

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution  
1050 First Street, N.E., Third Floor  
Washington, D.C. 20002

OSSE  
Office of Dispute Resolution  
December 27, 2024

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2024-0167
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 12/27/24
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates (using Microsoft Teams):
("DCPS"),	)	12/10/24, 12/11/24 & 12/12/24
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION (Corrected)**

**Background**

Petitioner, Student's Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") due to DCPS's failure to provide an appropriate Individualized Education Program ("IEP"), failure to provide any placement during 2023/24,<sup>2</sup> failure to implement an IEP, and that unilateral placement by Parent was not appropriate.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

**Procedural History**

Following the filing of the due process complaint on 9/9/24, the case was assigned to the undersigned on 9/10/24. Respondent filed a response on 9/20/24 and did not challenge

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<sup>1</sup> Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student's gender are omitted.

<sup>2</sup> All dates in the format "2023/24" refer to school years.

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jurisdiction. Respondent filed a Motion for Partial Summary Adjudication on 11/7/24; Petitioner responded with an Opposition and Cross-Motion for Summary Adjudication, corrected on 11/12/24. After thorough briefing, by Order dated 11/25/24, the undersigned denied Respondent's Motion and granted Petitioner's Cross-Motion, concluding that a 2/27/24 settlement agreement between the parties in Case 2023-0245 waived all claims for 2021/22 and 2022/23, but did not limit Petitioner's claims and relief relating to 2023/24, including a 7/27/23 IEP. DCPS maintains a standing objection with respect to that ruling and does not waive its position regarding the Hearing Officer exceeding his authority in that determination. A resolution meeting took place on 9/24/24, but the parties neither settled the case nor shortened the 30-day resolution period, which ended on 10/9/24. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by a 35-day continuance, which requires a Hearing Officer Determination ("HOD") by 12/28/24.

A prehearing conference was held on 11/26/24 and the Prehearing Order was issued that same day, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 12/10/24, 12/11/24, and 12/12/24, and was closed to the public. Petitioner was represented by *Petitioner's counsel*. DCPS was represented by *Respondent's counsel*. Parent participated in the entire hearing.

### Documents and Witnesses

Petitioner's Disclosure, submitted on 12/3/24, contained documents P1 through P94, all of which were admitted into evidence over blanket objections.<sup>3</sup> Respondent's Disclosure, also submitted on 12/3/24, contained documents R1 through R93, of which only R6, R32-R34, R39-R41, R50, R54-R56, R58, R60-R62, R64-R65, R68-R71, and R88-R92 were offered into evidence and admitted without objection, except for R92 which was admitted over objection; in addition, R93 was offered into evidence but an objection was sustained to the 2021 settlement agreement, so R93 was not admitted into evidence.

Petitioner's counsel presented 5 witnesses in Petitioner's case-in-chief (*see* Appendix A):

1. *Primary Therapist* at School B (qualified without objection as an expert in Residential Wilderness Therapy)
2. *Special Education Director* at School C (qualified without objection as an expert in Special Education Placement and Programming)

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<sup>3</sup> Citations herein to the parties' documents are identical except that Petitioner's documents begin with a "P," while Respondent's documents begin with an "R," followed by the exhibit number and then a "p" (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

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3. *Program Director* at School C (qualified without objection as an expert in Mental Health Counseling)
4. *Campus Director* at School A (qualified without objection as an expert in Educational Leadership and Curriculum Development)
5. Parent

Respondent's counsel presented 4 witnesses in Respondent's case (*see* Appendix A):

1. *Program Specialist* (qualified without objection as an expert in Special Education and Placement)
2. Central IEP Team Manager ("*Team Manager*") (qualified without objection as an expert in Special Education Programming and Placement)
3. *Psychologist* (qualified without objection as an expert in Special Education Programming and Placement)
4. *LEA Representative* (qualified without objection as an expert in Special Education Programming and Placement)

Petitioner's counsel offered no rebuttal evidence.

### **Issues and Relief Requested**

The issues to be determined in this Hearing Officer Determination are:

**Issue 1:** Whether DCPS denied Student a FAPE by failing to offer an appropriate IEP on 7/27/23 because it (a) did not contain many of the necessary changes that DCPS agreed to make, denying Parent's participation in creation of the IEP and rendering the IEP inappropriate, outdated, and inapplicable to many of Student's needs, and/or (b) was not finalized or provided to Parent and counsel for almost 2 months, impacting Parent's participation and necessitating that Parent fund Student's placement due to lack of a timely FAPE. (*Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*)

**Issue 2:** Whether DCPS denied Student a FAPE by failing to offer any placement, program, or location of services for 2023/24, justifying Parent's unilateral placement for 2023/24. (*Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*)

**Issue 3:** Whether DCPS denied Student a FAPE by failing to implement Student's IEPs during 2023/24 by failing to assign any school or program during the entire school year. (*Petitioner has the burden of persuasion on this issue.*)

The relief requested by Petitioner is:

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1. A finding that Student has been denied a FAPE.
2. DCPS shall reimburse Parent for all costs associated with:
  - (a) Student's placement at *School A* for 2023/24, including transportation;
  - (b) Student's placement, including educational and therapeutic services, at *School B* over and above any amounts reimbursed by insurance, including travel;
  - (c) Student's placement, including educational and therapeutic services, at *School C* over and above any amounts reimbursed by insurance, including travel; and
  - (d) Use of educational consultants to locate/identify placements for Student during 2023/24.
3. Any other relief that is just, appropriate and equitable.

### **Findings of Fact**

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>4</sup> are as follows:

1. Background. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>5</sup> Student is *Age, Gender, in Grade* at School A.<sup>6</sup> Student is "super friendly," but many things are hidden as Student tries to "fly under the radar" and is sometimes self-destructive and dangerous; Student was raped in October 2021 and attempted suicide in November 2021 by stealing and crashing Parent's car into a wall.<sup>7</sup>

2. IEP. Student's 7/27/23 IEP ("draft IEP") at issue in this case listed Student's disability classification as Emotional Disturbance ("ED"); the draft IEP left blank the box for specialized instruction, but provided 180 minutes/month of direct Behavioral Support Services ("BSS") outside general education and another 60 minutes/month of BSS

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<sup>4</sup> Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>5</sup> Parent.

<sup>6</sup> *Id.*

<sup>7</sup> Special Education Director; Program Director; Parent; Primary Therapist.

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consultation.<sup>8</sup> Student's 7/27/23 draft IEP was not finalized until 9/21/23.<sup>9</sup> About a month of that delay was attributed to DCPS changing its database system, but DCPS did not explain that to Parent.<sup>10</sup> The 9/21/2023 IEP ("final IEP") provided for 29 hours/week of specialized instruction outside general education, along with 180 minutes/month of direct BSS services outside general education and another 60 minutes/month of BSS consultation.<sup>11</sup>

3. Classification. Student was diagnosed with Major Depressive Disorder, Recurrent, Severe; Generalized Anxiety Post-Traumatic Stress Disorder ("PTSD"); Attention Deficit Hyperactivity Disorder ("ADHD") Unspecified.<sup>12</sup> At a 5/5/23 eligibility meeting, Parent noted that Student continued taking medication for ADHD but was still having issues.<sup>13</sup> Student's Multi-Disciplinary Team ("MDT") considered Specific Learning Disability ("SLD"), Other Health Impairment ("OHI") and concluded on 6/26/23 that Student qualified only for ED.<sup>14</sup> Parent was concerned about not including learning disabled and/or OHI.<sup>15</sup>

4. 7/27/23 IEP Meeting. Parent met with DCPS to review the draft IEP on 7/27/23.<sup>16</sup> Numerous changes in the draft IEP were agreed on at the 7/27/23 IEP meeting; most changes that were to be made in the final IEP were not made.<sup>17</sup> No new draft IEP with updated goals was ever provided to Parent after the 7/27/23 meeting.<sup>18</sup> Psychologist testified at the due process hearing that if DCPS agreed on changes to Student's IEP the changes should be made in the final IEP; if the IEP was not finalized it would impede the document from moving forward and being used.<sup>19</sup>

5. Math. In math, as a key example, Program Specialist (who took notes for DCPS at the 7/27/23 IEP meeting, along with another DCPS notetaker) agreed with Parent that the math goals in the draft IEP did not align with Student's needs.<sup>20</sup> Student's final IEP omitted 1 of the math goals of the 3 in the draft IEP as intended, but contained none of the 5 additional goals that were to be added as DCPS agreed at the IEP meeting (failing to include goals for interpreting graphs, mean/median, regrouping, 2-digit subtraction and the value of

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<sup>8</sup> P28p429,449,451; P30p493,513,515.

<sup>9</sup> P37p540,543.

<sup>10</sup> Program Specialist; Parent.

<sup>11</sup> P38p567.

<sup>12</sup> P28p431; *see also* P55p644 (11/29/23 comprehensive psychological evaluation).

<sup>13</sup> Parent; P24p388,390.

<sup>14</sup> R33; P26p403 (Prior Written Notice ("PWN")); P28p429; P30p493 (draft IEP).

<sup>15</sup> P32p528.

<sup>16</sup> Parent; Program Specialist; P32p528.

<sup>17</sup> Parent; Program Specialist; P39p576.

<sup>18</sup> Program Specialist.

<sup>19</sup> Psychologist.

<sup>20</sup> P39p579,580; P71p845; Parent.

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pi).<sup>21</sup> Student was weaker in math than other academic areas, but is gaining confidence in math and can ask for help.<sup>22</sup>

6. Reading. In reading, the final IEP contained 3 goals but failed to modify the first goal or to remove the third goal as agreed at the 7/27/23 IEP meeting; nor were important goals sought by Parent (fluency, reading rate, and phonemic awareness) added despite DCPS's agreement.<sup>23</sup>

7. Writing. In written expression ("writing"), the final IEP contained 3 goals but the second goal was not changed to an evidence-based essay rather than narrative based on informational text, as DCPS had agreed.<sup>24</sup>

8. Audiobooks. DCPS's 7/27/23 IEP meeting notes plainly state that DCPS "will add audio books" to Student's IEP.<sup>25</sup> Team Manager's credibility was harmed by arguing against audiobooks and testifying at the due process hearing that in the absence of a demonstrated need for audiobooks they would not be included in the IEP.<sup>26</sup> Parent explained that Student does best when reading a printed book while listening to the audiobook.<sup>27</sup>

9. Placement. Parent gave notice through counsel on 8/10/23 that if she was not offered FAPE prior to the start of 2023/24 she would have to place Student at School A.<sup>28</sup> Student was at School A in-person at the beginning of 2023/24 and returned there after School C; Student was successful at School A and had no behaviors of concern; Student was able to make up academic work at School A to catch up with peers late in 2023/24.<sup>29</sup> A change in placement meeting was held on 10/16/23; the final IEP had not been changed as DCPS had agreed to, so OSSE asked Team Manager to look into the IEP; Team Manager lost further credibility with the undersigned by testifying at the due process hearing that no changes were needed in the draft IEP and that the DCPS team had not agreed to changes in the draft IEP.<sup>30</sup> OSSE made clear that any need for Student to have a more restrictive environment needed to be discussed with DCPS.<sup>31</sup>

10. At the 10/16/23 change in placement meeting, Parent advised that the sexual assault case against Student's attacker was going to trial, causing Student significant anxiety; the grand jury process had recently concluded and was very difficult and traumatizing to

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<sup>21</sup> P30p499-500; P38p546,548; P39p580; P71p846.

<sup>22</sup> Parent; P10p99; Special Education Director.

<sup>23</sup> P30p503-04; P39p581; P38p550,552,554; P71p847.

<sup>24</sup> P30p506; P38p555,557,559-60; P39p582; P71p847; Parent.

<sup>25</sup> P71p845,846.

<sup>26</sup> Team Manager.

<sup>27</sup> Parent.

<sup>28</sup> P33p530.

<sup>29</sup> P6p75; P9p94; Campus Director; Parent.

<sup>30</sup> Team Manager; P42p594-97,601.

<sup>31</sup> P51p621.

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Student, so the family decided that Student needed therapeutic intervention to work through the issues; Parent found School B, a wilderness residential therapeutic center (“RTC”), for Student to attend immediately for a few months, earning 3 credits toward graduation.<sup>32</sup> Student was admitted to School B on 10/24/23 and discharged on 1/25/24.<sup>33</sup> Student had many different treatments since the rape, but none was as helpful as School B.<sup>34</sup>

11. After School A, Student’s unilateral placement continued at School B with Parent cooperating and collaborating to try to identify a placement for Student as discussed with OSSE; Parent had received 2 rejection letters by that time; the intention was for Student to return after School B and continue at School A.<sup>35</sup> While Student was at School B, OSSE stopped the effort to find a location for Student.<sup>36</sup> Parent gave unilateral notice through counsel on 1/16/24 that she would place Student at School C if DCPS did not provide FAPE within 10 days.<sup>37</sup> After School B, Student transitioned to School C, an RTC Student began on 1/29/24.<sup>38</sup> There was a great deal of discussion setting up observations of Student.<sup>39</sup> Observations were provided to DCPS through video, rather than in person.<sup>40</sup> Student had nowhere to attend in 2023/24 and Parent had to put Student somewhere.<sup>41</sup> Student was a good fit for these Schools and made good academic progress in the Schools during 2023/24.<sup>42</sup>

12. Timing. Parent repeatedly tried to move the process forward more quickly to find a suitable school for Student; DCPS stated that it would “follow [the] allotted timeline” to complete eligibility and other requirements and refused to expedite the process.<sup>43</sup> At the end of the 5/5/23 eligibility meeting, Petitioner’s counsel asked how quickly an IEP could be provided as Parent was seeking an offer of FAPE before 2023/24.<sup>44</sup> At the end of the 7/27/23 IEP meeting, DCPS promised to finalize the IEP within the next week.<sup>45</sup> On 12/1/23, Parent was concerned about the process stalling and forwarded to DCPS the recent psychological report from School B and suggested meeting as soon as possible so DCPS could offer FAPE.<sup>46</sup> Nearly a month later, on 12/29/23, DCPS proposed an Analysis of Existing Data (“AED”) meeting on 1/25/24 or 2/5/24.<sup>47</sup> On 2/14/24, DCPS proposed an

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<sup>32</sup> P48p616; Parent; Team Manager; Program Specialist.

<sup>33</sup> P73p894-95; Parent.

<sup>34</sup> P55p641; Program Director; Parent; Primary Therapist.

<sup>35</sup> Parent; P48p616.

<sup>36</sup> Team Manager; P49p617.

<sup>37</sup> P61p744; LEA Representative.

<sup>38</sup> P73p894-95; P78p993; Parent.

<sup>39</sup> Team Manager; P54p632; P60p723; P69p793; LEA Representative.

<sup>40</sup> LEA Representative.

<sup>41</sup> Team Manager; Program Specialist.

<sup>42</sup> Parent; Special Education Director.

<sup>43</sup> P69p799 (PWN); LEA Representative.

<sup>44</sup> P24p388,392.

<sup>45</sup> P39p584.

<sup>46</sup> P56p660-61.

<sup>47</sup> P56p659.

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eligibility meeting on 4/8/24, which Parent again felt was too far out; Petitioner's counsel stated that the timing meant that Parent would be funding the entire school year because Student would not receive a FAPE before the end of 2023/24.<sup>48</sup> At an 4/8/24 AED meeting, Parent sought FAPE and Petitioner's counsel raised concerns about the time to get an IEP and being without a location of services for the entire year.<sup>49</sup> On 5/3/24, DCPS proposed 6/20/24 or 6/24/24 for an IEP meeting, after the end of the regular school year.<sup>50</sup>

13. Reimbursement. Parent's out of pocket reimbursable costs over and above insurance for Student's educational and therapeutic services in 2023/24 were:

- (a) costs for School A of \$31,659.10;
- (b) costs for School B of \$75,995.16;
- (c) costs for School C of \$65,629.87;
- (d) costs of travel/transportation of \$16,932.16; and
- (e) costs for educational consultant of \$6,000.00 (needed to quickly find appropriate and available options for Student when placement urgently needed).<sup>51</sup>

14. Equities. Parent worked in a cooperative and collaborative manner with DCPS throughout the process and was willing to send to DCPS whatever was requested; DCPS provided no FAPE, no placement and no timely IEP.<sup>52</sup> DCPS said it has a timeline and would stick to it.<sup>53</sup> Team Manager testified cooperation from lacking from everyone – other than Parent – which caused delay.<sup>54</sup> Parent went through the application process with 6 schools suggested by OSSE.<sup>55</sup> Student received no placement from DCPS in 2023/24.<sup>56</sup> Parent did the best she could in the circumstances.<sup>57</sup>

### Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that “all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of*

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<sup>48</sup> P70p811,817-18.

<sup>49</sup> P76p930,932; Parent.

<sup>50</sup> P77p934; Parent.

<sup>51</sup> P90p1408-10; Parent (insurance was subtracted from these amounts; Parent paid these costs through home equity loans on her house and by borrowing from her mother).

<sup>52</sup> LEA Representative; P58p701; Parent.

<sup>53</sup> LEA Representative.

<sup>54</sup> Team Manager.

<sup>55</sup> LEA Representative.

<sup>56</sup> Psychologist.

<sup>57</sup> LEA Representative.



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*Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA “aims to ensure that every child has a meaningful opportunity to benefit from public education”).

“The IEP is ‘the centerpiece of the statute’s education delivery system for disabled children.’” *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Endrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child’s disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(14); *Endrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Endrew F.*, 137 S. Ct. at 1001.

In addition, the local education agency (“LEA”) must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at \*3 (D.D.C. 2018).

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only 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

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(iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

**Issue 1:** *Whether DCPS denied Student a FAPE by failing to offer an appropriate IEP on 7/27/23 because it (a) did not contain many of the necessary changes that DCPS agreed to make, denying Parent's participation in creation of the IEP and rendering the IEP inappropriate, outdated, and inapplicable to many of Student's needs, and/or (b) was not finalized or provided to Parent and counsel for almost 2 months, impacting Parent's participation and necessitating that Parent fund Student's placement due to lack of a timely FAPE. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a *prima facie* case concerning Student's IEP through testimony and documents, shifting the burden to DCPS, which failed to meet its burden of persuasion.

The applicable legal standard for analyzing the appropriateness of the IEP at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it was "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. As the U.S. Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* "raised the bar on what counts as an adequate education under the IDEA," requiring more than "merely some" educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be "reasonably calculated to produce meaningful educational benefit"). The measure and adequacy of the IEP are determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at \*12 (D.D.C. 2021); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student's IEP is analyzed by focusing on the specific concerns raised by Petitioner, which are considered in turn.<sup>58</sup> *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

Failure to Modify IEP. Petitioner's initial concern with the IEP at issue in this case is that numerous substantive changes to the IEP were agreed to by DCPS in the 7/27/23 IEP meeting, but DCPS failed to make those changes, which amount to a denial of FAPE.

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<sup>58</sup> A Hearing Officer must also determine whether "the State complied with the procedures" set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), *quoting Rowley*, 458 U.S. at 206-07. Procedural concerns are discussed herein.

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Focusing in particular on the academic areas of concern, in Student's weakest area, math, DCPS agreed with Parent to include 5 additional goals (relating to interpreting graphs, mean/median, regrouping, 2-digit subtraction and the value of pi) that all agreed were needed, but then failed to include them in the final IEP.

Similarly, in reading, the final IEP contained 3 goals but failed to modify the first goal or to remove the third goal as agreed at the 7/27/23 IEP meeting. Nor were reading goals sought by Parent (fluency, reading rate, and phonemic awareness) added even though DCPS agreed. In writing, the second goal was not changed (to an evidence-based essay, rather than a narrative based on informational text) as DCPS had agreed.

Worse, a key DCPS witness testified that DCPS had not in fact agreed to make changes in the IEP and that IEP changes were not needed for Student, which the undersigned found entirely unpersuasive. There were two sets of DCPS notes from the IEP meeting in the record confirming that DCPS did indeed agree to make these – and various other – changes in the final IEP, no doubt because they were needed by Student.

Delay in Finalizing IEP. Petitioner next alleges that DCPS failed in various ways to update Student's IEP as required by 34 C.F.R. §§ 300.324(b)(1)(i),(ii), 300.324(b)(2), which mandate that DCPS must review Student's IEP not less than annually to determine if goals are being met and address information about Student, anticipated needs, and other matters. *See Z. B. v. Dist. of Columbia*, 888 F.3d 515, 523-525 (D.C. Cir. 2018). Here, DCPS plainly acknowledged that the 7/27/23 draft IEP had not been finalized before the beginning of 2023/24, which left Student without a placement as the new school year began. DCPS sought to blame the delay as least in part on its change of computer database systems during August 2023, although that certainly was not Student's fault and was not explained to Parent. In any case that problem would only account for a portion of the nearly 2 month delay in finalizing the IEP, with no excuse for DCPS's further weeks of delay in September.

Parental Participation. The law does clearly require parental involvement in IEP development. *See Endrew F.*, 137 S. Ct. at 999 (crafting an appropriate program of education contemplates the input of the child's parents or guardians); *Lofton v. Dist. of Columbia*, 7 F. Supp. 3d 117, 124 (D.D.C. 2013) (the IDEA mandates that parent be allowed to meaningfully participate in the development of child's IEP); *Lague v. Dist. of Columbia*, 130 F. Supp. 3d 305 (D.D.C. 2015). A parent is not able to meaningfully participate in an IEP meeting if the student's goals and services are not set out in the IEP under review, or if the changes DCPS agreed to make in the IEP with Parent were not actually incorporated into the IEP, as was the case here. *See A.K. ex rel. J.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 682 (4th Cir. 2007).

FAPE. Student's IEP team agreed to numerous changes in Student's IEP which were not made and are procedural violations that had a substantive effect on Student, amounting to a denial of FAPE. *See* 34 C.F.R. § 300.513(a)(i) impeded the child's right to a FAPE, and (a)(iii) caused a deprivation of educational benefit).

In carefully considering the concerns raised above individually and as a group, the undersigned is cognizant of the fact that the analysis is not about achieving perfection.

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Instead, IEPs simply need to be reasonably calculated to enable Student to make appropriate progress in the circumstances. *See Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA “stops short of requiring public schools to provide the best possible education”). *See also Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015); *S.M. v. Dist. of Columbia*, CV 19-2096 (RC), 2020 WL 7230266, at \*5 (D.D.C. 2020). However, on balance, this Hearing Officer concludes that DCPS failed its burden of persuasion by a preponderance of the evidence on Issue 1, as the IEP was not reasonably calculated to enable Student to make appropriate progress in the circumstances. This results in the remedy discussed below.

**Issue 2:** *Whether DCPS denied Student a FAPE by failing to offer any placement, program, or location of services for 2023/24, justifying Parent’s unilateral placement for 2023/24. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a *prima facie* case concerning Student’s placement and programming through testimony and documents, shifting the burden to DCPS, which failed to meet its burden of persuasion.

The IDEA requires “school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student’s IEP.” *Middleton*, 312 F. Supp. 3d at 143, *citing O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008). *See also Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013) (DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP”). Here, Parent repeatedly tried to move the process forward to find a suitable placement for Student more quickly, while DCPS stuck to its “allotted timeline,” refusing to expedite the process regardless of Student’s needs. DCPS witnesses concurred that no placement or programming was ever provided to Student during 2023/24, despite Parent raising Student’s urgent need for education and support, requiring Parent to fund the cost of programs herself. This also contributes to the remedy below.

**Issue 3:** *Whether DCPS denied Student a FAPE by failing to implement Student’s IEPs during 2023/24 by failing to assign any school or program during the entire school year. (Petitioner has the burden of persuasion on this issue.)*

Finally, Petitioner met her burden of persuasion on IEP implementation. With a failure to implement claim, the IDEA is only violated when a school district deviates materially from a student’s IEP. *See Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 144 (D.D.C. 2018); *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007). A material deviation requires more than a minor discrepancy or a “*de minimis* failure to implement all elements of [the student’s] IEP.” *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013), *quoting Catalan ex rel. E.C. v. Dist. of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). Courts are clear that it is “the proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement.” *Turner v. Dist. of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), *citing Wilson v. Dist. of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011). Notably, there is “no requirement that the child suffer

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educational harm in order to find a violation” in a failure to implement claim. *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016).

Here, as discussed in detail above, Student was not given a placement by DCPS during 2023/24, as Student should have been, and thus Student’s IEP was never implemented during that year. This further and independently supports the remedy ordered below.

### Remedy

As concluded above, DCPS failed to provide a timely and suitable IEP and placement for 2023/24 that were reasonably calculated to enable Student to make appropriate progress in light of Student’s circumstances, which was a denial of FAPE that results in reimbursement for Student’s unilateral placements for 2023/24, as discussed next.

As the remedy for the denial of FAPE concerning Student’s IEP and placement, Petitioner seeks reimbursement for her payments to the 3 Schools needed by Student in 2023/24, since a suitable public or nonpublic school was not available. Judge Colleen Kollar-Kotelly confirmed in *A.T.*, 2021 WL 1978792, at \*3 (D.D.C. 5/18/21), that “[i]f no suitable public school is available, the school system must pay the costs of sending the child to an appropriate private school,” quoting *Dist. of Columbia v. Vinyard*, 901 F. Supp. 2d 77, 80-81 (D.D.C. 2012) (Kollar-Kotelly, J.). See also *Montuori*, 2018 WL 4623572, at \*3; *Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991) (if a public school program were available to enable student to receive educational benefits, DCPS would not need to consider nonpublic placement).

Under the IDEA, however, parents who unilaterally place their disabled child in a private school, without obtaining the consent of local school officials, “do so at their own financial risk.” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993), quoting *Burlington*, 471 U.S. at 374. The Court of Appeals explained in *Leggett v. Dist. of Columbia*, 793 F.3d 59, 66-67 (D.C. Cir. 2015), that,

As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise “proper under the Act”; and (3) the equities weigh in favor of reimbursement – that is, the parents did not otherwise act “unreasonabl[y].”

Here, the first prong of *Leggett* is met due to the denials of FAPE by DCPS failing to provide Student an appropriate and timely IEP and placement, as discussed at length above.

The second prong of *Leggett* focuses on whether the 3 Schools are proper for Student, which Petitioner demonstrated by showing both the fit and that Student did well at the Schools during 2023/24. Considering whether placement is proper, under *Endrew F.*, 137 S. Ct. at 1001, the question is whether Parent’s unilateral private placement was reasonably calculated to enable Student to make appropriate progress given Student’s

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circumstances. *Cf. Leggett*, 793 F.3d at 71, *quoting Rowley*, 458 U.S. at 207, 102 S. Ct. 3034. *See also Wirta v. Dist. of Columbia*, 859 F. Supp. 1, 5 (D.D.C. 1994); *N.G. v. Dist. of Columbia*, 556 F. Supp. 2d 11, 37 (D.D.C. 2008).

With careful selection of Schools by Parent, supported at a critical time by an educational consultant, Schools were a good fit for Student. Thus, Student has done very well in 2023/24, and made substantial progress to catch up academically with non-disabled peers, meet mental health needs, and continue Student's educational journey, making progress appropriate in Student's circumstances. For these reasons, this Hearing Officer concludes that the 3 Schools were proper and appropriate for Student, so the second prong of *Leggett* is satisfied. *See* 34 C.F.R. § 300.148.

The final prong of *Leggett* is to consider whether the equities weigh in favor of reimbursement or whether Petitioner acted unreasonably. Here, Parent diligently sought to understand the options available for Student and sought to cooperate and interact reasonably with DCPS at each step, despite delays Parent felt were unnecessary. Parent tried to do what DCPS requested and upon careful consideration by the undersigned, did not act unreasonably. The third prong is satisfied.

Accordingly, this Hearing Officer concludes that Parent should be reimbursed for all costs she paid out of pocket over and above any insurance reimbursements for Student's educational and therapeutic services during 2023/24 (8/28/23 to 8/26/24 based on DCPS's calendar), along with travel/transportation and educational consultant fees.

### **ORDER**

Petitioner has prevailed on the issues in this case, as set forth above. Accordingly, **it is hereby ordered that:**

Within 30 days, upon receipt of documentation of payment by Petitioner, DCPS shall reimburse Petitioner for costs she paid out of pocket over and above any insurance reimbursements for (1) Student's educational and therapeutic services during the 2023/24 school year for School A (\$31,659.10), School B (\$75,995.16) and School C (\$65,629.87), (2) along with travel/transportation (\$16,932.16), and (3) educational consultant fees (\$6,000.00).

Any and all other claims and requests for relief are **dismissed with prejudice.**

**IT IS SO ORDERED.**

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.  
Hearing Officer

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**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).

Copies to:

Counsel of Record (Appendix A, by email)

ODR (hearing.office@dc.gov)