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OSSE  
Office of Dispute Resolution  
January 10, 2024

**Confidential**

<p>Parent <sup>1</sup> Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools (“DCPS”) Local Educational Agency (“LEA”</p> <p>Respondent.</p> <p>Case # 2023-0211</p> <p>Date Issued: January 10, 2024</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Date: January 8, 2024</p> <p>Counsel for Each Party listed in Appendix A</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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<sup>1</sup> Personally identifiable information is in the attached Appendices A & B.

## **JURISDICTION:**

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations (“DCMR”), Title 5 Chapter 5-A30.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student who is the subject of this proceeding (“Student”) resides in the District of Columbia with Student’s guardian (“Petitioner”). Student is currently in the \_\_\_ grade and attending a DCPS school ("School A"). Student has been identified as a child with a disability pursuant to IDEA with a disability classification of autism. At the end of school year ("SY") 2022-2023, DCPS conducted evaluations of Student and changed Student's course of instruction from diploma track to certificate track for SY 2023-2024. Student is currently assigned to a communications education support ("CES") classroom at School A.

Petitioner, seeking to ensure that Student’s educational programming is appropriate and tailored to meet Student’s individual needs, authorized an educational consultant to observe Student in the CES classroom at School A. Petitioner, through his attorney, requested DCPS and School A for the educational consultant to observe Student in Student's CES classroom at School A. School A agreed to the observation, but limited to the observation to a virtual observation and denied the request for an in-person observation.

On October 27, 2023, Petitioner filed a due process complaint (“DPC”) alleging, inter alia, that DCPS denied Student a free appropriate public education (“FAPE”) by denying the requested in-person classroom observation.

### **Relief Sought:**

Petitioner seeks an order directing DCPS to allow Petitioner's educational consultant, as his designee, to observe Student in person in the School A CES classroom.

### **DCPS’s Response to the Complaint:**

DCPS filed a response to the complaint on November 7, 2023. In its response, DCPS stated, inter alia, the following:

School A requires all classroom observations to be conducted virtually. This policy has been in effect for many years, and various classroom observations have been conducted in this manner.

Petitioner alleges that his educational consultant “will not be able to properly assess [Student’s] programming by a virtual observation.” However, other educational consultants from the same firm have conducted virtual observations in this manner and ultimately assessed a student’s programming based on this observation. Upon request, LEAs must provide timely access to a

student's current or proposed special education program to persons identified in 5 DCMR 3041.1. DCPS does not deny that the consultant is permitted to observe Student in the current or proposed special educational program and has agreed to the consultant's observation request.

Per the DCMR, the LEA is required to develop and issue a written policy regarding child observation. That has also been done in this case and sent to Petitioner's counsel. DCPS's visitor policy states, "The school principal has primary responsibility for ensuring visitor access in the school building.... The principal has the authority to deny access to any individual seeking to enter the school if the principal determines that the visitor's presence poses a danger or disruption to school activities, school instruction, or students and staff."

DCPS has not denied the observation request. DCPS has agreed to the observation request and offered two dates for the observation. The DCMR allows LEAs to impose conditions or restrictions on observations to maintain the safety and confidentiality of children and prevent disruption. 5 DCMR 3041.2(a).

Neither IDEA nor the DCMR requires an LEA to conduct observations according to an educational consultant's preference. DCPS is not violating Petitioner's rights under the IDEA. Petitioner has been an active participant in Student's programming and placement. DCPS has continually included Petitioner's thoughts and opinions when programming for Student. DCPS will continue involving Petitioner as an IEP team member. DCPS requests that all claims in the DPC be dismissed and all relief requested be denied.

### **Resolution Meeting and Pre-Hearing Conference:**

The parties participated in a resolution meeting on November 28, 2023. The parties did not resolve the due process complaint ("DPC") and did not elect to waive the remainder of the resolution period. The DPC was filed on October 27, 2023. The 45-day period began on November 27, 2023, and ends [and the Hearing Officer's Determination ("HOD") is due on January 10, 2024.

The undersigned impartial hearing officer ("IHO" or "Hearing Officer") convened a pre-hearing conference ("PHC") and issued a pre-hearing order ("PHO") on December 13, 2023, outlining, inter alia, the issue to be adjudicated.

### **ISSUES:**<sup>2</sup>

The issues adjudicated are:

1. Did DCPS constructively deny Petitioner's designee the opportunity to observe Student for reasons impermissible under the law?

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<sup>2</sup> The Hearing Officer restated the issue at the hearing, and the parties agreed that this was the issue to be adjudicated.

2. Did DCPS deny Student a FAPE by preventing Petitioner from meaningfully participating as a parent with the IEP process by denying Petitioner's designee from observing Student's CES classroom?

### **RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the testimony of the witnesses and the documents submitted in each party's disclosures (DCPS Petitioner's Exhibits 1 through 17 and Parent Respondent's Exhibits 1 through 8) that were admitted into the record and are listed in Appendix 2.<sup>3</sup> The witnesses testifying on behalf of each party are listed in Appendix B.<sup>4</sup>

### **FINDINGS OF FACT:**<sup>5</sup>

1. Student resides with Student's guardian, Petitioner, in the District of Columbia, and DCPS is Student's LEA. Student has been found eligible to receive special education services with a disability classification of autism. Student currently attends School A, a DCPS school. (Petitioner's testimony, Petitioner's Exhibit 10)
2. Student attended School A in \_\_\_\_ grade during SY 2022-2023. Student's individualized education plan ("IEP"), dated February 28, 2022, prescribed 20 hours per week of specialized instruction outside the general education setting in the specific learning supports ("SLS") program. In addition, the Student received 120 minutes per month of speech-language pathology and 120 minutes per month of behavioral support services, both outside the general education setting, and 30 minutes per month of occupational therapy on a consultative basis. The areas of concern outlined in Student's IEP were mathematics, reading, written expression, adaptive/daily living skills, communication/speech and language, emotional, social, and behavioral development, and motor skills/physical development. (Petitioner's Exhibit 12)
3. In January and February 2023, DCPS conducted the following evaluations of Student: comprehensive psychological reevaluation, comprehensive occupational therapy ("OT") evaluation, and a speech-language reevaluation. (Petitioner's Exhibits 12, 13, 14)

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<sup>3</sup> Any item disclosed and not admitted, or admitted for limited purposes, was noted on the record and is noted in Appendix A.

<sup>4</sup> Petitioner presented two witnesses: (1) Student's guardian, Petitioner, (2) Petitioner's Educational Consultant, qualified as an expert. Respondent presented three witnesses: (1) School A's Director of Specialized Instruction, qualified as an expert; (2) School A's Assistant Principal; and (3) a DCPS Resolution Specialist. The IHO found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the testimony of witnesses that the Hearing Officer found are addressed in the conclusions of law.

<sup>5</sup> The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within a parenthesis following the finding. A document is noted by the exhibit number. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately, the Hearing Officer may only cite one party's exhibit.

4. On June 3, 2023, School A convened an eligibility and annual IEP meeting for Student. Petitioner participated along with his attorney. The meeting was hybrid, with the School A team members in person and the remainder of the participants participating remotely. The team reviewed the recent evaluations of Student and agreed that Student would benefit from additional Applied Behavior Analysis ("ABA") support and more employability skills with a change from a diploma track to a certificate track and a move from the School A's SLS self-contained program to the CES program. (Respondent's Exhibit 1, 2, 3, 4)
5. On August 30, 2023, School A convened an IEP meeting for Student. Petitioner participated in the meeting along with his attorney and an educational consultant. The IEP maintained the same level and setting for specialized instruction and related services as Student's previous IEP, but reduced speech-language services from 120 minutes to 90 minutes per month. (Petitioner's Exhibit 10)
6. Petitioner's educational consultant began assisting Petitioner in June 2023. She reviewed student's educational records and participated in the August 30, 2023, IEP meeting. Because Student had been struggling with the grade level curriculum, the consultant made recommendations to the IEP team during the August 30, 2023, meeting and agreed that Student's move to the CES classroom was appropriate. (Witness 1's testimony)
7. Although Student's report cards indicate that Student is doing well, Petitioner is not confident that Student's education needs are being met due to Student's past failures at School A. Petitioner wanted his educational consultant's professional assistance to assess whether Student's educational programming is appropriate and tailored to meet Student's individual needs. (Petitioner's testimony, Witness 1's testimony)
8. During the August 30, 2023, IEP meeting Petitioner and his representatives requested an observation of the School A CES classroom to which Student's had been assigned. They were informed that the observation request should be made through the DCPS central office. (Petitioner's testimony)
9. On September 18, 2023, Petitioner's attorney contacted the representative at DCPS central office requesting the observation. The representative informed the attorney that she did not approve or disapprove observation requests, but the local school did that. However, her understanding was that School A only allowed virtual observations, not in-person observations. Any change in that policy would be left to the school. (Witness 2's testimony, Petitioner's Exhibit 6-2)
10. Petitioner's educational consultant emailed the DCPS representative her educational qualifications and requested to observe Student in English, math, or general explorations class in mid to late October. (Witness 1's testimony, Petitioner's Exhibit 6-1)
11. On September 19, 2023, Petitioner completed and provided to DCPS the form designating his educational consultant as the designee for observing the CES classroom on his behalf. (Petitioner's testimony, Petitioner's Exhibit 16)

12. On September 25, 2023, School A approved the observation and offered the following dates: October 31, 12:45 p.m., November 2, at 10:30 a.m., or November 7, at 2:15 p.m. In the email to Petitioner's attorney offering the observation dates, the School A representative noted the following: "Related to the observation, I was informed that observations are taking place virtually instead of in person. Additionally, the observer must be on a DCPS property (i.e. central office or a conference room at JRHS) to conduct the observation virtually. If this works, we can schedule your observation and have a DCPS representative accompany/host you." (Petitioner's Exhibit 7-1)
13. During October 2023, Petitioner's attorney made attempts through correspondence with DCPS personnel to secure an in-person observation. She was informed that the School A principal had decided in an effort to not interrupt instruction to allow only virtual observation and that School A had been conducting observations in this manner for a few years. She was also provided the official DCPS visitors guide booklet. (Petitioner's Exhibits 8, 9, 17).
14. Petitioner wants to know what might be distracting to Student in the current classroom and what Student is learning and what Student is not. Although School A allowed Petitioner's consultant to conduct a virtual observation, Petitioner did not agree with that limitation. Petitioner believes that a full grasp of Student's current educational setting requires an in-person observation and that his desire for the consultant to evaluate the setting and Petitioner's ability to be fully informed is being hindered. Petitioner was informed during a meeting with School A that the virtual observation was due to medical concerns of other children in the classroom. On October 27, 2023, Petitioner filed his DPC challenging the School A virtual-only observation policy. (Petitioner's testimony, Petitioner's Exhibit 1)
15. Petitioner's educational consultant is familiar with virtual classroom observations and conducted virtual observations during the COVID-19 pandemic. She effectively evaluated the setting during the virtual observations she conducted. However, the observations the consultant has conducted in DCPS schools of late, including a DCPS high school, were conducted in person. Based on her experience conducting virtual observations in the past, the consultant believed that the virtual observation at School A would only be able to view Student and not the entire classroom and any instruction or occurrences going on in all classroom areas. However, no one at School A described how the virtual observation would be conducted and did not inform her that she would only be able to view Student and not the entire classroom. (Witness 1's testimony)
16. Following the COVID-19 pandemic, School A's administrative team decided that only virtual classroom observations by outside individuals would be allowed. Following the pandemic, the virtual observations have been maintained at School A to protect students from outside persons to not compromise the health of the students, especially given the large number of students who attend School A. (Witness 3's testimony)
17. Academically, Student is doing well since the change to the CES classroom. There have been some social concerns, but School A staff have communicated closely with Petitioner. Some students in the CES classroom have auto-immune problems. In addition to concern

for students' health concerns, School A's virtual observation policy is designed to curb the foot traffic in the school building and to lessen the distractions to students in the classroom during the school day that might take away from the integrity of instruction. The School A director of specialized instruction is usually the person who will facilitate the virtual observation and handle the laptop computer used in the classroom for the virtual observation to ensure that both the student and the full classroom can be observed. She will typically conduct a debriefing following the observation to address any concerns the observer might have. She believes the virtual observation allows for an accurate depiction of what is going on in the classroom and with a student. (Witness 4's testimony)

18. The DCPS's official visitor policy states the following regarding school visits by non-school staff for observations of students with disabilities:

Classroom Observations for Students with Disabilities: Observations can be conducted by parents as stated in Section B above. Parent's designees and professionals completing evaluations of a student at the school will also be allowed to observe the child in the classroom. Professional evaluators conducting an assessment must present an authorization letter from the parent. The authorization letter should indicate what assessment the evaluator is conducting, and include the parent's signature giving permission to conduct the assessment of the student at school.

Third-party persons (including attorneys and educational advocates) who are not evaluators, Hearing Officer-designated experts, parents, or parent designee(s) shall not be allowed to observe classrooms while children are in the classroom. A parent of a child with a disability may appoint a designee to observe the child's current or proposed special educational program. This designee must:

- a. Have professional expertise in the area of special education being observed;
- b. Be necessary to facilitate an observation for a parent with a disability; or
- c. Be necessary to provide language translation assistance to a parent.

A parent-appointed designee may not represent the child or family in litigation related to the provision of a free and appropriate public education (FAPE) nor can the designee have a financial interest in the outcome of such litigation. A designee must agree in writing that they will not disclose nor use any information obtained during the course of an observation for the purpose of seeking or engaging clients in litigation against the District or the LEA. In addition:

- a. All security procedures in Section A, above, must be adhered to;
- b. All classroom observations must be scheduled prior to the day of arrival at the school;
- c. Prior to the in-class observations, any observer must complete and provide to the principal the Confidentiality Agreement (see Appendix);

- d.** In appointing a parent’s observer, the LEA may require advance notice and for the designation to be in writing, by completing the Observation Designee Form (see Appendix)2;
- e.** The parent, designee, or evaluator must act in such a manner that allows the regular school program to continue during the observation by refraining from engaging the attention of the teacher or other student(s) through conversation or other means;
- f.** The parent, designee, or evaluator may be accompanied by DCPS personnel at the discretion of DCPS;
- g.** Attorneys who are representing the parent’s child in litigation related to the provision of a free and appropriate education (FAPE) should only be in the school building to attend a student’s IEP meeting, to retrieve student records, or to speak with a member of the school staff. Attorneys have no legal right to observe any class and shall not be permitted to do so;
- h.** In all instances of professionals visiting the school for special education matters, an appointment should be made with the relevant school staff person, or an IEP meeting should be previously arranged, and notice issued to all relevant attendees;
- i.** School staff are under no obligation or requirement to meet with an attorney, educational advocate, or observer or to allow them access to the school, if prior arrangements have not been made and agreed upon; and
- j.** Other professionals, not explicitly described above, visiting the school for special education matters shall have no direct interaction with students, including the student who is the subject of the observation.

(Petitioner’s Exhibit 17)

### **CONCLUSIONS OF LAW:**

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (“FAPE”).

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child’s right to FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS’] procedural violations affected the student’s substantive rights.” *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--  
(a) Are provided at public expense, under public supervision and direction, and without charge;  
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved;



and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. *Schaffer v. West*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case, Petitioner held burden of persuasion on the issues adjudicated.

**ISSUE 1:** Did DCPS constructively deny Petitioner's designee the opportunity to observe Student for reasons impermissible under the law?

**Conclusion:** Petitioner sustained the burden of persuasion by a preponderance of the evidence on this issue.

The IDEA requires each LEA to ensure that the parents of each child with a disability participate in meetings with respect to the educational placement of their child. 20 U.S.C. Sect. 1414(e); 34 C.F.R. § 300.501. The placement decisions must be made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. §300.116(a).

IDEA allows states to create additional procedural and substantive protections if they are consistent with IDEA. *Middleton v. District of Columbia*, 312 F.Supp.3d at 122. If a state creates a higher standard, "an individual may bring an action under the federal statute seeking to enforce the state standard." *Id.* (quoting *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1035).

In 2014, the District of Columbia passed the Student Rights Act. The Act "provides district parents with additional procedural safeguards to help make sure parents have the tools they need to stay informed, engaged, and empowered throughout the special education process." See D.C. Council Comm. Rep. on B 20-723 (D.C. 2014) at 1. Recognizing that "parents who do not have a specific background in the subject area ... often cannot adequately evaluate whether their child's instruction is sufficient [and that] parents are concerned that an LEA may limit such access to the point that the observation is unable to provide meaningful input into their child's educational progress," the Student Rights Act expanded on a parent's "right to observe" under the IDEA...<sup>6</sup>

The Act (D.C. Code § 38-2571.03) states in pertinent part the following:

5(A) Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child's current to proposed special education program:

(i) the parent of a child with a disability; or

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<sup>6</sup> *Woodson, et al., v. District of Columbia*, 119 LRP 28316

(ii) a designee appointed by the parent of a child with a disability who has professional expertise in the area of special education being observed or is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent; provided, that the designee is neither representing the parent's child in litigation related to the provision of a free and appropriate public education for that child nor has a financial interest in the outcome of such litigation.

(C) A parent, or the parent's designee, shall be allowed to view the child's instruction in the setting where it ordinarily occurs or the setting where the child's instruction will occur if the child attends the proposed program.

(D) the LEA *shall not impose any conditions or restrictions on such observations except those necessary to:*

(i) Ensure the safety of the children in the program;

(ii) Protect other children in the program from disclosure by an observer of confidential and personally identifiable information in the event such information is obtained in the course of an observation by a parent or a designee, or

(iii) Avoid any potential disruption arising from multiple observations occurring in a classroom simultaneously.

(E) An observer shall not disclose nor use any information obtained during the course of an observation for the purpose of seeking or engaging clients in litigation against the District or the LEA.

(F) The LEA may require advance notice and may require the designation of a parent's observer to be in writing.

(G) Each LEA shall make its observation policy publicly available.

The protections of the Student Rights Act have been further clarified in the DCMR:

5A DCMR §3041.1 provides:

Upon request, the LEA shall provide timely classroom access, either together or separately, to the following persons for the purpose of observing a child's current or proposed special educational program:

(a) The parent of a child with a disability;

(b) A designee appointed by the parent of a child with a disability, that is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation, and:

(1) Who has professional expertise in the area of special education being observed so long as the LEA has written consent of the parent on file prior to the parent's designee's observation of a child; or

(2) Who is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent.

5A DCMR §3041.2 provides:

The LEA shall develop and issue a written policy regarding child observation as follows:

(a) The LEA shall not impose any conditions or restrictions on such observations except those necessary to ensure that:

(1) The safety of the children in a program is maintained;

(2) The confidentiality of the other children in the program is protected by prohibiting observers from disclosing confidential and personally identifiable information in the event such information is obtained in the course of an observation by the parent or a designee; and

(3) Any potential disruption to the learning environment arising from multiple observations occurring in a classroom simultaneously is avoided;

(b) The LEA policy may require advance notice of parent observation;

(c) The LEA policy may require the designation of a parent's observer to be in writing; and

(d) The LEA shall make its written policy regarding child observation publicly available.

DCPS has published its policy regarding school visits by non-school staff for observations of students with disabilities in a January 2017 document entitled School Visitor Policy, Chancellor's Directive 260.2, Version 2.0.

The facts in the case demonstrate that Student's educational placement was changed at School A from the SLS special education classroom to the School's CES classroom at the start of SY 2023-2024. Petitioner participated in the decision to change Student's educational placement and expressed no disagreement with the change. In the August 30, 2023, IEP meeting, Petitioner first inquired about an observation of Student's newly assigned classroom to assist him in determining whether Student's needs were being adequately met given Student's past failures at School A.

DCPS informed the Petitioner and his representatives who participated in the meeting that the request should be made to the DCPS central office. Petitioner followed with such a request and provided the necessary authorization for his educational consultant to observe the Student's classroom. The consultant met the requirements as Petitioner's designee for the observation. DCPS then provided dates for the observation. However, in verbal communication from the DCPS central office representative and in an email, DCPS, and School A informed Petitioner that his consultant's observation would be limited to a virtual observation and that an in-person observation would not be permitted.

DCPS witnesses testified that School A's limitation of observations to virtual observations has continued post-COVID-19 pandemic restrictions for the health and safety of students, to limit foot traffic in the school building, and to minimize disruptions to instruction. In addition, there was testimony that some students in the CES classroom have auto-immune conditions that warrant additional protection.

Although Petitioner's educational consultant presumed that a virtual observation would only focus on Student and not allow her to assess the appropriateness of Student's current educational setting fully and adequately, she acknowledged that during the COVID-19 pandemic she conducted virtual observations that were effective. The DCPS witness testified that the virtual observation would not be limited to only viewing Student and that she perhaps would be the individual to facilitate the virtual observation and control the laptop or other device used in the virtual

observation. Thus, she could ensure the entire classroom was visible. In addition, she would conduct an immediate debrief of the observation to address any concerns. However, this witness could not guarantee that she would be the person to facilitate the virtual observation. In addition, School A observation policy required that the observer be at DCPS central office and not at School A.

Although the testimony of the DCPS witnesses seems to express what could be a legitimate means of protecting the safety of students in School A, the evidence demonstrates that this School A policy of virtual observations goes beyond the restrictions in the Student Rights Act in the D.C. Code, the restrictions in the DCMR and the restrictions in DCPS's published policy.

Both the D.C. Code and the DCMR require that each LEA shall make its observation policy publicly available, and the DCMR requires that the policy be in writing. DCPS has put its observation policy in writing. That policy, after outlining the requirements for a non-school personnel observation, goes on to state:

- “i. School staff are under no obligation or requirement to meet with an attorney, educational advocate, or observer or to allow them access to the school, if prior arrangements have not been made and agreed upon; and
- j. Other professionals, not explicitly described above, visiting the school for special education matters shall have no direct interaction with students, including the student who is the subject of the observation.”

The IHO infers that this written policy presumes that any observation by non-school personnel will be in person. Although the IHO takes judicial notice that with COVID-19, there were no persons allowed in schools. However, that practice has long since ended. Neither party presented any evidence of a DCPS policy document that limited observations to virtual observations or one that superseded the policy document cited above.

Petitioner's educational consultant testified that she has conducted in-person observations in DCPS schools since the COVID-19 pandemic and that these observations were coordinated directly with the respective schools and not DCPS central office. Based on the evidence, the IHO concludes that School A's policy is unique to school A and based upon the decision of the School A administration. However, there is no evidence that School A's policy, with its increased restrictions, has been published or made available in writing as the law requires.

Consequently, the IHO concludes that Petitioner sustained the burden of persuasion by a preponderance of the evidence that School A in restricting Petitioner's designee to a virtual observation denied the consultant the opportunity to observe Student contrary to DCPS's published written policy and, therefore, for reasons that are impermissible under the law.

**ISSUE 2:** Did DCPS deny Student a FAPE by preventing Petitioner from meaningfully participating as a parent in the IEP process by denying Petitioner's designee from observing Student's CES classroom?

**Conclusion:** Petitioner sustained the burden of persuasion by a preponderance of the evidence that School A, by restricting Petitioner's designee to a virtual observation, significantly impeded Petitioner's opportunity to participate in the decision-making process regarding the provision of FAPE to Student.

As noted in *Woodson v. District of Columbia* 119 LRP 28316 (July 15, 2019) "The purpose of IDEA is to "ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." *M.G. v. District of Columbia*, 246 F.Supp.3d 1,7 (D.D.C. 2017) (citing 20 U.S.C. § 1400(d)(1)(A)).

Parents must have an opportunity to participate in the IEP process, and "procedural inadequacies that "seriously infringe upon the parents' opportunity to participate in the IEP formulation process ... clearly result in the denial of a FAPE." *Cooper v. District of Columbia*, 77 F.Supp.3d 32, 37 (D.D.C. 2014) (quoting *A.I. 3ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 164 (D.D.C. 2005)) (alteration in original). To ensure these requirements are followed, IDEA established procedural safeguards that allow parents to seek a review of IEP decisions they disagree with. See *Middleton v. District of Columbia*, 312 F.Supp.3d 113, 122 (D.D.C. 2018). Section 1415(f)(1)(A) provides "the parents or the local education agency involved in such a complaint shall have an opportunity for an impartial due process hearing ..."

Petitioner asserts that a virtual observation denies him the opportunity to view Student in the setting where Student receives instruction and special education services. Without this observation, Petitioner contends, Student cannot receive a FAPE because Petitioner is not able ensure that Student's IEP is appropriate and being implemented and, therefore, Petitioner is not able to meaningfully participate in Student's IEP team.

Although School A allowed Petitioner's consultant to conduct a virtual observation, Petitioner disagreed with that limitation. Petitioner believes that a full grasp of Student's current educational setting requires an in-person observation and that his right for his consultant to evaluate the setting and his ability to be fully informed is hindered by School A's restriction.

The D.C. City Council in the Student's Rights Act (D.C. Code § 38-2571.03) created additional rights to allow parents to observe their child's education placement and be a fully informed IEP team member.

As the Court noted in *Woodson v. District of Columbia* 119 LRP 28316 (July 15, 2019), the Student Rights Act "provides District parents with additional procedural safeguards to help make sure parents have the tools they need to stay informed, engaged, and empowered throughout the special education process." D.C. Council Comm. Rep. on B 20-723 (D.C. 2014) at 1. The Council report stated that observations are a "critical tool" for parents, and the ability to designate an observer was a "significant issue for special education ... as parents who do not have a specific background in the subject area ... often cannot adequately evaluate whether their child's instruction is sufficient." *Id.* at 3. At no point in the Report's discussion of "parental access to schools" does the Council discuss preventing the observer from being involved in litigation for the student they have observed. In addition, the legislative report indicates that the Act was meant to address the unequal

distribution of information between an LEA -- who "is typically the party who has access to all of the compliance information" -- and parents who "[must] procure more extensive, and expensive, legal services, including expert witnesses, in an effort to match the resources of the LEA." *Id.* at 4-5. While these quotes are addressing changes the Act made to the "Burden of Proof," under IDEA, this discussion further shows the importance the Council put on ensuring parents were on an equal footing with the school. Allowing only the school, and not the parents, to bring experts into due process hearings would go directly against this goal and would create additional expenses by forcing parents to retain a separate witness for litigation purposes.

Petitioner credibly testified that he wants to know what might be distracting to Student in the current classroom, what Student is learning, and what Student is not. Petitioner acknowledged that he did not have the requisite expertise to determine the appropriateness of Student's current placement in the CES classroom. He is somewhat jaded about School A's ability to meet Student's needs given Student's past failure at School A. As a result, Petitioner is relying upon the expertise of his educational consultant to observe the classroom and Student on his behalf to assist Petitioner in discerning whether Student is being provided a FAPE.

Although School A authorized Petitioner's educational consultant to observe Student's classroom virtually, this restriction was not only an impermissible restriction under law, it deprived Petitioner of fully and effectively evaluating the appropriateness of Student's current education placement. In sum, the evidence of this case demonstrates that School A, and thus DCPS, in denying Petitioner's request for an in-person observation, violates D.C. Code § 38-2571.03 and impeded Petitioner's opportunity to participate in the decision-making process regarding the provision of FAPE to Student.

### **Remedy:**

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11-12.) The Hearing Officer has concluded that Student was denied a FAPE by DCPS and has directed that DCPS in the order below remedy that denial.

### **ORDER:<sup>7</sup>**

DCPS shall, within ten (10) business days of the issuance of this order, grant Petitioner's designee access to School A to conduct an in-person observation of Student's current educational placement and CES classroom and shall comply with the requirements of D.C. Code § 38-2571.03 5(A), 5A DCMR §3041, and DCPS's published School Visitor Policy that was disclosed by the parties in this case.

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<sup>7</sup> Respondent's deadlines for compliance with any of the provisions of this order shall be extended on a day-for-day basis for any delay in compliance caused by Petitioner.

**APPEAL PROCESS:**

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

*/S/ Coles B. Ruff*

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**Coles B. Ruff, Esq.**  
**Impartial Hearing Officer**  
**Date: January 10, 2024**

Copies to:     Counsel for Petitioner  
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