15 students. Exhibit R-30.

13. At the conclusion of the May 8, 2023 IEP team meeting, the DCPS representatives decided that Student's IEP would provide for 20 hours per week of specialized instruction outside of general education. Petitioner's Counsel and Educational Advocate objected that Student needed specialized instruction across the school day. Exhibit R-30. The proposed IEP also provided for related services at 180 minutes per month, each, for OT, Speech-Language Pathology and Behavioral Support Services. In addition, the IEP provided for Consultation Services, including 1 hour per week of specialized instruction, 120 minutes per month of Behavioral Support Services,

30 minutes per month of OT and 30 minutes per month of Speech-Language Pathology.

The proposed IEP also provide for an array of Other Classroom Aids and Services.

Exhibit R-29. There was no objection to the IEP provisions for Related Services or Consultation Services. Testimony of Program Specialist.

14. Petitioner's Counsel and Educational Advocate disagreed with the IEP specialized instruction proposal for 20 hour per week and noted they were concerned about specials (elective classes) and lunch. Mother also noted concerns about Student's transitioning between classes. Mother and Petitioner's Counsel also maintained that 15 students in a class is too large. Exhibit R-31.

15. In response to questions from Mother and Petitioner's Counsel, Assistant Principal shared that the special education department at City School 2 also offers some electives, which maintain a lower student/teacher ratio. Assistant Principal also stated that students who struggle with transitions can be accommodated by allowing them to begin transitioning between classes five minutes before the bell rings. Exhibit R-31.

16. On May 18, 2023, Mother wrote Assistant Principal and the school's DIRECTOR OF SPECIALIZED INSTRUCTION (DSI) by email to request to schedule a visit by Educational Advocate and the parent to City School 2 so that she could learn more about the school and observe the program proposed for Student at the IEP meeting. Not having received a response, Mother sent a follow-up email on May 31, 2023. On June 4, 2023, DSI responded by email that at City School 2, families are able

to conduct virtual classroom observations at DCPS' Central Office location. DSI explained that this virtual observation "allows the family a bird's eye view into the learning environment and instructional practices within the classrooms of [City School 2], while ensuring the privacy of other students with IEPs as well as creating minimal disruption of instruction. By email of June 9, 2023, Mother responded to DSI and asked if she could actually visit and physically observe in the building. Mother did not receive a further response from City School 2 to her observation request until the September 8, 2023 resolution session meeting for this case, when Resolution Specialist agreed to reach out to DSI regarding this visit request. As of the hearing date, Mother had not received a response to her request. Testimony of Mother.

17. By letter of July 19, 2023, DCPS notified Mother that City School 2 had been identified as the 2023-2024 School Year location of special education services for Student and that City School 2 had the SLS programming and resources in place to implement Student's educational and IEP needs. Exhibit R-32.

18. By letter of August 2, 2023, Petitioner's Counsel provided written notice that Student would attend Nonpublic School for the 2023-2024 school year and requested that DCPS place and fund him/her at Nonpublic School. Counsel wrote that they did not believe that an appropriate special education program had been identified or offered by DCPS to meet Student's unique needs, and that should DCPS refuse the parent's request for funding, she reserved the right to seek funding for the private school

placement. By email letter of August 15, 2023, DCPS' representative responded that it was DCPS' position that the District had made a FAPE available to Student with an appropriate IEP and a placement at City School 2, and that if the parent chose not to enroll Student at City School 2, DCPS would consider Student a parentally-placed private school student. Exhibit P-15. On August 23, 2023, the parent filed her administrative due process complaint in this proceeding, seeking reimbursement from DCPS for Student's school year 2023-2024 private school expenses. Hearing Officer Notice.

19. Nonpublic School is a private day school in Washington, DC, serving students with language-based learning differences. It serves students of average to high-average cognitive abilities with deficits in academics and executive functioning. Nonpublic School exclusively serves children with disabilities and there is no interaction in school with typically developing peers. Nonpublic School holds a current Certificate of Approval (COA) from the D.C. Office of the State Superintendent of Education (OSSE). In the upper school where Student attends, there are approximately 130 students. Student's academic classes have 9 to 12 students with one teacher. In addition to academic instruction at Nonpublic School, Student receives 180 minutes per month each of Behavioral Support and OT related services. Testimony of Private School Director, Testimony of Educational Advocate.

20. Student is making progress in the 2023-2024 school year at Nonpublic

School. For first quarter grades in academic classes, Student earned A's in history, geometry and Spanish, B- in biology, C+ in English and C- in algebra. Exhibit P-23. In a recent classroom observation, Educational Advocate saw less calling-out by Student in class and no "shut-down" in English class. She observed that Student spends less time off-task than in past years and made fewer mechanical errors with writing. Private School Director observed that in biology class, Student responded when called upon, but did not volunteer. He/she sat away from peers in Anime club and did not engage with the other students. Testimony of Educational Advocate, Testimony of Private School Director.

21. Psychologist who was formerly the director of the mental health team at Nonpublic School, has worked with Student since the fall of 2021. Psychologist currently sees Student, in private practice, approximately twice a month. Psychologist's current therapy goals for Student include helping him/her find ways to manage anxiety, working with him/her to develop a sense of self and to self advocate, and working on Student's emotional awareness and how to manage emotions. Student presents as highly motivated and really cares about his/her success. Student will talk about being anxious. He/she has a really hard time engaging in eye contact. He/she really wants people to see him/her and wants people to have relationships with him/her, but it's really hard for Student to do that. Student has cognitive rigidity, so he/she has a really hard time being flexible and assessing situations and adapting as the situation warrants.

Student's self esteem is pretty fragile and he/she tends to feel outside of the social group. Student will go on his/her own and self-isolate. When Student has a hard time managing emotions and when he/she gets anxious and overwhelmed, he/she has a hard time solving problems. Testimony of Psychologist.

### **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 parent in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the child's IEP or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

ANALYSIS

Reimbursement for Private School Expenses

In this proceeding, the parent seeks tuition reimbursement and ongoing funding from DCPS for Student’s 2023-2024 school year expenses at Nonpublic School, on the grounds that DCPS allegedly denied Student a free appropriate public education (FAPE) with the District’s proposed May 8, 2023 IEP and because DCPS allegedly did not allow the parent and Educational Advocate to visit the special education program proposed for Student at City School 2. 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 retroactive 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. However, parents who unilaterally place a child with a disability in a private school, without consent of the school system, “do so at their own financial risk.” *B.B. v. District of Columbia*, No. CV 20-2467 (CKK), 2022 WL 834146, at \*2 (D.D.C. Mar. 21, 2022), citing *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993) (quoting *School Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471

U.S. 359, 373-74 (1996)).

For the 2023-2024 school year, DCPS offered the May 8, 2023 IEP for Student which provided for, *inter alia*, 20 hours per week of Specialized Instruction Services in the Specific Learning Support (SLS) program at City School 2. The parent had sought specialized instruction for Student, in a special school, for the entire school day. The first inquiry in this case is whether with the proposed May 8, 2023 IEP, DCPS failed to offer Student a FAPE. 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

A. Did DCPS deny Student a FAPE by illegally predetermining his/her educational programming and placement for the 2023-2024 school year?

Petitioner alleges that DCPS violated IDEA procedures by predetermining the hours of specialized instruction for the May 8, 2023 IEP. *See Dixon v. District of Columbia*, 83 F. Supp. 3d 223, 230 (D.D.C. 2015) (Predetermination of school

placement constitutes a procedural violation of IDEA.) 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.” *Id.*, 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.*

Petitioner has the burden of persuasion on the predetermination issue. The basis of the parent’s predetermination claim is that when Program Specialist opened the May 8, 2023 virtual IEP team meeting, she told the IEP team that DCPS was proposing 20 hours per week of specialized instruction for Student. This was before the IEP team had discussed Student’s present levels of performance, areas of need or annual goals. In her testimony at the due process hearing, Program Specialist denied that DCPS had predetermined the content of Student’s IEP. Program Specialist explained that she had inquired at the start of the IEP meeting whether the participants had received DCPS’ most recent draft IEP for Student, which included 20 hours of specialized instruction, because she had sent an earlier IEP draft which only proposed 12.5 hours of specialized

instruction. District of Columbia law requires that in advance of IEP meetings, local education agencies (LEAs) must provide parents with a copy of any document that will be discussed at the meeting. *See* D.C. Code § 38-2517.03(3) (2015).

I find that notwithstanding DCPS' proposal in advance of the IEP meeting to provide student 20 hours per week of specialized instruction, the parent was able to participate meaningfully in the IEP's team's decision-making process. At the due process hearing, Petitioner's expert, Educational Advocate, testified that the IEP team reviewed the entire proposed IEP at the meeting. Mother testified that she told the IEP team that Student needed specialized instruction for the entire school day she agreed that there was a "fulsome" discussion of the proposed IEP. Periodically during the meeting, Petitioner's Counsel and Private School Director shared their views that the proposal for 20 hours per week of specialized instruction was not sufficient to meet Student's needs. Specifically, Private School Director spoke to the programming and the equivalence of hours Student was currently receiving in the full-day program at Nonpublic School. Petitioner's Counsel also stated at the meeting that Student needed a nonpublic placement.

I find that Mother had a meaningful opportunity to participate in the May 8, 2023 IEP meeting and that she did not establish at the due process hearing that DCPS unlawfully predetermined the hours of Specialized Instruction Services to be offered to Student. I conclude that Petitioner did not meet her burden of persuasion that DCPS

violated IDEA procedures by predetermining the hours of specialized instruction for the May 8, 2023 IEP.

Substantive Compliance

B. Did DCPS deny Student a FAPE by failing to propose an appropriate IEP and placement for the 2023-2024 school year?

Turning to the second prong of the *Rowley* inquiry, the substantive issue in this case is whether the May 8, 2023 IEP, which provided for Student to receive 20 hours per week of specialized instruction in the SLS classroom at City School 2, was appropriate for Student. The SLS classroom is a self-contained classroom, capped at 15 students, staffed by a special education teacher and a paraprofessional. Under the proposed IEP, Student would have been in the SLS classroom for core academic instruction and with typically developing peers at lunch, electives classes and physical education. In her due process complaint, Mother alleged that she rejected the proposed May 8, 2023 IEP out of concern for Student's ability to attend large classes in both general education and the self-contained classrooms at City School 2. DCPS responds that it developed the IEP in compliance with Hearing Officer Ruff's mandate in the April 16, 2023 HOD and that the proposed IEP was appropriate for Student.

In *E.W. v. District of Columbia*, No. 21-CV-1598 (FYP/GMH), 2022 WL 2070869 (D.D.C. May 11, 2022), *report and recommendation adopted*, No. 21-CV-1598 (FYP), 2022 WL 2070858 (D.D.C. June 1, 2022), U.S. Magistrate Judge G. Michael Harvey set

forth the legal standard for evaluating IEPs.

The IDEA guarantees children with disabilities the right to a FAPE, which is defined as “special education and related services” provided at public expense that “conform[ ] with the [student’s] individual education program,” also known as an IEP. 20 U.S.C. §§ 1400(d)(1)(A); 1401(9); 1412(a)(1). Thus, the primary vehicle for ensuring that students identified as disabled receive a FAPE is the creation and implementation of an IEP setting forth the services to be provided to meet that student’s needs. 20 U.S.C. § 1414(d)(1)(A)–(2)(A); *Sch. Comm. of Burlington v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 368, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985) (describing the IEP as the “*modus operandi*” of the IDEA). The plan is developed by the student’s IEP team, which includes the student’s parents, teachers, and other educational specialists. 20 U.S.C. § 1414(d)(1)(B). An IEP contains assessments of the student’s needs, strategies to meet those needs, and goals used to measure the effectiveness of the plan. 20 U.S.C. § 1414(d)(1)(A). The IEP team must develop an IEP that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. ----, ----, 137 S. Ct. 988, 999, 197 L.Ed.2d 335 (2017). The IDEA also requires that children with disabilities be placed in the “least restrictive environment” so that they can be educated in an integrated setting with children who do not have disabilities to the maximum extent appropriate. *See* 20 U.S.C. § 1412(a)(5)(A).

*E.W.*, 2022 WL 2070869, at \*3. “[A]n IEP’s adequacy thus ‘turns on the unique circumstances of the child for whom it was created,’ and a reviewing court should defer to school authorities when they ‘offer a cogent and responsive explanation’ showing that an IEP ‘is reasonably calculated to enable the child to make progress appropriate in light of [her] circumstances.’” *A.D. v. Dist. of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570, at \*7 (D.D.C. Mar. 8, 2022).

I find that Petitioner, through the testimony of parent and her expert witnesses,

established a *prima facie* case that the program and educational placement proposed in the May 8, 2023 IEP were inappropriate for Student. Therefore, DCPS holds the burden of persuasion on the appropriateness of the proposed IEP and placement.

In the April 16, 2023 HOD, Hearing Officer Ruff ordered DCPS to convene an IEP meeting within 30 days and review and revise Student's IEP consistent with the conclusions of law in his HOD. As a starting point, I consider whether DCPS complied with that part of Hearing Officer Ruff's April 16, 2023 HOD order. *Cf. Jones v. District of Columbia*, No. CV1701437RCLRMM, 2018 WL 7286022, at \*10 (D.D.C. Sept. 5, 2018), *report and recommendation adopted*, No. CV 17-1437, 2019 WL 532671 (D.D.C. Feb. 11, 2019) (Deficiencies in IEP in contravention of HOD denied Student a FAPE.)

The conclusions of law in the April 16, 2023 HOD, which I find relevant to the IEP appropriateness issue, were,

- DCPS did not sustain its burden of persuasion that its September 7, 2021 and June 9, 2022 IEPs developed for Student were reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. Specifically, the September 7, 2021 and June 9, 2022 IEPs, which both provided for 12.5 hours per week of Specialized Instruction Services, of which 5 hours would be outside the general education setting, were insufficient because based on Student's deficits, he/she should have been "provided specialized instruction outside general education in any course or subject with significant reading and writing, which would cover most of Student's instructional day."
- There was insufficient evidence that Student was in need of a setting as restrictive as a separate special education school. Hearing Officer Ruff explained that Petitioner's witnesses' testimony that Student would need special education services throughout the school day did not convince the IHO "that Student could not successfully function in a setting with typically developing non-disabled peers

in classes that did not involve significant reading and writing, and much less settings like lunch and recess.”

– Hearing Officer Ruff did not conclude that Student’s appropriate LRE was or is a separate special education day school like Nonpublic School, where Student was totally removed from non-disabled peers, and Hearing Officer Ruff determined that despite the progress Student had made at Nonpublic School, the private school was not a placement that DCPS was obligated to place or fund Student beyond reimbursing the parent for costs for Student for the 2021-2022 and 2022-2023 school years.

See Exhibit P-5. In the HOD order, Hearing Officer Ruff directed the IEP team, *inter alia*, to:

[R]eview the available data of Student’s academic and social-emotional progress as well as progress in related service areas and consider and determine the special education services, including the specific number of hours of specialized instruction and the setting of same that meets Student’s individual needs particularly considering Student’s attentional issues, tendency to isolate, low peer interaction, and need for low student to teacher ratio in courses that involve significant reading and writing.

The team shall specifically discuss and determine Student’s LRE and the courses that Student will be required to and is likely to take during the grade level in SY 2023-2024, determine the placement and have a fulsome discussion and consideration of the location of service, have a representative of the location attend and participate in that meeting so that Petitioner is fully and timely informed of the specifics of the offer of FAPE that is being made such that she can make a reasoned choice of her preference of an educational setting for her child.

At the time the April 16, 2023 HOD was issued, Student had attended Nonpublic School for almost two school years. Therefore, after obtaining consent from the parent, DCPS reached out to Nonpublic School to request records on Student, including report cards, attendance records, teacher data, assessments and other records. As ordered in

the HOD, DCPS scheduled the IEP review meeting for Student for May 8, 2023.

Mother, Educational Advocate, Petitioner's Counsel, as well as Private School Director and Nonpublic School's head psychologist and OT director attended the virtual meeting. DCPS also arranged for a representative of City School 2, Assistant Principal, to participate.

The May 8, 2023 IEP meeting ran for some 1 hour and 20 minutes. The IEP team discussed Student's individual needs, including his/her need for a low student to teacher ratio in courses that involve significant reading and writing, the LRE, special education services hours, setting and placement and location of services. Assistant Principal described the special education program at City School 2 which DCPS proposed for Student. Petitioner does not dispute that the IEP team had a fulsome discussion and considered and determined the matters specified in Hearing Officer Ruff's order.

Over the parent's objections, the DCPS representatives on the team ultimately decided that the appropriate educational placement for Student was a self-contained SLS classroom at City School 2 for 20 hours per week. Instruction in core academic subjects would be in the SLS classroom and Student would be with general education peers for lunch, physical education and elective classes. The resulting final IEP was issued on May 16, 2023 and was sent to Mother along with a Prior Written Notice. I conclude that DCPS substantially complied with Hearing Officer Ruff's procedural directive for the IEP meeting.

As to the appropriateness of the May 8, 2023 IEP, “[t]he 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 it offered was reasonably calculated to enable the specific student’s progress.” *Z. B. v. District of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018). The fact that the IEP team met to develop the May 8, 2023 IEP only 22 days after the final decision issued in Case No. 2023-0002, is of paramount importance. While the Law of the Case Doctrine does not apply to due process proceedings, the principles underlying that doctrine are instructive. As the Court pronounced in *United States v. Eilberg*, 553 F. Supp. 1, 3 (D.D.C. 1981),

“If justice is to be served, there must be at some point an end to litigation; on that account, the power to recall mandates should be exercised sparingly. To warrant divergence from law of the case, a court must not only be convinced that . . . an . . . earlier decision was erroneous; it must also be satisfied that adherence to the law of the case will work a grave injustice.” *Laffey v. Northwest Airlines, Inc.*, 642 F.2d 578, 585 (D.C.Cir.1980) . . . The accepted doctrine, consistent with the principles just expressed, is that a district judge has power to overrule or ignore an earlier decision but this power should only be used in extraordinary circumstances.

*Eilberg*, 443 F.Supp. at 3.

In Case No. 2023-0002 concerning this student, Hearing Officer Ruff was not convinced by the hearing evidence that Student could not successfully function in a setting with typically developing non-disabled peers in classes that did not involve significant reading and writing, and much less settings like lunch and recess. Hearing Officer Ruff found, expressly, that there was insufficient evidence that Student was in

need of a setting as restrictive as a separate special education school.

In the present case Mother and her expert witnesses at the due process hearing continued to advocate for Student’s full-day educational placement in a special school separate from typically developing peers. Petitioner’s expert, Educational Advocate, opined in her testimony that Student required specialized instruction program for all classes – not only content classes. Similarly Private School Director testified that she had concerns about Specialized Instruction Services not covering the entire school day for Student. I did not find these opinions persuasive, because at the March 2023 due process hearing before Hearing Officer Ruff, the parent’s experts, including Educational Advocate, offered similar opinions and their testimony did not convince the hearing officer that Student could not successfully function in an educational setting with typically developing non-disabled peers in classes that did not involve significant reading and writing. Petitioner has not shown that Hearing Officer Ruff’s decision was erroneous or that following that decision would work a grave injustice. *See Eilberg, supra.*

With regard to class size, Mother testified to her concern that Student would “not be available” for classes with more than 10 students. However, the hearing evidence established that in Student’s academic classes at Nonpublic School, there are 9 to 12 students, with only 1 instructor. The City School 2 SLS classroom has a lower student to teacher ratio – no more than 15 students with a special education teacher and a teaching

assistant.

For the May 8, 2023 IEP team to have placed Student in full day program, in a special school totally removed from non-disabled peers, would have been contrary to Hearing Officer Ruff's determination of Student's needs and LRE in the final decision issued only 22 days earlier. I conclude that based on what DCPS knew about Student's needs at the time of the May 8, 2023 IEP meeting, informed by the April 16, 2023 HOD, DCPS has met its burden of persuasion that its decision to offer Student an IEP placement in the 20 hours per week SLS program at City School 2 and to enable him/her to be educated for part of the school day with typically developing peers, was reasonably calculated to enable Student's progress.<sup>2</sup>

C. Did DCPS deny Student a FAPE by failing to allow the parent and her educational consultant to visit the proposed program at City School 2?

At the May 8, 2023 IEP meeting, Mother asked about visiting City School 2 to observe the program proposed for Student. On May 18, 2023, Mother wrote Assistant Principal and City School 2's DIRECTOR OF SPECIALIZED INSTRUCTION (DSI) by

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<sup>2</sup> Petitioner contends that some elective classes at City School 2 could involve significant reading and writing. At the IEP team meeting, Assistant Principal shared that electives classes are capped at 25 students, but some elective classes are smaller. Also, he related that the special education department at City School 2 offers some electives, which maintain a lower student/teacher ratio. At the time of the May 8, 2023 IEP team meeting, Student had not enrolled in DCPS and it was not known which elective classes Student would take were he/she to move from Nonpublic School to City School 2, or whether any electives would involve significant reading and writing. I find the argument that Student would have been placed in large elective classes that require significant reading and writing overly speculative.

email to request to schedule an observation visit for herself and Educational Advocate. She received no response from City School 2 and sent a follow-up email on May 31, 2023. On June 4, 2023, DSI responded by email that at City School 2, families are able to conduct virtual classroom observations at DCPS' Central Office location. DSI explained that allowing a virtual observation, instead of an in-person observation, was to ensure the privacy of other students with IEPs and to minimize disruption of instruction. By email of June 9, 2023, Mother asked DSI whether she could physically observe in the school building. She did not receive a response from DCPS. At the September 8, 2023 resolution session meeting for this case, Resolution Specialist agreed to reach out to DSI regarding Mother's school visit request. Mother never heard back from Resolution Specialist or DSI.

Mother contends that DCPS' failure to approve her request for an in-person observation at City School 2 denied Student a FAPE. DCPS' Counsel agreed in argument that City School 2 should have followed up on Mother's request for the observation visit, but disputes that this omission was a denial of FAPE. For the reasons below, I find that City School 2's failure to approve Mother's visit request violated District of Columbia special education requirements, but I agree with DCPS that this did not rise to a denial of FAPE.

The D.C. Special Education Student Rights Act of 2014 provides, *inter alia*, that, Upon request, an LEA shall provide timely access, either together or separately,

to the following for observing a child’s current or proposed special educational program:

- (i) The parent of a child with a disability; or
- (ii) A designee appointed by the parent of a child with a disability who has professional expertise in the area of special education being observed . . .

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

To this hearing officer, it is highly questionable whether DSI’s offer of a virtual observation of the special education program at City School 2 complied with the Act’s provision that the parent must be allowed to view the instruction in “the setting where the child’s instruction will occur.” In any event, DCPS’ failure to provide any response to Mother’s June 9, 2023 request to physically observe the program in the school building violated DCPS’ obligation to provide “timely access” to the parent and her designee to observe the special education program at City School 2 proposed for Student.

Assuming, without deciding, that DCPS’ not timely allowing a parental observation visit required by the Student Rights Act is an IDEA violation, I find that DCPS’ lack of responsiveness in this case was a procedural violation, which did not rise to a denial of FAPE. Procedural violations may only be deemed a denial of FAPE if the procedural inadequacies—

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

34 CFR § 300.513(a)(2).

Mother's advisor, Educational Advocate, testified at the due process hearing that she was familiar with City School 2, that she had student clients currently attending that school and that City School 2 had been proposed for other clients. Educational Advocate had sufficient information to opine, without reservation, that the SLS program at City School 2 could not meet Student's needs because she believed that Student required a specialized program throughout all of his/her classes, not just for content classes, and that Student needed a small program throughout the entire school day. For her part, Mother testified at the due process hearing that she told the May 8, 2023 IEP team that Student needed specialized instruction for the entire school day, including lunch and electives – that is, not the 20 hour per week SLS program offered by City School 2. Therefore, even without the opportunity to visit City School 2 and to observe, in person, the program proposed for Student, Mother was able to fully participate in the IEP decision-making process and arrive at her categorical decision that the program proposed at City School 2 was not appropriate for Student.

On these facts, I find that DCPS' failure to provide Mother timely access to

observe the special education program at City School 2 did not significantly impede the parent's opportunity to participate in the decision-making process and did not impede Student's right to a FAPE or cause any deprivation of educational benefit. I conclude that Petitioner has not established that DCPS' failure to accommodate Mother's request to observe the program at City School 2 may be deemed a denial of FAPE. *Cf. E.D. v. Colonial School District*, 117 LRP 12348 (E.D. Pa 3/31/17) (Denying the observation request of a parent's expert did not impede the student's right to FAPE, impede the parent's opportunity to participate in the decision making process or cause a deprivation of educational benefits.)

As explained above in this decision, the first requirement for a successful private school reimbursement claim is that public school officials failed to offer the student a FAPE. *See Leggett v. District of Columbia*, 793 F.3d 59, 66-67. In this decision I have found that DCPS met its burden of persuasion that the District offered Student a FAPE with its May 8, 2023 IEP – that is, the proposed IEP was reasonably calculated to enable Student to receive educational benefits appropriate in light of his/her circumstances. Nor has the Petitioner established that DCPS otherwise denied Student a FAPE subsequent to when the April 16, 2023 HOD issued. Thus, because Petitioner has failed to satisfy the threshold question that DCPS denied Student a FAPE, the parent is not entitled to tuition reimbursement or prospective private school funding for the 2023-2024 school year. *See, e.g., N.G. v. E.L. Haynes Pub. Charter Sch.*, No.

20-CV-1807-TJK-ZMF, 2021 WL 3507557, at \*14 (D.D.C. July 30, 2021).

**ORDER**

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

All relief requested by the Petitioner herein is denied.

Date: December 16, 2023

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

**NOTICE OF RIGHT TO APPEAL**

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

cc: Counsel of Record  
Office of Dispute Resolution