

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

OSSE
Office of Dispute Resolution
February 13, 2024

PARENTS, on behalf of STUDENT, ¹)	Date Issued: February 13, 2024
)	
Petitioner,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2023-0158
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	
Respondents.)	Hearing Dates:
)	January 30 and 31, 2024
)	
)	

PARENTS, on behalf of STUDENT,)	
)	
Petitioner,)	
)	Hearing Officer: Peter B. Vaden
v.)	
)	Case No: 2023-0199
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
)	
Respondents.)	
)	
)	

HEARING OFFICER DETERMINATION
IN CONSOLIDATED CASES

¹ Personal identification information is provided in Appendix A.

INTRODUCTION AND PROCEDURAL HISTORY

These matters, consolidated before this hearing officer, came to be heard upon the Administrative Due Process Complaint Notices filed by Petitioner parents (the PARENTS) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In the first complaint (Case No. 2023-0158), the Parents claim that DCPS denied Student a free appropriate public education (FAPE) by not ensuring parental participation in the development of a November 3, 2021 Individualized Education Program (IEP), by offering an inappropriate IEP and by not fully implementing Student's IEPs in the 2021-2022 school year. In the second complaint (Case No. 2023-0199), the Parents claim that DCPS denied Student a FAPE by not responding to the Parents' request, in Case No. 2023-0158, for access to their child's education records. For relief, the Parents asked in both cases that the Student be awarded compensatory education and, in Case No. 2023-0199, that DCPS be ordered to provide copies of all requested records.

Petitioners' due process complaint in Case No. 2023-0158, filed on August 21, 2023, named DCPS as Respondent. The undersigned hearing officer was appointed on August 22, 2023. The parties met for a Resolution Session Meeting on October 10, 2023 and did not resolve the issues in dispute.

Petitioners' complaint in Case No. 2023-0199, filed on October 10, 2023, named

DCPS as Respondent. The undersigned hearing officer was appointed on October 11, 2023. The parties met for a Resolution Session Meeting for the second case on November 2, 2023 and did not resolve the issues in dispute.

On October 10, 2023, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters.

On September 1, 2023, DCPS filed its response and notice of insufficiency in Case No. 2023-0158. By a decision issued September 4, 2023, I determined that Petitioners' complaint was not sufficient. Petitioners filed an amended complaint in Case No. 2023-0158 on September 13, 2023. On October 19, 2024, over DCPS' opposition, I issued an order consolidating Case Number 2023-0158 and Case No. 2023-0199 for further proceedings before this hearing officer. On November 6, 2023, Petitioners filed a motion to amend their complaint in Case No. 2023-0199, which motion I granted by order issued November 14, 2023. On November 17, 2023, amended on December 5, 2023, Petitioners, by counsel, filed a motion to compel production of records by DCPS. By order entered December 29, 2023, I denied Petitioners' motion to compel. On January 12, 2024, Petitioners, by counsel, filed a motion to bifurcate the hearings in the consolidated cases, or, in the alternative, to end consolidation of cases, stay proceedings in Case No. 2023-0158 and proceed on Case No. 2023-0199 only. By order issued January 22, 2024, I denied this motion. On January 19, 2024, DCPS filed a motion to dismiss in Case No. 2023-0199, which I took under advisement. On January 22, 2024,

DCPS filed a motion to quash Notices to Appear served by Petitioners. By order issued January 26, 2024, I granted, in part, and denied, in part, DCPS' motion to quash. On November 11, 2024, I granted Petitioners' unopposed motion to extend the final decision due dates for both cases to February 16, 2023.

With the Parents' consent, the due process hearing for the consolidated cases was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on January 30 and 31, 2024. MOTHER appeared online for the hearing and was represented by PETITIONERS' COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL. Petitioners' Counsel made an opening statement. Petitioners called Mother as their only witness. DCPS called as witnesses CIEP MANAGER, OCCUPATIONAL THERAPIST, CES TEACHER, SOCIAL WORKER and SPECIAL EDUCATION COORDINATOR.

Petitioners' Exhibits P-1 through P-3, P-5, P-11 through P-18 and P-21 were admitted into evidence, all over DCPS' objections. I sustained DCPS' objections to Exhibits P-8 through P-10, and P-22 through P-27. DCPS' Exhibits R-1, R-2 in-part (Resumes starting at pages R-2-1, R-2-7, R-2-30 and R-2-32), R-3, R-4, R-6, R-6A and R-7 through R-9 and R-11 through R-15 were admitted into evidence, including Exhibits R-6, R-7 and R-11 admitted over Petitioners' objections. I sustained Petitioners' objections to Exhibits R-17 and R-18.

At the conclusion of Petitioners' case-in-chief on January 30, 2024, DCPS made a motion for a directed finding in its favor which I denied, in part, and took under advisement, in part. On January 31, 2024, after both parties had presented their cases, Petitioners' Counsel and DCPS' Counsel made oral closing arguments. There was no request to file written closings but the parties were granted leave until February 2, 2024 to submit citations to relevant authority. Both parties submitted lists of citations.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issues for determination in this case, as set out in the November 14, 2023 Second Amended Prehearing Order, and as amended by Petitioners' Counsel on the record at the hearing on January 30, 2024, are:

Case No. 2023-0158

- a. Whether DCPS denied the student a FAPE by developing an IEP on November 3, 2021, without parental participation;
- b. Whether DCPS denied the student a FAPE by providing an inappropriate IEP on November 3, 2021 IEP for the following reasons:
 - The IEP prescribed too few hours of specialized instruction; the IEP prescribed too few hours of occupational therapy; the IEP prescribed too large a classroom.
- b.1. Whether DCPS denied the Student a FAPE by making an inappropriate

placement location at CITY SCHOOL 2 for the 2021-2022 school year because City School 2 could not provide the student his/her required specialized instruction and related services from qualified providers in an appropriate setting.

c. Whether DCPS denied the Student a FAPE at City School 2 in the 2021-2022 school year by failing to provide all IEP specialized instruction and all speech-language pathology and behavioral support related services, and a classroom setting as small as prescribed in the IEP.

Case No. 2023-0199

d. Whether DCPS denied the student a FAPE by not providing copies of emails and redacted class rosters in response to the Parents' request, in Case No. 2023-0158, for access to their child's education records.

At the due process hearing, Petitioners, by counsel, withdrew with prejudice their claims that the November 3, 2021 IEP was inadequate because it did not prescribe ESY; did not prescribe transportation accommodations and prescribed insufficient calming strategies and equipment. The Petitioners also withdrew with prejudice their claim that DCPS denied Student a FAPE at City School 2 in the 2021-2022 school year by failing to provide all occupational therapy.

For relief, Petitioners request that DCPS be ordered to provide copies of all requested education records; that the hearing officer order, in the alternative, either that DCPS be ordered to provide the student appropriate compensatory education to remedy the harm caused by its alleged violations; or that DCPS determine appropriate compensatory education for the student at an appropriately staffed IEP meeting; or that DCPS fund an independent compensatory education evaluation, and

for the Parents' request for compensatory education be dismissed without prejudice to allow for the compensatory education issue to be litigated, if necessary, after the completion of the independent evaluation; and that the hearing officer order all other relief which the hearing officer deems appropriate.

FINDINGS OF FACT

Prior Judicial Proceedings

Multiple administrative and judicial proceedings under the IDEA have been brought by the Parents on behalf of Student in the past. In the most recent judicial decision, *J.T. v. District of Columbia*, No. CV 21-3002 (RBW), 2023 WL 8369938 (D.D.C. Dec. 4, 2023), United States District Judge Reggie Walton cited the factual background described in U.S. Magistrate Judge G. Michael Harvey's Report and Recommendation, which Judge Walton noted that the parties had not objected to. To avoid unnecessary duplication, for background, I will adopt the relevant findings of fact of fact from Magistrate Judge Harvey's report. *See J.T. v. District of Columbia.*, No. 21-CV-3002 (RBW/GMH), 2023 WL 9215177, at *1 (D.D.C. Jan. 4, 2023), (the Report and Recommendation).

Student is eligible for special education services as a student with autism spectrum disorder (ASD). Student has sensory processing issues; specifically, he/she is a sensory seeker for visual stimuli and an extreme sensory avoider for sounds. According to Mother, those issues, together with his/her motion sickness and difficulty

in self-regulation, make it difficult for him/her to tolerate road travel lasting longer than twenty minutes without becoming too upset to participate in school activities. Student attended a non-public day school for a number of years, until the school found in 2015 that it was no longer an appropriate placement for him/her. At that point, Mother sought an IEP from DCPS. That request spawned the first of a series of administrative due process complaints concerning Student's education. By the end of the regular 2019–2020 school year, Mother and DCPS reached an agreement that DCPS would provide virtual instruction to Student through a DCPS public school. That virtual instruction began in June 2020 and continued through the 2020-2021 school year. An IEP developed for Student in July 2020 provided 24 hours per week of specialized instruction, six hours per month of speech-language pathology, six hours per month of occupational therapy, and four hours per month of behavioral support services, all outside the general education setting; various consultation services; a maximum class size of nine students; a dedicated aide; and special education transportation on a DOT vehicle. On October 30, 2020, DCPS provided Student's parents a letter known as a "Location of Services" letter, or "LOS"—informing them that it had identified NONPUBLIC SCHOOL for Student. Student never enrolled at Nonpublic School and at the time of a December 2, 2020 IEP team meeting, Student was receiving instruction virtually from a DCPS school.

In his Report and Recommendation, Magistrate Judge Harvey considered four

claims by the parent —that Student was denied a FAPE (1) by the development of an IEP that was inappropriate because it did not include transportation accommodations, (2) by obstruction of the Parents’ opportunity to participate in the decision-making process about her child’s education, (3) by DCPS’ failure to identify a school for Student until months into the 2020–2021 school year and (4) by DCPS’ failure to produce records to the Parent. Magistrate Judge Harvey recommend that the Court grant summary judgment on each claim to DCPS. Report and Recommendation 2023 WL 9215177, at *1. In his December 4, 2023 decision in *J.T.*, Judge Walton accepted and adopted Magistrate Judge Harvey’s Report and Recommendation and granted summary judgment to DCPS. *Id.* at *15. Mother has appealed the District Court’s December 4, 2023 decision to the U.S. Circuit Court for the District of Columbia. Representation of Petitioners’ Counsel.

October 20, 2021 Hearing Officer Determination

In a due process proceeding brought by DCPS in August 2021 (Case No. 2021-0109), while the Parents’ appeal to the District Court in Case No. CV 21-3002 was pending, Impartial Hearing Officer Coles Ruff found in his October 20, 2021 Hearing Officer Determination (the October 20, 2021 HOD) that DCPS had made diligent efforts to convene an annual IEP meeting on July 30, 2021 and that the Parents refused to participate in that meeting, and their failure to attend was a sufficient basis for the hearing officer to order the Parents to attend an IEP meeting to update Student’s IEP for

the 2021-2022 school year

In his Findings of Fact in the October 20, 2021 HOD, Hearing Officer Ruff found, *inter alia*, that the Parents and DCPS agreed that Student would be provided instruction and related services virtually on an interim basis during the COVID-19 emergency, starting with Extended School Year (ESY) during summer 2020 and during the 2020-2021 school year, pending a final determination of an appropriate non-public separate school that could meet Student's needs; that Student attended the DCPS program at CITY SCHOOL 1, virtually, starting with ESY during summer 2020 through school year 2020-2021; that on July 19, 2021, DCPS sent Parents and their counsel a letter of invitation to hold Student's annual IEP meeting on July 30, 2021; that Petitioners' Counsel responded that an IEP meeting prior to a full and adequate evaluation of Student would be premature and counterproductive; that the DCPS team convened for the IEP team meeting on July 30, 2021 and that neither Parents, nor their counsel joined the virtual meeting to develop and review Student's IEP.

In his October 20, 2021 HOD Hearing Office Ruff ordered, as follows

1. Within fourteen (14) calendar days of the date of this order, DCPS shall convene an IEP meeting to review and update Student's IEP for SY 2021-2022, and it is further ordered that the Student's parents shall participate in that meeting.
2. DCPS is directed to update Student's IEP with any relevant data, even if Parents refuse to participate in the IEP meeting ordered in the provision above, and to convene another IEP meeting to review Student's IEP once Parents have provided DCPS the pending IEE report.

In a footnote to this order, Hearing Officer Ruff provided that “Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.” Exhibit P-12.

Hearing Officer’s Additional Findings of Fact

After considering all of the evidence received at the consolidated due process hearing in Case No. 2023-0158 and Case No. 2023-0199 on January 30 and 31, 2024, as well as the argument of counsel, my additional findings of fact are as follows:

1. Student, an AGE youth, resides with the Parents in the District of Columbia. Testimony of Mother.
2. In the 2021-2022 school year, Student was eligible for special education as a student with Autism Spectrum Disorder (ASD). Exhibit P-14.
3. Student’s July 30, 2020 IEP, as amended on October 29, 2020, provided for Student to receive 24 hours per week of Specialized Instruction Services, 360 minutes per month of Speech-Language Pathology, 360 minutes per month of Occupational Therapy and 240 minutes per month of Behavioral Support Services. The setting for all services was Outside General Education. The IEP provided that Student required the support of a dedicated aide for 6 hours per day and that due to the nature and severity of Student’s delays, he/she required specialized instruction in a highly structured small group setting (6-9 students). Exhibit P-13.
4. For the 2020-2021 school year, the Parents chose to enroll Student at City

School 1 in an online virtual program, even though Student's DCPS IEP provided for Student to attend a nonpublic day school. Nonpublic School was the special education day school identified by DCPS for Student. Testimony of CIEP Manager.

5. As of August 2021, Student's location of services, assigned by DCPS, was the in-person program at Nonpublic School, a private special education day school. Testimony of CIEP Manager. Student never attended Nonpublic School. Testimony of Mother.

6. At the start of the 2021-2022 school year, DCPS offered a virtual instruction option for students who met medical eligibility requirements. Parents were required to complete an online registration and submit a form signed by their physician stating the child had a medical condition that required virtual learning. Hearing Officer Notice.

7. On August 17, 2021, Petitioners' Counsel sent an email to DCPS stating the following: "While the parties remain in dispute regarding the appropriate school for [Student], the [Parents] remain interested in collaborating to mitigate the harm to the family. In lieu of a school all parties agree upon, the [Parents] are interested in temporary distance learning at a DCPS school beginning this fall if that is available. Please let us know if that is a possibility." Exhibit P-2.

8. By email to Petitioners' Counsel of August 24, 2021, CIEP Manager wrote that virtual instruction required medical documentation and because the medical

eligibility requirements for Student had not been met, the family had two choices: namely, enroll Student at Nonpublic School, which continued to be Student's location of service, or DCPS could hold an IEP meeting to discuss services and placement to determine if Student needed a Less Restrictive Environment. CIEP manager queried whether the family would enroll Student at Nonpublic School or wanted to hold an IEP meeting. Exhibit P-2.

9. By email of August 30, 2021, Mother wrote CIEP Manager that she would like to decline Nonpublic School and instead would like to enroll Student in the DCPS virtual learning program for the fall 2021 semester. Mother asserted that Student had a medical condition and that his/her physician had confirmed and signed the necessary medical documents as required by DCPS. Mother requested CIEP Manager to help her to enroll Student in the DCPS virtual learning program that day.

10. On September 1, 2021, DCPS' Coordinator, Student Health Services, (COORDINATOR) wrote Mother by email that as long as Student had an IEP, he/she would be all set and that students that are enrolled in virtual learning with an IEP will get instruction directly from the school. Exhibit P-2.

11. On September 7, 2021, Coordinator wrote Mother by email confirming that Student had been approved for virtual learning since August 31, 2021. Coordinator wrote further that if your student does not have a device (laptop, tablet) to access their classes online, you can reach out to the school for which you completed enrollment

forms to receive a device; Since your child is in a self-contained program, the school of record, City School 1, will provide the IEP instruction and related services. Exhibit P-2.

12. By email of September 9, 2021, CIEP Manager wrote mother that Student would be attending the CES classroom at City School 2 virtually and that Mother needed to complete the enrollment process for Student at City School 2. Exhibit P-2.

13. On September 10, 2021, CIEP Manager met virtually with Mother to review what virtual instruction for Student at City School 2 would be set up. Exhibit P-2.

14. By email of October 20, 2021, Petitioners' Counsel wrote CIEP Manager that he understood that DCPS intended to provide Student instruction and services remotely; that City School 2 had not been providing Student "anything close to [his/her] prescribed instruction and services;" that there had been very many deficiencies, but at the most basic level, the assigned class was not a distance learning class of the type Student attended the prior year, but was clearly an in-person class in which Student was "a spectator at best." Petitioners' Counsel requested CIEP Manager to let them know how DCPS intended to educate Student, accommodating his/her current medical exemption. Exhibit P-2. On that day, the October 20, 2021 HOD was issued. On October 26, 2021, CIEP Manager wrote the Parents and counsel to try to schedule the IEP meeting for Student on November 3, 2023. Exhibit P-2.

15. In an email to the Parents dated October 26, 2021, CIEP Manager

informed the Parents that DCPS was looking to hold Student's annual IEP meeting on November 3rd, 2021, at either 12:00 p.m. or 1:00 p.m., and asked which time would work best for them. Exhibit R-6. On October 27, 2021, DCPS issued by email a Letter of Invitation (LOI) to the Parents for a meeting to conduct an annual review of the student's IEP, by teleconference, for November 3, 2021 at 12:00 p.m. Exhibit R-6A. Petitioners' Counsel responded by email on November 1, 2021 that the proposed IEP meeting times on November 3, 2021 would "not work for us." Petitioners' Counsel asked what other days would work for DCPS and requested that DCPS provide at least two different days, as opposed to consecutive hourly slots on the same day. Petitioners' Counsel noted that the October 20, 2021 HOD extended the DCPS deadline to hold the IEP meeting for delays caused on the Parents' side. In a separate email sent on November 1, 2021, Petitioners' Counsel warned CIEP Manager that if DCPS developed an IEP at a meeting scheduled without the Parents, they would contest it on that basis. Exhibit R-6.

16. After receiving Petitioners' Counsel's November 1, 2021 emails stating that DCPS' proposed IEP meeting times on November 3, 2021 would not work, DCPS elected to move forward with the IEP meeting on November 3, 2021. This was the 14th calendar day after the November 20, 2021 HOD. The Parents did not participate. Testimony of CIEP Manager.

17. The DCPS attendees at the November 3, 2021 IEP meeting developed a

revised annual IEP for Student in the Parents' absence. The November 3, 2021 IEP identified Reading, Mathematics, Written Expression, Social-Emotional-Behavioral Development, Adaptive-Daily Living Skills, Communication-Speech and Language and Motor Skills-Physical Development as areas of concern for Student. The IEP provided for Student to receive 20 hours per week of Specialized Instruction and, for related services, 360 minutes per month of Speech-Language Pathology, 240 minutes per month of Occupational Therapy, and 240 minutes per month of Behavioral Support Services. The IEP also provided for Consultation Services, including 60 minutes per month of Speech-Language Pathology, 60 minutes per month of Occupational Therapy and 60 minutes per month of Behavioral Support Services. The IEP further provided for a dedicated aide for 6 hours per day and a host of Other Classroom Aids and Services. For Student's Least Restrictive Environment, the IEP stated that Student required specialized instruction in a structured small group setting. Exhibit R-7.

18. Up to November 3, 2021, the proposed placement at Nonpublic School was still available for Student. Testimony of CIEP Manager.

19. DCPS' proposed November 3, 2021 IEP was for in-person learning. No one at DCPS said that Student should enroll in distance learning. DCPS never provided a Distance Learning Plan for Student. Testimony of CIEP Manager.

20. On November 19, 2021, DCPS issued a Prior Written Notice to the Parents, stating, *inter alia*, that in compliance with the October 20, 2021 HOD, the IEP team

held the annual IEP meeting for Student on November 3, 2021 at 12:00 p.m. and that it was necessary to update Student's IEP with the information collected during the 2020-2021 school year to program appropriately for Student; that Hearing Officer Ruff ordered on August 6th, 2021 [*sic*] that DCPS shall convene an IEP meeting to review and update Student's IEP for the 2021-2022 school year and to update Student's IEP with any relevant data, even if Parents refused to participate in the IEP meeting; and that the Parents refused to attend the IEP meeting on November 3, 2021 and the team proceeded as ordered. Exhibit R-12.

21. On November 19, 2021, DCPS sent the Parents a location of services (LOS) letter stating that Student's location of services to implement the November 3, 2021 IEP would be the Communication & Education Support (CES) program at City School 2. Exhibit R-12. The maximum class size in the CES program at City School 2 was 8 students. Testimony of CIEP Manager.

22. Student's online services at City School 2 had many problems. Student was not able to log in to the CES classroom. Student was the only distance learning student and he/she could only view the teacher and the blackboard – not the rest of the class. Student could not follow the teacher in class and Mother had to work with him/her. There were no visual aids or instructions for Student. It was difficult to communicate with the dedicated aide because the aide did not have a computer to be on line with Student or the class. Eventually, in December 2021, at Mother's request,

Mother and the classroom teacher made an arrangement for the teacher to send paper copies of the core academic material home and Mother educated Student with the materials provided by the teacher. Testimony of Mother.

23. For Speech and Language Services in the 2021-2022 school year, Student's IEPs prescribed 360 minutes per month of Speech-Language Pathology (SLP). Assuming a 36-week school year, this would amount to some 3,240 minutes of SLP services for the school year. The DCPS Service Trackers indicate that Student was provided some 2,640 minutes of SLP services over the regular school year. Student was reported to have missed 140 minutes of SLP services due to student absences. Exhibits P-18, R-4.

24. Student has been enrolled in PUBLIC CHARTER SCHOOL, a separate local education agency, since the fall of the 2022-2023 school year. Student's services at Public Charter School are provided online. That is working very well for Student. Testimony of Mother, Testimony of CIEP Manager.

25. By email of September 13, 2023 to DCPS' Counsel, Petitioners' Counsel requested copies of Student's educational records, including all educational records created or modified, or added to his/her records since May 2021 and all emails regarding Student and/or the Parents created at any time. Exhibit P-5.

26. DCPS does not routinely collect and maintain emails in its special education data base with the exceptions of certain emails, for example, if a parent sent

an email requesting an evaluation, which would be maintained on a case-by-case basis. Class rosters are not considered school records and are not provided in response to record requests. Testimony of SEC.

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

ANALYSIS

- a. Did DCPS deny the student a FAPE by developing an IEP on November 3, 2021, without parental participation? (Case No. 2023-0158)

b. Did DCPS deny the student a FAPE by providing an inappropriate IEP on November 3, 2021 because the IEP prescribed too few hours of specialized instruction, the IEP prescribed too few hours of occupational therapy and the IEP prescribed too large a classroom? (Case No. 2023-0158)

b.1. Did DCPS deny Student a FAPE by making an inappropriate placement location at City School 2 for the 2021-2022 school year because City School 2 could not provide the student his/her required specialized instruction and related services from qualified providers in an appropriate setting.² (Case No. 2023-0158)

The Parents' primarily claims in this case go to the appropriateness of DCPS' November 3, 2021 IEP for Student, developed by the DCPS IEP team, without the Parents' participation. DCPS contends that the IEP was appropriate based on information available to the IEP team at the time the IEP was developed. I find that Mother, through her own testimony, made a *prima facie* showing that the IEP was not appropriate. Therefore, DCPS must bear the burden of persuasion as to the IEP's appropriateness. I conclude that DCPS did not meet that burden because the District did not show that at the time the IEP was developed, it was specially designed to meet Student's unique need for an online learning educational placement.

U.S. District Judge Rudolph Contreras explained in *Middleton v. District of*

² At the due process hearing on January 31, 2024, I informed the parties that I deemed Issue b.1. to refer to the placement of Student at City School 2 after the November 3, 2021 IEP team meeting. Upon further review of the September 13, 2023 Amended Due Process Complaint Notice in Case No. 2023-0158 and the November 6, 2023 Amended and Consolidated Due Process Complaint, I believe this ruling was incorrect. For purposes of this decision, I deem the allegations in Issue b.1 to date to Student's placement at City School 2 on or about September 9, 2023. See Finding of Fact 12, *supra*.

Columbia, 312 F. Supp. 3d 113 (D.D.C. 2018), how a court or a hearing officer must assess an IEP:

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

Middleton at 128.

Procedural Compliance

Petitioner alleges that DCPS failed to comply with IDEA procedures because it held the November 3, 2021 annual IEP review meeting without the Parents. DCPS convened the November 3, 2021 IEP meeting to comply with the October 20, 2021 HOD. In that decision, Hearing Office Ruff ordered:

1. Within fourteen (14) calendar days of the date of this order, DCPS shall convene an IEP meeting to review and update Student’s IEP for SY 2021-2022, and it is further ordered that the Student’s parents shall participate in that meeting.
2. DCPS is directed to update Student’s IEP with any relevant data, even if Parents refuse to participate in the IEP meeting ordered in the provision above, and to convene another IEP meeting to review Student’s IEP once Parents have provided DCPS the pending IEE report.

In a footnote to the order, Hearing Officer Ruff provided that “Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner

shall extend the timelines on a day for day basis.” On October 26, 2021, CIEP Manager informed the Parents, by email, that DCPS was looking to hold Student’s annual IEP meeting on November 3rd, 2021, at either 12:00 p.m. or 1:00 p.m., and asked which time would work best for them. On November 1, 2021, Petitioners’ Counsel responded to CIEP Manager by email that the proposed IEP meeting times on November 3, 2021 would “not work for us.” Petitioners’ Counsel asked CIEP Manager what other days would work for DCPS. DCPS decided to hold the IEP team meeting on November 3, 2021 anyway, and the Parents did not attend.

For all IEP team meetings, the IDEA expressly requires that the LEA take steps to ensure that the parents are present or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

34 CFR § 300.322(a). An IEP meeting may only be held without the parent present if the public agency is unable to convince the parent to attend and if the agency kept a record of its attempts to arrange and agree on a mutually convenient time and place.

See *Jalloh v. District of Columbia*, 968 F.Supp.2d 203, 211 (D.D.C. 2013).

The Parents’ attendance at IEP meetings was at issue in Case No. 2021-0109. In her hearing testimony, CIEP Manager explained her understanding that Hearing Officer

Ruff's order in the October 20, 2021 HOD directed DCPS to update Student's IEP by November 3, 2021, even if the Parents refused to participate in the IEP meeting. But the evidence in this case does not show that the Parents refused to attend an annual IEP meeting after the October 20, 2021 HOD issued – only that Petitioners' Counsel requested that the meeting not be held on November 3, 2021. Moreover, any DCPS concern about not holding the meeting within the 20 calendar days set in the HOD should have been alleviated, since Hearing Officer Ruff specified that a delay in meeting the timelines that resulted from the Parents' action or inaction would extend the timelines on a day for day basis. There was no evidence at the hearing that after receiving the November 1, 2021 email from Petitioners' Counsel requesting a different meeting day, DCPS attempted to arrange and agree on a mutually convenient time and place. *See Jalloh, supra*. I find, therefore, that DCPS' holding the November 3, 2021 IEP team meeting without the Parents was a procedural violation of the IDEA. *See, e.g., J.N. v. District of Columbia*, 677 F. Supp. 2d 314, 321 (D.D.C. 2010) (citing with approval Ninth Circuit Court of Appeals finding that refusing to reschedule an IEP meeting at the parents' request represents a significant procedural defect.)

Procedural violations may be deemed a denial of FAPE if, *inter alia*, the procedural inadequacies significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child. *See* 34 CFR

§ 300.513(a)(2)(ii). Conduct by the District that seriously infringes upon the parents' opportunity to participate in the IEP formulation process will result in a denial of a FAPE. *See, e.g., A.I. ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 164 (D.D.C.2005).

At the November 3, 2021 IEP team meeting, the DCPS representatives made significant changes to Student's IEP without the Parents' input – notably, changing the hours of Specialized Instruction Services from full-time to 20 hours per week and changing Student's educational placement from a special school to a special class in a regular public school. I find, therefore, that the Petitioners have met their burden of persuasion that DCPS' proceeding with the November 3, 2021 IEP team meeting, without the Parents' participation, resulted in a denial of FAPE to Student because it significantly infringed upon the Parents' opportunity to participate in the IEP decision-making process.

Substantive Compliance

U.S. District Judge Beryl Howell explained in *A.D. v. District of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570 (D.D.C. Mar. 8, 2022), how a hearing officer should evaluate the appropriateness of an IEP:

A “free and appropriate public education,” or “FAPE,” is delivered by local education authorities through a uniquely tailored “individualized education program,” or “IEP.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 993-994 (2017); *see also* 20 U.S.C §§ 1401(9)(D),

1412(a)(1). To be IDEA-compliant, an IEP must reflect “careful consideration of the child’s individual circumstances” and be “reasonably calculated to enable the child to receive educational benefits,” *Andrew F.*, 137 S. Ct. at 994, 996 (cleaned up), “even as it stops short of requiring public schools to provide the best possible education for the individual child,” *Z.B. v. District of Columbia*, 888 F.3d 515, 519 (D.C. Cir. 2018). An IEP is also required to “set[] out, in writing, the student’s existing levels of academic and functional performance, establish[] appropriate goals, and describe[] how the student’s progress toward those goals will be measured.” *Id.* Moreover, it is “imperative that, to ‘the maximum extent appropriate,’ public schools provide students with disabilities an education in the ‘least restrictive environment,’ “ *id.* at 528 (quoting 20 U.S.C. § 1412(a)(5)(A)), which, as recently emphasized by the Supreme Court, “requires that children with disabilities receive education in the regular classroom whenever possible,” *Andrew F.*, 137 S. Ct. at 999. An IEP failing to satisfy these statutory directives may be remedied through an IDEA claim to the extent the IEP “denies the child an appropriate education.” *Z.B.*, 888 F.3d at 519.

A.D., 2022 WL 683570, at *1. “[W]here a plaintiff challenges an IEP as inadequate at its inception . . . , a court must analyze that question as of the time that the IEP was offered to the student, ‘rather than with the benefit of hindsight.’” *Edward M.-R. v. District of Columbia*, 660 F. Supp. 3d 82, 144 (D.D.C. 2023), quoting *Z.B. v. District of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018).

Petitioners claim that DCPS’ November 3, 2021 IEP placement of Student at City School 2 was inappropriate because, among other reasons, City School 2 could not provide Student his/her required specialized instruction in an appropriate setting. I agree. On August 31, 2021, Student had been approved by DCPS’ Student Health Services for virtual education for the entire fall semester of the 2021-2022 school year.

As of November 2021, Student was only attending school online. In fact, Student had attended school online since summer 2020, when he/she attended the ESY program at City School 1. Apparently ignoring that Student was approved for virtual education, the November 3, 2021 IEP team provided for Student to receive specialized instruction in a structured small group setting at City School 2 – that is, the IEP proposed an in-person placement.

As the Supreme Court pronounced in *Endrew F., supra*, a focus on the particular child is at the core of the IDEA and the instruction offered must be “specially designed” to meet a child’s “unique needs.” *Id.*, 580 U.S. at 400, 137 S. Ct. at 999. I conclude that DCPS’ proposal of an in-person educational placement for Student – when the District was fully aware that Student was certified by a physician to require virtual learning – was not specially tailored to meet Student’s unique needs. DCPS’ proposed educational placement for Student in the November 3, 2021 IEP was therefore not appropriate and this was a denial of FAPE.

Petitioners also alleged that the November 2, 2021 IEP was inappropriate because it prescribed too few hours of specialized instruction and occupational therapy (OT) services. The IEP provided for Student to receive 20 hours per week of Specialized Instruction Services and 240 minutes per month of OT services. DCPS’ special education experts, CIEP Team Manager and CES Teacher, opined that the proposed

special education services were appropriate for Student. Occupational Therapy testified that the IEP OT service minutes appropriately balanced Student's OT needs with his/her need to be in the classroom with his/her peers. Petitioner did not offer expert testimony on Student's need for more special education or occupational therapy services. I conclude that DCPS met its burden of persuasion that the provisions in the November 3, 2021 IEP for Specialized Instruction and OT services were appropriate for Student.

c. Did DCPS deny the Student a FAPE at City School 2 in the 2021-2022 school year by failing to provide all IEP specialized instruction, speech-language pathology, and behavioral support related services; and a classroom setting as small as prescribed in the IEP? (Case No. 2023-0158)

Student's July 30, 2020 IEP, as amended on October 29, 2020, provided for Student to receive 24 hours per week of Specialized Instruction Services, 360 minutes per month of Speech-Language Pathology, 360 minutes per month of OT and 240 minutes per month of Behavioral Support Services. The proposed setting for this IEP was Nonpublic School, a special education day school. The November 3, 2021 IEP provided for Student to receive 20 hours per week of Specialized Instruction Services, 360 minutes per month of Speech-Language Pathology, 240 minutes per month of OT and 240 minutes per month of Behavioral Support Services. The proposed setting was in person, in the CES classroom at City School 2. The Parents allege that during the 2021-2022 school year, DCPS did not fully implement these IEPs' Specialized Instruction, Speech-Language and Behavioral Support services or provide a sufficiently

small classroom setting.

For the 2021-2022 school year, the Parents elected to have Student attend DCPS classes virtually and never enrolled Student at Nonpublic School or sent Student to in-person classes at City School 2. Since the 2022-2023 school year, Student has been enrolled in Public Charter School, a separate local education agency. I, therefore, consider the Parents' claim that DCPS did not provide a small enough classroom setting at City School 2 to be moot.

With regard to Specialized Instruction Services, the hearing record does not establish how many hours of services were available to Student online in the 2021-2022 school year before December 2021, when Mother apparently gave up on virtual special education and decided that she would teach Student herself using materials the CES classroom teacher sent home. For Behavioral Support Services, Social Worker testified that she was pretty consistent with Student's services and this testimony was not rebutted by the Parents. I conclude that Petitioners did not meet their burden of persuasion that DCPS failed to implement the specialized instruction or behavioral support services specified in Student's 2021-2022 school year IEPs.

For Speech and Language Services, Student's IEPs prescribed 360 minutes per month [90 minutes per week] of Speech-Language Pathology (SLP). Assuming a 36-week school year, this would amount to some 3,240 minutes of SLP services for the

2021-2022 school year. The DCPS Service Trackers indicate that Student was provided some 2,640 minutes of SLP services over the regular school year. Student was reported to have missed 140 minutes of SLP services due to student absences. I calculate, therefore, that over the 2021-2022 school year, DCPS failed to provide Student some 470 minutes out of 3,240 minutes of prescribed IEP SLP services. This amounts to approximately a 15% shortfall.

U.S. District Judge Rudolph Contreras explained in *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 (D.D.C. 2018), that a material failure to implement substantial or significant provisions of a child’s IEP may constitute a denial of FAPE.

A school district “must ensure that . . . special education and related services are made available to the child in accordance with the child’s IEP.” 34 C.F.R. § 300.323(c)(2). A material failure to implement a student’s IEP constitutes a denial of a FAPE. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268–69 (D.D.C. 2013). To meet its burden, the moving party “must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP.” *Beckwith v. District of Columbia*, 208 F.Supp.3d 34, 49 (D.D.C. 2016) (quoting *Hous. Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). “Generally, in analyzing whether a student was deprived of an educational benefit, ‘courts . . . have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.’ “ *Id.* (quoting *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011)).

Middleton at 144.

According to data in the November 3, 2021 IEP, Student’s receptive and

expressive language delays impacted his/her ability to progress in the general education curriculum. Student continued to need and benefit from visual/verbal cues/prompts to independently follow complex directions and understand instruction in order to complete classroom activities. According to the IEP, Student's expressive language skills were improving. During sessions, Student had been observed to use his/her oral and written language skills to protest and request. Student had also typed emails and sent texts to the speech-language pathologist to express remorse and/or protest.

At the due process hearing, Petitioner did not call a speech and language expert or other professional to testify about the goal and import of the hours of SLP services that were not provided. DCPS also did not call a speech and language witness. Student's IEP teams envisioned that Student would receive SLP services in the school setting. Unfortunately, in the virtual setting, Student had very limited opportunity to communicate with classroom peers and express him/herself verbally during group activities, an area impacted by Student's disability.

On this evidence, and considering that Student did not go to school for in-person SLP services, I conclude that Petitioners have not established that DCPS' failure to provide some 15% of Student's SLP services over the 2021-2022 school year deprived Student of substantial educational benefit.

d. Did DCPS deny Student a FAPE by not providing copies of emails and redacted class rosters in response to the Parents' request, in Case No. 2023-0158,

for access to their child's education records. (Case No. 2023-0199)

The only issue for determination asserted in Case No. 2023-0199 is whether DCPS denied Student a FAPE by not providing Petitioners' Counsel access to all of Student's education records, as previously requested by counsel in Case No. 2023-0158. Prior to the due process hearing, most of the requested records were apparently provided. However, DCPS did not provide copies of all emails regarding Student or the Parents or redacted class rosters, which had been requested by Petitioners' Counsel.

Under the IDEA and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, a child's local education agency (LEA) must permit parents to inspect and review any education records relating to their child with a disability, that are collected, maintained, or used by the agency. *See* 34 C.F.R. §§ 300.613(a), 300.501(a); *Friendship Edison Public Charter School Collegiate Campus v. Murphy* 2006 WL 2711524, 4 (D.D.C. 2006). The DCMR provide that the parent of a child with a disability shall be given the opportunity to inspect, review, and copy all of the child's records relating to the identification, evaluation, and educational placement, and the provision of FAPE. *See* 5A DCMR § 3030.1.

In a prior administrative proceeding concerning this student, Case No. 2018-0264, Impartial Hearing Officer Keith Seat analyzed the issue of whether DCPS' internal email communications and/or email communications "directly related to a student"

between or among DCPS and the Office of the State Superintendent of Education, [PRIVATE SCHOOL], or others should be included in Student's "education records" or otherwise produced in connection with the then-pending due process hearing. In an Order Denying Petitioners' Motion for Education Records, Hearing Officer Seat determined that there were a number of reasons for not requiring DCPS emails to be provided to parents in that case or other routine cases, including,

(a) the volume of emails that would need to be reviewed and processed, (b) the need to redact personally identifiable information about all other students in emails provided, (c) the intrusion into DCPS's internal deliberative processes, (d) the need to screen emails for attorney-client communications to avoid waiving the privilege, (e) the possible need to log withheld emails due to privilege, if moving into a discovery context, and (f) the desirability of keeping resources focused on education of children, rather than expanding litigation processes in the absence of a persuasive demonstration of the need for emails for a specific reason on a particular topic.

[Petitioners] v. District of Columbia Public Schools, Case No. 2018-0264, Order (ODR January 1, 2019), *citing* U.S. Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46645 (8/14/06) (noting the importance of adequately balancing the public agency's interest in controlling costs).

I find Hearing Officer Seat's well-reasoned analysis in the prior case concerning this student persuasive and I, likewise, find that the meaning of "education records," as used in 34 C.F.R. §§ 300.613(a) and 300.501(a) and 5A DCMR § 3030.1, does not encompass email communications regarding Student or the Parents unless those

records have been added to the LEA's special education student data system.

With regard to class rosters, SEC testified that such classroom rolls are not considered school records and are not provided in response to record requests. The Petitioners did not establish that class rosters were collected or maintained by DCPS as part of Student's education records.

I conclude that the Parents did not meet their burden of persuasion that DCPS denied Student a FAPE by failing to provide counsel copies of the requested email communications or class rosters. Since I have determined that those documents are not "education records" within the meaning of 34 C.F.R. § 300.613(a), the Parents are not entitled to copies of those documents.

Compensatory Education

For relief in this case, the Petitioners requested, *inter alia*, that Student be awarded compensatory education for the alleged denials of FAPE. In this decision, I have determined that DCPS denied Student a FAPE by proceeding with the November 3, 2021 IEP meeting without the Parents' participation and by offering an inappropriate in-person educational placement in the IEP, when Student was only attending school online. For relief for the denials of FAPE, the Petitioners request, alternatively, (a) that DCPS be ordered to provide compensatory education to remedy the harm caused the denials of FAPE found by the hearing officer; (b) that DCPS be ordered to determine

appropriate compensatory education for Student at an appropriately staffed IEP meeting³ or (c) that DCPS be ordered to fund an independent compensatory education evaluation and for the Petitioners' request for compensatory education to be dismissed without prejudice, to be litigated, if necessary, after the completion of the independent evaluation.

In his December 5, 2023 decision concerning this student in *J.T. v. District of Columbia, supra*, U.S. District Judge Walton pronounced the principles of compensatory education relief under the IDEA.⁴ Judge Walton wrote,

When a court finds that a school district has denied a student a FAPE under the IDEA, "it has 'broad discretion to fashion an appropriate remedy,' which can go beyond prospectively providing a FAPE, and can include compensatory education." *B.D. v. District of Columbia*, 817 F.3d 792, 798 (D.C. Cir. 2016) (*quoting Boose v. District of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015)). In assessing whether an equitable remedy should be provided, however, "[courts] must consider all relevant factors." *Branham v. District of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005) (*quoting Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 16 (1993)). This

³ Ordering Student's IEP team to determine appropriate compensatory education is not a permissible option. *See, e.g., D.C. Int'l Charter Sch. v. Lemus*, 660 F. Supp. 3d 1, 28 (D.D.C. 2023) (Hearing Officer may not delegate to IEP team his authority to determine appropriate compensatory education awards.)

⁴ Petitioners' Counsel argues that Judge Walton's decision should not be deemed persuasive because the Parents have appealed the decision to the D.C. Circuit. However, notwithstanding the Parents' appeal, the decision is a final judgment and may be considered by the hearing officer.

includes considering “the parties’ conduct” in fashioning an equitable remedy. *Reid*, 401 F.3d at 524. For instance, a court may consider “the school system reasonably ‘requir[ing] some time to respond to a complex problem,’ “ or if “[a] parent[‘s] refusal to accept special education delays the child’s receipt of appropriate services[.]” *Id.*

Typically, “[c]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide a FAPE to a student.” *Id.* at 523 (internal quotation marks omitted) (*quoting G ex rel. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295, 309 (4th Cir. 2003)). However, “[t]here is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Id.* at 524 (*quoting Parents of Student W. v. Puyallup School Dist., No. 3*, 31 F.3d 1489, 1497 (9th Cir. 1994)). Nevertheless, “the inquiry must be fact-specific and . . . the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Id.*

Moreover, “[e]ven if entitlement to an award is shown through a denial of a free and appropriate public education, it may be conceivable that no compensatory education is required for the denial of a FAPE either because it would not help or because the student has flourished in his current placement.” *Phillips ex rel. T.P. v. District of Columbia*, 932 F. Supp. 2d 42, 50 (D.D.C. 2013) (Walton, J.) (*quoting Cousins v. District of Columbia*, 880 F. Supp. 2d 142, 145 n.3 (D.D.C. 2012)). Indeed, “the weight of authority in this Circuit . . . recognizes that an award of compensatory education is not mandatory in cases where a denial of a FAPE is established.” *Id.* at 52 n.4; *see Reid*, 401 F.3d at 524; *see also B.D.*, 817 F.3d at 798 (“An appropriate compensatory education award must rely on individualized assessments, and the equitable and flexible nature of the remedy will produce different results in different cases depending on the child’s needs.” (internal quotation marks omitted)). . . .

Although the plaintiff need not prove that harm occurred to

establish a substantive violation of the IDEA and the subsequent denial of a FAPE to [Student], *see N.W. v. District of Columbia*, 253 F. Supp. 3d 5, 15–16 (D.D.C. 2017), to receive a compensatory education award, the plaintiff is required to show that she is entitled to a remedy that rectifies “[the] educational deficit created by [the defendant]’s failure over a given period of time to provide a FAPE to [Student]” *Reid*, 401 F.3d at 523. Because the plaintiff has failed to produce any evidence of harm, the Court concludes that “no compensatory education is required for the denial of a FAPE, given that [Student] has flourished in his current placement.” *Phillips*, 932 F. Supp. 2d at 50. Thus, the plaintiff has failed to “comply with the *Reid* standard [by] propos[ing] a well-articulated plan that reflects [Student’s] current educational abilities and needs and is supported by the record.” *Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt* (“*Nesbitt II*”), 583 F. Supp. 2d 169, 172 (D.D.C. 2008).

J.T., 2023 WL 8369938, at *13–15 (footnotes omitted). This latest administrative due process proceeding concerning Student was brought by the Parents, including Mother, who was also the plaintiff in the case decided by Judge Walton on December 5, 2023, and the Parents are represented by the same attorney. Because the *J.T.* decision concerned the same parties and is so recent, I find the Court’s compensatory education analysis to be on point and persuasive.

Notwithstanding Judge Walton’s admonition in *J.T.* that to receive a compensatory education award, the plaintiff is required to produce evidence of harm and propose a well-articulated compensatory education plan, the Petitioners in this case did not propose a compensatory education plan for Student, as was their burden. *See J.T.*, *supra*, n. 10 (The plaintiff has the burden to show that Student suffered “affirmative harm resulting from the particular IDEA violation.”) In fact, the Petitioners

elected to call no witnesses, except Mother, and did not proffer any probative evidence of the educational deficit or harm likely caused by DCPS' holding the November 3, 2021 IEP meeting in the Parents' absence, or resulting from the IEP team's proposing an in-person educational placement for Student, when, for medical reasons, the child was only attending school online. The hearing evidence did establish that at Public Charter School, where Student has been enrolled for the last two school years, online services are working very well for Student.

Because Petitioners have failed to demonstrate what compensatory education, if any, should be provided to Student for the denials of FAPE in this case, I will deny the Parents' request for a compensatory education award. *See J.T., supra* at *15 (“[B]ecause the plaintiff has failed to demonstrate what compensatory education should be provided to [Student] to remedy what she contends he has been denied, the Court therefore denies the plaintiff's motion for summary judgment on this issue.” *Id.*)

DCPS' Motion to Dismiss, Motion for Directed Finding

In this proceeding, I took under advisement DCPS' January 30, 2024 oral motion for directed findings and January 19, 2024 motion to dismiss in Case No. 2023-0199. In light of my findings and conclusions in this decision, I deny both motions.

