

**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  
February 27, 2022

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PARENTS, on behalf of  
STUDENT,<sup>1</sup>

Date Issued: February 27, 2022

Petitioners,

Hearing Officer: Peter B. Vaden

v.

Case No. 2021-0113

Case No. 2021-0156

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Online Video Conference Hearing

Respondent.

Hearing Dates: January 18, 19 and 20, 2022  
February 17, 2022

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

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

Petitioners' Due Process Complaint in Case No. 2021-0113 was filed on August 6, 2021 and assigned to the undersigned hearing officer on August 9, 2021. Petitioners filed a second due process complaint, Case No. 2021-0156, on September 30, 2021, which was assigned to this hearing officer on October 1, 2021. Both complaints named DCPS as Respondent. In the October 12, 2021 Prehearing Order, I granted Petitioners' unopposed request to consolidate Case No. 2021-0156 with Case No. 2021-0113.

On August 23, 2021, Petitioners, by counsel, filed an objection to the appointed hearing officer, on the asserted grounds that the terms of the hearing officer's contract with the District of Columbia Office of the State Superintendent of Education (OSSE), allegedly made the hearing officer an employee of OSSE. By a written order issued August 30, 2021, I overruled Petitioners' objection.

On October 12, 2021, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. By order issued August 24, 2021, I granted Petitioners' unopposed continuance request in Case No. 2021-0113. By orders issued October 27, 2021 and January 8, 2022, I granted DCPS' unopposed continuance requests in the consolidated cases. My final decision in the consolidated cases is now due by March 4, 2022.

On December 2, 2021, Petitioners, by counsel, filed a motion to strike DCPS' responses to the due process complaints, or alternatively, to bar DCPS from offering defenses in this matter. By order issued December 16, 2021, I ordered DCPS to file an

amended response to meet the requirements of 34 C.F.R. § 300.508(e)(ii) and, (iii) and otherwise denied Petitioners' motion. DCPS filed its amended response on December 22, 2021.

Due to the social distancing protocols in force in the wake of the Coronavirus outbreak, the due process hearing was held online with the parents' consent and recorded by the hearing officer, using the Microsoft Teams video conference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on January 18, 19 and 20, 2022 and February 17, 2022. The Parents appeared online for the hearing and were represented by PETITIONERS' COUNSEL. Respondent DCPS was represented by IEP SPECIALIST and by DCPS' COUNSEL.

Petitioners' Counsel made an opening statement. DCPS waived making an opening. Petitioners called as witnesses FATHER, MOTHER, DEAN, PRIVATE SPEECH-LANGUAGE PATHOLOGIST (SLP), PSYCHIATRIST and INDEPENDENT PSYCHOLOGIST. DCPS called as witnesses SCHOOL SOCIAL WORKER, DCPS MANAGER, SCHOOL PSYCHOLOGIST, MONITORING SPECIALIST and IEP Specialist. Petitioners' Exhibits P-3 through P-104, except Exhibit P-6, were admitted into evidence. I sustained DCPS' objections to Exhibit P-2 and to Exhibit R-28, which Petitioners' sought to introduce as a Petitioners' exhibit. Exhibits P-3, P-4, and P-82 were admitted over DCPS' objections. DCPS' Exhibits R-1 through R-4, R-6, R-7, R-11

through R-21, R-30, R-33, R-37, R-38, R-41, R-47 (Pages 567-569, 738, 740-755) were all admitted into evidence, including Exhibits R-4, R-30, R-33, R-37 and R-38 admitted over Petitioners' objections. I sustained Petitioners' objections to Exhibits R-5 and R-48.

On the last day of the hearing, after the taking of the evidence, counsel for the respective parties made oral closing arguments. With leave of the hearing officer, Petitioner filed a written rebuttal closing brief on February 22, 2022.

### **JURISDICTION**

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

### **ISSUES AND RELIEF SOUGHT**

The issues for determination in these consolidated cases, as set out in the October 12, 2021 Prehearing Order, are:

Whether DCPS denied Student a FAPE by failing to offer an appropriate Individualized Education Program, educational placement and location of services for all or part of the 2019-2020 and 2020-2021 and 2021-2022 school years. The Petitioners also assert as an issue, whether PRIVATE SCHOOL 3 has been a proper nonpublic school for Student for the 2019-2020, 2020-2021 and 2021-2022 school years and whether the parents are entitled to reimbursement for their unilateral placement of Student at Private School 3.

For relief in the consolidated cases, Petitioners request that they be reimbursed by DCPS for their expenses for tuition and other covered expenses for Student to attend Private School 3 for the 2019-2020, 2020-2021 and 2021-2022 school years, and that the

hearing officer find and determine that Private School 3 is Student's current educational placement and order DCPS to fund Student's tuition and related expenses at Private School 3 through end of the 2021-2022 school year.

### **FINDINGS OF FACT**

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

1. Student, an AGE youth as of the due process hearing date, resides with the Parents in the District of Columbia. Testimony of Father.

2. Student is eligible for special education as a student with an Emotional Disturbance (ED). Exhibit R-41.

3. The Parents are Student's adoptive parents. In 2009 Student came from another state to live with the Parents and has resided with them, without interruption, ever since. The Parents completed formal adoption procedures for Student in 2017. Testimony of Father.

4. Psychiatrist has been treating Student since March 2010 and she continues to see Student monthly. Student was originally referred to Psychiatrist because he/she was exhibiting aggression, disorganization and anger. Over the years, Psychiatrist's diagnoses of Student included Posttraumatic Stress Disorder (PTSD) with Dissociative Symptoms, Child Physical Abuse, Child Sexual Abuse and Reactive Attachment Disorder, Mild, Persistent. Student continues to have PTSD and

Psychiatrist is also treating Student for major depression, single episode moderate and generalized anxiety disorder. Testimony of Psychiatrist, Exhibit P-2.

5. When Student came to the District in 2009, he/she already had an Individualized Education Program (IEP) issued by a local education agency (LEA) in the state where Student formerly lived. Testimony of Father.

6. DCPS has developed IEPs for Student since 2010. After Student arrived in the District, DCPS funded Student's enrollment at PRIVATE SCHOOL 1 for four years. Next, DCPS placed Student at PRIVATE SCHOOL 2 for four years. Both private schools offered trauma-based programs. Student did very well in those schools and made significant progress. Testimony of Father.

7. In May 2018, DCPS proposed to place Student in the Specific Learning Support (SLS) classroom program at CITY SCHOOL 1, a DCPS public school. Exhibit R-6. The Parents did not agree to the proposed placement at City School 1 and decided in July 2018 to unilaterally place Student at Private School 3. Exhibit P-7.

8. On or about September 25, 2018, the Parents informed DCPS, in writing, they had decided that Student would attend Private School 3 and they expected DCPS to pay for his/her education there. Exhibit P-7. DCPS did not agree to fund Student's enrollment at Private School 3. The Parents filed a due process complaint against DCPS, Case No. 2019-0061, seeking reimbursement for Student's tuition at Private School 3 for

the 2018-2019 school year. The due process complaint was resolved by a settlement agreement executed on or about April 3, 2019. Exhibit P-8.

9. By letter of June 23, 2019, the Parents informed DCPS that they intended to sign a contract and pay fees to Private School 3 to hold a place for Student for the 2019-2020 school year and that they expected DCPS to pay for Student's tuition and fees at Private School 3 for the upcoming school year. Exhibit P-14.

10. On August 1, 2019, the DCPS' Centralized IEP (CIEP) Support Unit convened an IEP team meeting to develop an IEP for Student's 2019-2020 school year. The Parents and their former attorney attended. The proposed IEP, finalized on August 9, 2019, stated that Student's disability was ED and identified Mathematics, Reading, Written Expression, Emotional-Social-Behavioral Development and Motor Skills/Physical Development as areas of concern. The proposed IEP stated, *inter alia*, that Student is an academically capable student in class but he/she needed to develop better interpersonal skills with peers to enhance his/her academic working relationship; that there remained some challenges for Student with getting attention from peers in positive ways and maintaining positive peer interactions; that there were occasions where Student became argumentative with peers; that according to the Parents, Student was able to listen to constructive feedback from adults without argument or denial and take responsibility for behavioral choices; that there were times when Student would make negative self-statements, especially when frustrated or anxious when studying for

an exam; that Student could become rude, make verbally aggressive statements and be physically aggressive; that Student could be very compliant with teacher directives but have some difficulty following adult directions; that when completing homework at home, Student may become upset in completing the tasks; that Student had difficulty accepting assistance from the Parents and would have a melt down, often screaming, “flying off the handle” and crying; that Student regularly followed school rules and routines and had maintained safety, respect and responsibility; that Student used adult reminders, cues and guidance to support improving peer interactions and develop problem solving and compromising skills with peers; that in order to maintain success in educational and social settings, Student required structure and consistency from teachers, therapeutic providers, and in the physical environments with routines, rules, and expectations; that Student benefitted from reminders, prompts, and/or suggestions of self-regulation strategies to manage his/her impulses in less structured situations such as recess; that Student’s ED disability impacts his/her success in the general education setting as he/she becomes easily anxious and stimulating in large group settings and has difficulty regulating his/her emotions; that Student’s behaviors (such as impulsivity, inattentiveness and hyperactivity) interfere with his/her ability to stay focused, regulated and organized; that Student became distracted and disengaged if not seen by the teacher when he/she expected to be and had difficulty remaining engaged in independent assignments. Exhibit P-15.



11. For Special Education and Related Services, the August 9, 2019 IEP provided for Student to receive 29 hours per week of Specialized Instruction outside general education, 240 minutes per month of Behavioral Support Services, and 30 minutes per month of Occupational Therapy (OT) consultative services. Exhibit P-15.

12. The August 9, 2019 IEP provided extensive and comprehensive Other Classroom Aids and Services to assist with Student's social-emotional-behavioral challenges. Exhibit P-15.

13. The August 9 2021 IEP specified that Student's Least Restrictive Environment (LRE) was a non-public school and that Student's behavioral needs required a highly structured, small group, learning environment with a low student to teacher ratio. Exhibit P-15. DCPS did not propose a specific non-public school at the August 1, 2019 IEP meeting, but stated that Student's current school, Private School 3, would not be chosen because Private School 3 did not hold a Certificate of Approval (COA) from OSSE. Exhibit R-16.

14. On August 9, 2019, the IEP developed for Student at the August 1, 2019 IEP team meeting was finalized, uploaded to OSSE's Special Education Data System (SEDS) and sent to the Parents. Exhibits R-4, P-15.

15. By letter of August 23, 2019, DCPS notified the Parents that Student's IEP team had determined that Student required a separate day school setting; that DCPS had received an acceptance letter from PRIVATE SCHOOL 4; that DCPS had made a

FAPE available to Student with an appropriate IEP and placement at Private School 4 and that if the Parents chose not to enroll Student at Private School 4, DCPS would consider Student to be a parentally-placed private school student. Exhibit R-21.

16. On August 26, 2019, DCPS provided written notice to the Parents that Private School 4 had been identified as the location of services for Student for the 2019-2020 school year. Exhibit R-19.

17. By letter of September 3, 2019, The Parents wrote DCPS that the Parents had serious reservations about enrolling Student at Private School 4, asserting that the private school had no clear track record of graduation rates and could not reassure The Parents that students completing high school would be college ready; that the range of students' achievement levels at Private School 4 was very broad, and unlike Student, most of its students were not at grade level academically; that Student did not require a PBIS behavior plan, as used at Private School 4; that a PBIS behavior program did not necessarily create the calm environment Student needed in order to feel safe and that transportation to Private School 4 would require long school bus rides, which in the past had been a problem for Student. The Parents were also concerned that they were not permitted to observe classes in session at Private School 4 before enrolling Student. The Parents gave notice to DCPS that, "for now", Student would continue to attend Private School 3 and the Parents expected DCPS to reimburse them for their Private School 3 costs. Exhibit P-21.

18. On or about February 6, 2020, DCPS sent an email to Parents proposing PRIVATE SCHOOL 5 as a location of services for Student. By letter of February 18, 2020, the Parents notified DCPS that, after visiting Private School 5, they did not consider the school appropriate for Student for the asserted reasons, *inter alia*, that the school did not appear able to provide a suitably challenging academic program for Student; that the range of student achievement levels at Private School 5 appeared to be very broad and other students would not have the same interest in academic pursuits as Student; that Student did not require the level of therapy sessions or behavior mediation provided by Private School 5; that Student would react poorly to the school's "eyes on the student" program in which students are allegedly never alone and because the school bus transportation arrangement would be unacceptable for Student. Exhibit P-29.

19. Student attended Private School 3 for the entire 2019-2020 school year.  
Testimony of Father.

20. On July 13, 2020, DCPS convened a telephone meeting of Student's Multidisciplinary Team (MDT) to review data and update Student's eligibility for special education services. The Parents, Petitioners' Counsel and representatives from Private School 3 participated. School Psychologist reviewed Student's history of ED and stated that there was no new information to suggest Student was no longer eligible as a student with ED. School Psychologist proposed to continue to classify Student as eligible for special education under the ED disability until there was information that indicated

otherwise. The Parents concurred with the ED classification and all MDT members agreed that Student continued to qualify for special education as a student with ED.

Exhibit R-30.

21. On August 5, 2020, DCPS convened a telephone IEP team meeting for Student. The Parents, Petitioners' Counsel, Dean from Private School 3, and two of Student's outside therapists attended. In the proposed IEP, finalized on August 13, 2020, the IEP team identified Mathematics, Reading, Written Expression, Emotional-Social-Behavioral Development and Motor Skills/ Physical Development as areas of concern for Student. The DCPS representatives proposed for Student to receive 20 hours per week of Specialized Instruction in a Behavior and Education Support (BES) classroom in a DCPS public school, 360 minutes per month of Behavioral Support Services, including 120 minutes in the general education setting, and Consultation Services for Specialized Instruction, OT and Behavioral Support Services. Exhibits P-56, R-33.

22. The August 13, 2020 IEP provided extensive and comprehensive Other Classroom Aids and Services to assist with Student's social-emotional-behavioral challenges. Exhibits P-51, P-56.

23. The Parents requested time to consider the proposed IEP. On August 13, 2020, the Parents wrote DCPS that they were concerned by the absence of an identified location of services for Student for the upcoming school year and the reduction of hours

of Specialized Instruction in the proposed IEP. They wrote that Student required support throughout the school day. The Parents stated their concern about unsupported interactions of Student with multiple peers in general education; that the proposed IEP did not recognize Student's continuing difficulties in dealing with peers and adults, especially during transition, unstructured and non-academic times; that Student's continuing reactions to PTSD triggers persisted and interfered with academics and choices of school activities, even in classes in a more supportive environment. The Parents also questioned whether Student needed regularly scheduled in-school therapy as provided in the proposed IEP. The Parents gave notice that they were planning to enroll Student again at Private School 3 for the 2020-2021 school year. Exhibit P-54.

24. DCPS sent the finalized IEP to Parents on August 13, 2020. Exhibit P-56.

25. On August 28, 2020, DCPS provided written notice to the Parents that City School 1, in the Behavior & Education Support classroom, had been identified as the location of services for Student for the 2020-2021 school year. Exhibit P-58.

26. On August 28, 2020, DCPS confirmed receipt of the Parents' August 13, 2020 notice that they had enrolled Student in Private School 3 for the 2020-2021 school year. In the letter, DCPS gave notice of its position that the District had made a FAPE available Student with an appropriate IEP and a placement in the LRE at the City School 1 BES classroom and that if the Parents chose not to enroll Student at City School 1, DCPS would consider Student to be a parentally-placed private school student. Exhibit

P-58. The Parents continued their unilateral enrollment of Student at Private School 3 for the 2020-2021 school year. Testimony of Father.

27. At the August 5, 2020 IEP team meeting, there was a discussion about DCPS' reevaluating Student. The Parents requested a speech and language assessment. The DCPS representative discussed obtaining parental consent for DCPS to conduct a psychological reevaluation. Exhibit P-55. On August 13, 2020, the DCPS representative sent the parents a form for them to consent to new evaluations. On October 5, 2020, the DCPS representative followed up with a request that the Parents consent to DCPS' conducting psychological and OT evaluations of Student and a functional behavior assessment (FBA). By email of October 15, 2020, Father provided consent for the OT evaluation only. Father wrote that the Parents had been arranging for neuropsychological and speech-language testing of Student on their own. Exhibit P-61. On December 18, 2020, DCPS sent the Parents a Prior Written Notice (PWN) stating that due to the Parents' refusal to provide unconditional consent for the District to evaluate Student, DCPS would not consider Student eligible for special education and related services and that Student's then-current IEP end date of August 4, 2021 would continue. Exhibit P-63.

28. Private SLP has provided speech and language services and social skills training to Student since 2013. Private SLP is Student's regular speech therapist and sees him/her around twice a week, 40 weeks per year. Testimony of Private SLP. On

December 13, 2020, Private SLP conducted a Comprehensive Speech and Language Assessment of Student at the Parents' request. In her assessment report, Private SLP reported that Student's articulation, fluency, and voice skills were within normal parameters. Overall, Student's language profile suggested to Private SLP that weaknesses related to aspects of receptive and expressive language, as well as receptive syntax and written language would impact Student's ability to function across all academic and peer settings. Private SLP recommended that Student should especially be supported in classes and unstructured peer settings where there were increased linguistic expectations, as these expectations can be a trigger for linguistic anxiety. She recommended that in order for Student to fully demonstrate his/her cognitive potential, Student would likely need specific language supports and accommodations embedded throughout the day, across all academic and social settings, to ensure that he/she is accessing the curriculum and functioning at the level at which he/she is cognitively able. Private SLP reported that Student's linguistic profile is consistent with the diagnoses of Mixed Receptive-Expressive Disorder due to weak auditory processing as related to auditory memory, receptive and expressive language weaknesses, especially as they impact him/her at the contextual level in integrated tasks; and social pragmatic language weaknesses. Private SLP reported that a disorder of Written Expression was also warranted due to Student's significant difficulty integrating various language skills in order to complete written language tasks in functional academic settings. Private SLP

recommended that Student receive individual speech and language services twice weekly in 45-60 minute sessions, targeting skills in developing auditory memory strategies, language-formulation and organization in spoken language, use of organizational supports to foster oral and written language organization, linguistic executive functioning skills, receptive and expressive syntax; and social pragmatic language skills Exhibit P-64.

29. In November and December 2020, Independent Psychologist conducted a psychological reevaluation of Student. Independent Psychologist had previously evaluated Student in 2016. In his January 18, 2021 Psychoeducational Evaluation Report, Independent Psychologist reported that Student continued to meet criteria for PTSD, with Dissociative Symptoms; that Student's PTSD was manifested by occasional flashbacks of early childhood abuse, avoidance of abuse triggers, irritability, self esteem and interpersonal issues, and difficulty with concentration; that Student also met criteria for Generalized Anxiety Disorder based on excessive fears about his/her future, losing his/her parents, and doubts about his/her abilities; that Student reported symptoms of depression that included self-pity, negative self esteem, irritability, and occasional suicidal ideation and that although Student was excelling in school, he/she remained very emotionally fragile and prone to react negatively when he/she encounters environmental triggers of abuse. Furthermore, according to Independent Psychologist, Student's depressive dependency on others, his/her negative self-image, and his/her



desire for emotional connection make him/her highly vulnerable to being exploited or re-victimized by others, especially peers. Cognitive/intellectual and academic testing indicated that Student's verbal comprehension and reasoning skills were High Average and there was no evidence of learning disorders in Student's score profile. Although Student earned Average scores on measures of receptive and expressive language skills, concurrent testing by Private SLP had revealed ongoing issues with pragmatic and application of language skills. Independent Psychologist continued to diagnose Student with Language Disorder. Independent Psychologist reported that Student met diagnostic criteria for PTSD with Dissociative Symptoms; Generalized Anxiety Disorder; Other Specified Depressive Disorder (did not meet full criteria for Major Depressive Disorder); Personal History of Physical Abuse in Childhood; Personal History of Sexual Abuse in Childhood; Language Disorder (previously diagnosed) and Developmental Coordination Disorder (previously diagnosed). In his psychoeducational evaluation report, Independent Psychologist recommended that Student should remain at Private School 3; that Student requires a small and supportive school environment where PTSD triggers can be better anticipated and avoided; that Student requires monitoring of his/her social interactions as he/she remains vulnerable to interpersonal exploitation; that Student is able to make good progress in the general education curriculum as long as he/she is placed in an appropriate school environment with readily available access to teachers and other supportive persons, both during and beyond the typical school day,

and as long as he/she receives the other accommodations recommended in Student's IEP and Independent Psychologist's report. Exhibit P-66, Testimony of Independent Psychologist.

30. On July 9, 2021, DCPS' CIEP Support Unit contacted the Parents to schedule an annual IEP team meeting for Student. The IEP team met on August 3, 2021 by telephone. The Parents, Petitioners' Counsel, Dean, Private SLP and Student's therapist participated. The IEP team identified Mathematics, Reading, Written Expression, Emotional-Social-Behavioral Development and Motor Skills/Physical Development as areas of concern for Student. The DCPS representatives proposed for Student to receive 15 hours per week of Specialized Instruction, of which 10 hours would be inside general education and 5 hours outside, 180 minutes per month of Behavioral Support Services, and Consultation Services for OT and Behavioral Support. The 5 hours of Specialized Instruction outside the general education setting was designed to help Student with any missed content, during a time where Student's anxiety would not let him/her attend in the general education setting. The IEP was finalized on August 11, 2021. Exhibits P-70, P-71.

31. In a letter to DCPS emailed on August 12, 2021, the Parents expressed their concerns, *inter alia*, that a location of services for Student had not yet been identified for the 2021-2022 school year; by the reduction in Specialized Instruction hours in the August 11, 2021 IEP; by the IEP team's allegedly ignoring the

recommendations of Student's private service providers for small classes throughout the day with ready access to teachers for help as needed; by the IEP's not recognizing Student's need for an academically rigorous program where Student would be challenged by peers who met or exceeded his/her own abilities; by the IEP's provision for scheduled Behavioral Support Services, which Student no longer needed; by the IEP's allegedly deficient transition section and by the IEP's failure to provide support throughout the school day and not recognizing Student's continuing difficulties in dealing with peers and adults, especially during non-academic times. The Parents gave notice to DCPS that until an appropriate IEP and school location were offered by DCPS, Student would remain at Private School 3. Exhibit P-72.

32. By letter of August 16, 2021, DCPS informed the Parents that the August 11, 2021 IEP would be implemented at City School 1. In that letter, DCPS stated its position that the District had made a FAPE available to Student for the 2021-2022 school year with an appropriate IEP and a placement in the LRE at City School 1, and if the Parents chose not to enroll Student at City School 1, DCPS would consider the Student to be a parentally-placed private school student. Exhibit P-73.

33. The Parents continued their unilateral enrollment of Student at Private School 3 for the 2021-2022 school year. Testimony of Father.

34. Private School 3 is a small private college preparatory school in suburban Maryland. It has a total enrollment of less than 70 students. Private School 3, which is

not certified as a special education school, primarily works with students who have been frustrated at typical schools. About two-thirds of its students are “neurodiverse” or have learning disabilities. Other students have mental health issues. Private School 3 does not implement IEPs. Most classes have 6 to 8 students. The maximum class size is 12 students. There is a 5 to 1 student to staff ratio. Private School 3 does not provide OT, Speech-Language, Behavioral Support Services or other special education related services. Private School 3 follows State of Maryland requirements for high school diplomas. Almost all Private School 3 graduates matriculate to college programs. Private School 3 does not hold a Certificate of Approval from OSSE. The total annual tuition cost is currently \$35,000. Testimony of Dean.

35. At Private School 3, Student has succeeded academically. Student is a very strong student and has earned almost all “A” grades. At Private School 3, Student’s emotional dysregulation has not been a significant factor for his/her program success. Student is president of the school’s chapter of the National Honor Society. Student has made friends at the school. Testimony of Father, Testimony of Mother, Testimony of Dean, Testimony of School Social Worker.

36. Private School 4 is a nonpublic special education school in suburban Maryland, which holds a Certificate of Approval from OSSE. Private School 4 issues high school diplomas. Private School 4 offers a school-wide program model to support positive behaviors. Private School 4 has certified special education teachers as well as

social workers, integrated in all classes, to provide behavioral support services. Private School 4 supports students with ED disabilities, who are likely to have behavior and emotional dysregulation challenges. Testimony of DCPS Manager, Testimony of Independent Psychologist, Testimony of Psychiatrist.

37. Private School 5 is a nonpublic special education school in suburban Virginia, which holds a Certificate of Approval from OSSE. Private School 5 offered special education teachers and was able to provide behavior support and OT services throughout the school day. Testimony of DCPS Manager.

38. City School 1 is a DCPS public school. It has around 600 students total. Testimony of Father. The BES classrooms at City School 1 have smaller classes with a maximum of 12 students drawn from different grades, staffed by a certified special education teacher, a teacher's aide and a behavior technician. Students assigned to the BES classroom would receive all core academics in the classroom. BES students are placed with general education peers for specials and elective classes, lunch and recess. Testimony of DCPS Manager.

39. At City School 1, IEP consultation services can be integrated into the general education setting. Specialized Instruction Services in the General Education setting would be provided to individuals or small groups by a special education teacher, co-teaching with the general education teacher. Testimony of DCPS Manager.

### **CONCLUSIONS OF LAW**

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

#### **Burden of Proof**

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioners in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by the public agency, in this case DCPS, the agency shall hold the burden of persuasion on the appropriateness of the proposed placement; provided that the Petitioners shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

#### **Analysis**

In this proceeding, the Parents seek reimbursement from DCPS for Student's private school tuition and school transportation expenses for the 2019-2020, 2020-2021 and 2021-2022 school years, and for services provided by Private SLP over the same period.

#### **Statute of Limitations**

Counsel for DCPS argued at the due process hearing that the Parents'

reimbursement claims are barred, in part, by the IDEA's two-year statute of limitations period. *See* 34 CFR § 300.511(e).<sup>2</sup> The actions that form the basis for the Parents' due process request in this matter start with Petitioners' claim that DCPS developed an inappropriate IEP for Student on August 9, 2019. The Parents requested their due process hearing, in Case No. 2021-0113, on August 6, 2021, less than two years after the August 9, 2019 IEP was finalized. I conclude that none of Petitioners' claims in the consolidated cases falls outside of the two-year statute of limitations period.

#### Reimbursement for Private School Expenses

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

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

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<sup>2</sup> *Timeline for requesting a hearing.* A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

34 CFR § 300.511(e).

*R.B., supra* at 7. See, also, *School Committee of Town of Burlington v. Department of Education of Massachusetts*, 471 U.S. 359, 369, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985). See also, *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). These private school expenses reimbursement criteria are often cited as the *Burlington-Carter* test.

Applying the *Burlington-Carter* test to this case, the first factor in deciding whether DCPS must reimburse the parents for Student's private school expenses is whether DCPS failed to offer Student a FAPE in a public or private school. The Petitioners allege that DCPS failed to offer Student a FAPE with its allegedly inappropriate August 9, 2019, August 13, 2020 and August 11, 2021 IEPs and proposed educational placements.

#### Appropriateness of IEPs

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

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

*Middleton* at 128.



In these consolidated cases, the Petitioners have not raised a procedural compliance objection. Therefore, I turn to the substantive prong of the *Rowley* IEP inquiry – Were the IEPs developed by DCPS for the 2019-2020, 2020-2021 and 2021-2022 school years – and the proposed educational placements – appropriate for Student? In *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017), the U.S. Supreme Court elaborated on the standard, first enunciated in *Rowley*, for what constitutes an appropriate IEP under the IDEA:

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

*Endrew F.*, 137 S.Ct. at 1002. *See, also, Z. B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018). The Parents made a *prima facie* showing that the IEPs at issue in these cases were not appropriate for Student. Therefore, DCPS holds the burden of

persuasion as to the appropriateness of its proposed IEPs and educational placements.

August 9, 2019 IEP

In May 2018, after placing Student at special education day schools for some 8 years, DCPS proposed to place Student, for the 2018-2019 school year, in the Specific Learning Support (SLS) classroom program at City School 1, a DCPS public school. The Parents rejected the proposed public school placement and unilaterally placed Student at Private School 3 for the 2018-2019 school year. The Parents later filed a due process complaint against DCPS, seeking reimbursement for their child's 2018-2019 private school expenses. That due process complaint was resolved by a settlement agreement with DCPS in April 2019.

In August 2019, DCPS' CIEP Support Unit staff met with the Parents and their representatives to develop an annual IEP for Student for the 2019-2020 school year. The proposed August 9, 2019 IEP would have placed Student at a special education day school and provided for Student to receive full-time, 29 hours per week, Specialized Instruction outside general education, 240 minutes per month of Behavioral Support Services and 30 minutes per month of Occupational Therapy (OT) consultative services. The IEP specified that Student needed a highly structured, small group, learning environment with a low student to teacher ratio. On August 26, 2019, DCPS notified the parents that it had identified Private School 4 to implement the August 9, 2019 IEP.

The Parents rejected DCPS' proposal to place Student at Private School 4 and

unilaterally continued Student's enrollment at Private School 3 for the 2019-2020 school year. The Parents' decision to keep Student at Private School 3 was not because they objected to the August 9, 2019 IEP, but as the Parents explained in a September 3, 2019 letter to DCPS, because they had serious reservations about enrolling Student at Private School 4. Those concerns included, *inter alia*, whether Private School 4 was academically rigorous and whether other students would be below Student's academic level, the school's use of a PBIS behavior plan, and long school bus rides. The Parents also expressed concern that they were not allowed to observe classes in session at Private School 4 before enrolling Student. In the September 3, 2019 letter to DCPS, the Parents did not identify any concerns with the content of the August 9, 2019 IEP.

In her testimony at the due process hearing, Petitioners' expert, Private SLP, opined that the August 9, 2019 IEP was not appropriate for Student because it did not provide for Speech-Language Pathology related services. Even though Private SLP had been providing services to Student since 2013, there is no indication in the hearing record that at the time August 9, 2019 was created, the Parents, their representatives or anyone else proposed that Student needed IEP speech and language services. The hearing officer must determine whether, *at the time the IEP was created*, it was reasonably calculated to enable the Student to make appropriate progress. *See, e.g., Z. B. v. District of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018) (Standard calls for evaluating an IEP as of the time IEP was created, rather than with the benefit of

hindsight.) I find that at the time the August 9, 2019 IEP was created, Student's IEP team had no cause to determine that Student required speech and language services to benefit from special education. *See* 34 C.F.R. § 300.34(a).

Petitioners' expert, Independent Psychologist, opined in his hearing testimony that the provision for 240 minutes per month of Behavioral Support Services in the August 9, 2019 IEP was not appropriate because Student has not demonstrated the need for in-school behavioral support for a number of years. Also, Student was already seeing a private therapist outside of school. Independent Psychologist was not a member of Student's IEP team and the hearing record does not indicate that the Parents or anyone else on the August 2019 IEP team opposed Behavioral Support Services for Student. DCPS' expert, School Psychologist, who also was not present for the 2019 IEP team meeting, opined that it was important for Student to have Behavioral Support Services in the IEP because Student presents with a PTSD, anxiety-related, history and has self-reported depressive symptoms.

While both experts were credible witnesses, School Psychologist has worked as a school psychologist and has advised IEP teams for some 20 years. Independent Psychologist's specialty is clinical psychology. I found School Psychologist's opinion more persuasive that the August 2019 IEP team's decision to provide Behavioral Support Services in Student's IEP was appropriate. I conclude that DCPS has met its burden of persuasion that its proposed August 9, 2019 IEP was reasonably calculated to

enable Student to make progress appropriate in light of Student's circumstances. *See Andrew F.*, 137 S. Ct. at 999.

“Designing an appropriate IEP is necessary but not sufficient. DCPS must also implement the IEP, which includes offering placement in a school that can fulfill the requirements set forth in the IEP.” *O.O. ex rel. Pabo v. District of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (citing 20 U.S.C. § 1401(9).) As explained above, the hearing evidence establishes that the Parents' decision to keep Student at Private School 3 for the 2019-2020 school year was out of concern about the appropriateness of Private School 4 – not about the content of the August 9, 2019 IEP.

A hearing officer's review of an educational placement “is defined by whether a school district has ‘offer[ed] placement in a school and in programming that can fulfill the requirements set forth in the student's IEP.’” *See W.S. v. District of Columbia*, 502 F. Supp. 3d 102, 120 (D.D.C. 2020) (citing *Middleton*, 312 F. Supp. 3d at 143.) The hearing officer therefore focuses on “the IEP as written” to determine whether an educational placement is “capable of substantially implementing [a student's] IEP.” *W.S.*, 502 F. Supp. 3d at 120 (citing *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267-68 (D.D.C. 2013)). From the IEP, the hearing officer must make “reasonable conclusions about [the student's] needs and whether [the school offered by DCPS] could accommodate those needs.” *W.S.*, 502 F. Supp. 3d at 125.

The August 9, 2019 IEP identified Student's disability as ED and reported that

Student has PTSD based on early childhood trauma. Although the IEP reported that Student had made progress, there are recurring references in the IEP to Student's continuing challenges with peer interactions, with self-regulation and with anxiety about being "perfect." As examples, the IEP stated that Student needed to develop better interpersonal skills with peers to enhance his/her academic working relationship; that there remained some challenges for Student with getting attention from peers in positive ways and maintaining positive peer interactions; that there were occasions where Student became argumentative with peers; that there were times when Student would make negative self-statements, especially when frustrated or anxious when studying for an exam; that Student could become rude, make verbally aggressive statements and be physically aggressive; that Student used adult reminders, cues and guidance to support improving peer interactions and develop problems solving and compromising skills with peers; that in order to maintain success in educational and social settings, Student required structure and consistency from teachers, therapeutic providers, and in the physical environments with routines, rules, and expectations; that Student benefitted from reminders, prompts, and/or suggestions of self-regulation strategies to manage his/her impulses in less structured situations such as recess; that Student's ED disability impacts his/her success in the general education setting as he/she becomes easily anxious and stimulating in large group settings and has difficulty regulating his/her emotions; that Student's behaviors (such as impulsivity,

inattentiveness and hyperactivity) interfere with his/her ability to stay focused, regulated and organized; that Student became distracted and disengaged if not seen by the teacher when he/she expected to be and had difficulty remaining engaged in independent assignments.

From the August 9, 2019 IEP's focus on Student's PTSD related social-emotional-behavioral concerns and needs, it follows that to accommodate those needs, in addition to offering appropriate academic instruction, the placement offered by DCPS must also be capable of addressing Student's social-emotional-behavioral challenges identified in the IEP. *Cf. W.S., supra*, 502 F. Supp. 3d at 125 (Hearing Officer should have made "reasoned and specific findings" regarding how [private school] could have accommodated W.S.'s aggressive behaviors.) *See, also, Andrew F.* 137 S. Ct. at 999. (A focus on the particular child is at the core of the IDEA. The instruction offered must be specially designed to meet a child's unique needs through an individualized education program.)

While it is undisputed that Private School 4 offered a full-time special education program for students with ED disabilities, it was not established at the hearing that Private School 4 was capable of accommodating Student's unique emotional-behavioral needs resulting from his/her PTSD disability. Psychiatrist, who has been treating Student since 2010, opined that Private School 4 was not appropriate for Student because other students at that school were likely to have behavioral and emotional

dysregulation and their behaviors would be overwhelming and distressing to Student and make Student anxious, depressed and more prone to dissociation. Independent Psychologist opined that Private School 4 was not appropriate for Student because of concerns about, *inter alia*, the potential for harmful peer interactions with other students with behavioral disabilities.

DCPS' expert witness, DCPS Manager, agreed that Private School 4 has students with conduct disorders and externalizing behaviors and that other students' aggression can be a trigger for Student's PTSD symptoms. However, DCPS Manager opined that Private School 4 was appropriate for Student and was able to implement the August 9, 2019 IEP. She testified that Private School 4 has implemented full-time IEPs for other students "like" Student and that Private School 4 has a school-wide model to support positive behavior and social workers are integrated in all classes. I discount DCPS Manager's opinion because she had only limited familiarity with Private School 4's program. She had not served as the District's monitoring specialist for this private school and had never visited the school. Nor had she met Student or participated in Student's IEP team meetings. DCPS Manager also did not know what behavior management plan Private School 4 would have had for Student in the 2019-2020 school year.

No witness from Private School 4 testified at the due process hearing. On this record, I find that DCPS has not provided sufficient probative evidence of how Private



School 4 could have met Student's needs resulting from his/her PTSD disability. I must conclude that DCPS did not offer "a cogent and responsive explanation" for its determination that Private School 4 could fulfill the requirements for Student set forth in the August 9, 2019 IEP.

On or about February 6, 2020, DCPS sent an email to Parents proposing PRIVATE SCHOOL 5 as a location of services for Student. This was mid-school year and the Parents did not agree to move Student from Private School 3 to Private School 5. Even assuming that Private School 5 could have appropriately accommodated Student's IEP needs, which the Parents dispute, DCPS' failure to offer that placement or another suitable placement *by the beginning of the school year* was a denial of FAPE. *Cf., Leggett, supra*, 793 F.3d at 70 (DCPS denied the child a FAPE by failing to have an IEP in place by the beginning of the school year.) I conclude that DCPS has not met its burden of persuasion that it offered Student a placement, for the 2019-2020 school year, in a school that could fulfill the requirements of the August 9, 2019 IEP.

August 13, 2020 IEP

On August 13, 2020, DCPS offered Student a final IEP for the 2020-2021 school year. This IEP provided for Student to receive 20 hours per week of Specialized Instruction Services in a Behavior and Education Support (BES) classroom in a DCPS public school, 360 minutes per month of Behavioral Support Services, including 120 minutes in the general education setting, and Consultation Services for Specialized

Instruction, OT and Behavioral Support Services. In DCPS' BES classrooms, students are placed with a maximum of 12 students, not all in the same grade, staffed by a certified special education teacher, a teaching aide and a behavior technician. BES students receive all core academics in the self-contained classroom and attend specials and elective classes, lunch and recess with general education peers.

On August 13, 2020, the Parents wrote DCPS that they were concerned by, *inter alia*, the proposed IEP's reduction of Specialized Instruction hours – from full time in the August 9, 2019 IEP to 20 hours per week in the 2020 IEP. The Parents also stated their concern about Student's interacting, without support, with multiple peers in general education, especially during transitions, unstructured and non-academic times. The Parents also questioned whether Student needed regularly scheduled in-school therapy, as provided in the proposed IEP. The Parents rejected the proposed August 13, 2020 IEP and kept Student unilaterally enrolled in Private School 3 for the 2020-2021 school year. In their due process complaint, the Parents contend that the proposed IEP was not appropriate for Student.

Private SLP, who attended the August 5, 2020 IEP team meeting, opined at the due process hearing that the proposed IEP was inappropriate because, *inter alia*, it did not address Student's speech-language needs. However, there is no indication in the meeting notes, the PWN or the Parents' August 13, 2020 letter to DCPS that Student's alleged need for speech and language services was an area of concern at the time. I did

not find credible Private SLP's opinion that the proposed August 13, 2020 IEP was not appropriate for want of speech and language services. *See, e.g., Z. B., supra.*

On August 28, 2020, DCPS notified the Parents that City School 1, in the BES classroom, had been identified as the location of services for Student for the 2020-2021 school year. City School 1 had over 600 students. At the due process hearing, Petitioners' expert, Independent Psychologist, who evaluated Student in 2016 and 2020, testified that a large general education school environment would be overwhelming for Student. In his November 7, 2016 psychoeducational evaluation of Student, Independent Psychologist had recommended that given Student's PTSD, he/she would benefit from a small, structured school environment to minimize the potential for Student to become overwhelmed. DCPS' expert, School Psychologist, opined in her testimony that it was appropriate start to "titrate" down the special education services for Student based on the progress Student had made.

To the extent School Psychologist's testimony was at odds with the opinions of Independent Psychologist, I found the latter expert's opinions more credible. School Psychologist never met Student and she did not have the opportunity to conduct her own psychological assessment. Independent Psychologist conducted psychoeducational evaluations of Student in 2016 and in 2020. He also obtained input from Student's private therapist. I conclude that DCPS has not provided a "cogent and responsive explanation" for the decision of the August 2020 CIEP team to reduce Student's special

education services from full-time in a special education day school to 20 hours per week in a large public school, and to place Student with general education peers for much of the school day. I find that DCPS has not met its burden of persuasion that the proposed August 13, 2020 IEP was appropriate for Student.

August 11, 2021 IEP

On August 3, 2021, DCPS convened its CIEP IEP team to develop an annual IEP for Student's 2021-2022 school year. The Parents, Petitioners' Counsel, Dean, Private SLP and Student's therapist participated. Over the Parents' objections, the DCPS IEP team members proposed an IEP which placed Student in the general education setting for most of the school week. The IEP provided for Student to receive 10 hours per week of Specialized Instruction Services inside the general education setting and 5 hours per week of Specialized Instruction outside general education. The proposed IEP also provided for 180 minutes per month of Behavioral Support Services and for Consultation Services for OT and behavioral support. The IEP was finalized on August 11, 2021. According to DCPS' August 11, 2021 PWN, DCPS decided to reduce Student's special education services because Student was able to complete grade level work and was on schedule to transition to college. On August 16, 2021, DCPS informed the Parents that the new IEP would be implemented at City School 1.

In an August 12, 2021 letter to DCPS, the Parents expressed their concerns about the August 11, 2021 IEP, including, *inter alia*, that Student's Specialized Instruction

hours had been further reduced from the August 13, 2020 IEP; that the IEP did not provide for small classes throughout the school day; that the IEP provided for scheduled Behavioral Support Services, which the Parents felt Student did not need and that the IEP did not address Student's continuing difficulties in dealing with peers and adults, especially during non-academic times. The Parents decided to continue Student's unilateral placement at Private School 3 for the 2021-2022 school year.

In his January 18, 2021 psychoeducational evaluation report, Independent Psychologist recommended that given Student's PTSD, he/she requires a small and supportive school environment where PTSD triggers can be better anticipated and avoided. In the fall of 2020, DCPS sought to conduct its own psychological evaluation of Student and, in December 2020, threatened to stop considering Student eligible for special education and related services due to the Parents' refusal to provide unconditional consent for the DCPS evaluation. However, in summer 2021, DCPS elected to proceed with Student's triennial eligibility meeting and the August 3, 2021 IEP annual review meeting without conducting its own formal evaluations.

As discussed above in this decision, Independent Psychologist testified at the due process hearing that a large general education school environment would be overwhelming for Student. He stated that the appropriate class size for Student would be 5 to 10, or up to 15, students. Independent Psychologist explained that larger class sizes would interfere with communication and feedback between the teacher and

Student and make it difficult for the teacher to monitor Student's social interaction in class.

DCPS' expert, School Psychologist, explained in her testimony that the DCPS members of the August 2021 IEP team decided to reduce Student's Specialized Instruction to 5 hours outside and 10 hours inside the general education setting in order to maximize the level of support offered Student while providing him/her the least restrictive environment placement. However, School Psychologist, testified that she had no objection to the substantive components of Independent Psychologist's January 18, 2021 psychoeducational evaluation, which stated that Student requires a small and supportive school environment.<sup>3</sup> I find that DCPS has failed to provide a "a cogent and responsive explanation" for the decision of the August 11, 2021 CIEP team to override the placement and classroom setting recommendations made in the January 18, 2021 independent psychoeducational evaluation report – which was the only recent psychological evaluation before the IEP team – and to place Student instead nearly full-time in the general education setting at City School 1.

Private SLP opined in her hearing testimony that the August 11, 2021 IEP, which did not provide for speech and language services, was inappropriate because, *inter alia*, it did not address Student's speech-language needs. In a December 13, 2020 speech and

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<sup>3</sup> School Psychologist's only objection to the January 18, 2021 psychoeducational evaluation was the omission of a classroom observation. At the time the evaluation was conducted, Student was not attending school in-person due to the Covid 19 pandemic.

language assessment report, Private SLP had recommended that Student receive individual speech and language services twice weekly in 45-60 minute sessions, targeting skills in developing auditory memory strategies, language-formulation and organization in spoken language, use of organizational supports to foster oral and written language organization, linguistic executive functioning skills, receptive and expressive syntax; and social pragmatic language skills. At the due process hearing, the DCPS witnesses did not explain the District's decision to not provide speech and language related services in DCPS' proposed August 11, 2021 IEP, contrary to the recommendation contained in Private SLP's December 13, 2020 speech and language assessment report.

I conclude that DCPS has not met its burden or persuasion that the decisions of the August 2021 CIEP team, to change Student's educational placement to the general education setting and not to provide Student IEP speech and language services, was reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances. This was a denial of FAPE.

#### Private School Reimbursement

Under the D.C. Circuit's holding in *Leggett v. Dist. of Columbia, supra*, school districts must reimburse parents for their private-school expenses if: (1) school officials failed to offer the child a FAPE in a public or private school; (2) the private-school placement chosen by the parents was otherwise proper under the IDEA; and (3) the

equities weigh in favor of reimbursement. *Id.*, 793 F.3d at 66-67. In this decision, I have found that DCPS did not meet its burden of persuasion that it offered Student a FAPE with its August 13, 2020 or August 11, 2021 IEPs or the school location chosen to implement the August 9, 2019 IEP. I conclude, therefore, that DCPS failed to offer Student a FAPE in a public or private school for the 2019-2020, 2020-2021 and 2021-2022 school years.

I turn, next, to the other two requirements for tuition reimbursement pronounced in the *Leggett* decision – that the private school chosen by the parents, Private School 3, was proper and that the parents did not otherwise act unreasonably. Analogizing to the standard for IEP appropriateness from the U.S. Supreme Court’s *Rowley* decision, the D.C. Circuit held in *Leggett* that for the private school chosen by the parents to be proper, it need be “reasonably calculated to enable the child to receive educational benefits.” *Leggett, supra*, at 71. In *L.H. v. Hamilton Cty. Dep’t of Educ.*, 900 F.3d 779 (6th Cir. 2018), the Sixth Circuit Court of Appeals explained the requirements which a private school must satisfy to be found appropriate for reimbursement purposes after the *Andrew F.* decision:

[E]ven though the IDEA’s requirements do not apply to private schools, *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. at 13-14, for reimbursement purposes, the private school must satisfy the substantive IEP requirement, *i.e.*, it must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*, 137 S.Ct. at 999. . . . *see also C.B. v. Garden Grove Unified Sch. Dist.*, 635 F.3d 1155, 1159 (9th Cir. 2011) (“To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every



special service necessary to maximize their child’s potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.”) (quoting with approval *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 365 (2d Cir. 2006) ).

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

The Parents have met that burden in these consolidated cases. The evidence establishes that Private School 3 is a small private college preparatory day school in suburban Maryland. Although Private School 3 is not certified as a special education school, most or all of its students are neurodiverse, have learning disabilities or other mental health issues. Private School 3 offers small class size and a low student to staff ratio. Private School 3 is not on OSSE’s “approved list” but the private school need not meet the full public school standards. *See* 34 C.F.R. § 300.148 (“A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by [state and local education agencies].” (codifying *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 at 13-14, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993))).

By all accounts, Student has made outstanding educational and behavioral progress at Private School 3. Student has earned top grades, made new friends and is on

track to graduate with his/her class. School honors include Student's being named president of the National Honor Society chapter. I find that Petitioners have shown that their choice of Private School 3 for the three school years at issue was reasonably calculated to enable Student to make appropriate progress, and was therefore proper under the *Leggett/L.H.* standards.

Lastly, the *Leggett* decision requires that the "equities weigh in favor of reimbursement — that is, the parents did not otherwise act 'unreasonabl[y]." *Leggett*, 793 F.3d at 67. Reimbursement may be "reduced or denied" if the parents failed to notify school officials of their intent to withdraw the child or otherwise acted unreasonably. *Leggett, supra*, 793 F.3d at 63. The Parents gave timely notice to DCPS prior to the start of the 2019-2020, 2020-2021 and 2021-2022 school years that they did not believe that DCPS had offered Student a FAPE, that Student would attend Private School 3 for each of the respective school years and that they would seek tuition reimbursement from the District. *See* 34 C.F.R. § 300.148(d).<sup>4</sup>

The annual tuition cost at Private School 3 is currently \$35,000. DCPS has not shown this rate is out of line with other private day schools in the region or that the parents otherwise acted unreasonably in unilaterally placing Student at Private School

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<sup>4</sup> The cost of reimbursement may be reduced or denied if at the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense.

3. I find that under the *Leggett* criteria for reimbursement, DCPS must reimburse the Parents for their tuition and related expenses for Student to attend Private School 3 for the 2019-2020, 2020-2021 and 2021-2022 school years.

The parents also seek reimbursement for their costs for school transportation and private speech and language services procured for Student. For school transportation, the Parents claim entitlement to reimbursement for Student's Metro fees and the Parents' personal vehicle expenses for driving Student to and from Private School 3. The hearing record does not adequately establish what transportation expenses the Parents incurred. I will order DCPS to reimburse the Parents for reasonable school transportation expenses for Student, in accordance with DCPS requirements, for which they provide satisfactory documentation.

Lastly the Parents seek reimbursement for their payments to Private SLP over the three school years at issue. In this decision, I have found that the evidence did not establish that DCPS' proposed IEPs for the 2019-2020 and 2020-2021 school years were not appropriate for want of speech and language services. For the 2021-2022 school year, I have found that DCPS did not provide an explanation for the CIEP team's decision not to provide speech and language services in the August 11, 2021 IEP, when such services had been recommended in the December 13, 2020 speech and language assessment report.

Private SLP recommended in her December 13, 2020 report that Student receive

individual speech and language services twice weekly in 45-60 minute sessions. The evidence establishes that from September through December 2021, the Parents paid Private SLP around \$2,600 for speech and language services provided to Student at her \$125.00 hourly rate. DCPS did not proffer evidence that the Parents acted unreasonably in securing private speech and language services for Student. I will, therefore, order DCPS to reimburse the Parents for documented payments to Speech-Language Pathologist in the 2021-2022 school year, at the rate of \$125 per hour, not to exceed two hours per school week. The parents are not entitled to reimbursement from DCPS for speech and language services obtained for Student in the prior school years.

**ORDER**

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

ORDERED:

1. Upon receipt of documentation of payment by the parents as may be reasonably required, DCPS shall, without undue delay, reimburse the parents their costs for covered tuition and transportation expenses for Student's enrollment at Private School 3 for the 2019-2020, 2020-2021 and 2021-2022 school years;
2. DCPS shall fund Student's tuition expenses and reasonable transportation expenses for Student to attend Private School 3 through the end of the private school's regular 2021-2022 school year;
3. Upon receipt of documentation of payment by the parents as may be reasonably required, DCPS shall, without undue delay, reimburse the parents for their payments to Private SLP for speech and language services provided to Student in the 2021-2022 school year through the date of this decision. DCPS shall continue to pay Private SLP's fees for such services, not to exceed \$125 per hour for up to two 60 minutes sessions per school

week, through the remainder of the 2021-2022 school year. This is without prejudice to the right of DCPS to conduct its own speech and language evaluation of Student and to terminate such payments for Private SLP's services, if based on the DCPS evaluation, Student's IEP team determines that speech and language services are not required to assist Student to benefit from special education. If the Parents do not timely provide written consent for DCPS to conduct a speech and language evaluation of Student, DCPS may immediately discontinue paying Private SLP for ongoing services.

4. All other relief requested by the Petitioners herein is denied.

Date: February 27, 2022

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  
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