

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
July 25, 2024

PARENT, on behalf of STUDENT, ¹)	Date Issued: July 25, 2024
)	
Petitioner,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2024-0093
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Date: July 22, 2024
Respondent.)	
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner parent under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the parent seeks relief for Respondent District of Columbia Public Schools' (DCPS) allegedly inappropriate educational placement of Student, following a prior hearing officer determination issued May 3, 2024.

Petitioner's Due Process Complaint, filed on May 17, 2024, named DCPS as Respondent. The undersigned hearing officer was appointed on May 20, 2024. The parties met for a Resolution Session Meeting on May 30, 2024 and did not resolve the

¹ Personal identification information is provided in Appendix A.

issues in dispute.

On May 28, 2024, Petitioner filed a motion to invoke “stay-put” for Student pursuant to the IDEA’s stay-put provision, 20 U.S.C. § 1415(j). By order issued June 4, 2024, I granted Petitioner’s stay-put motion.

On May 30, 2024, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. The due process hearing was set for July 22, 2024.

With the parent’s consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. The hearing, which was open to the public, was convened before the undersigned impartial hearing officer on July 22, 2024. MOTHER appeared online for the hearing and was represented by PETITIONER’S COUNSEL. Respondent DCPS was represented by DCPS’ COUNSEL. Counsel for the respective parties made opening statements. Petitioner called as witnesses MOTHER and EDUCATIONAL ADVOCATE. DCPS called GENERAL EDUCATION TEACHER as its only witness.

Petitioner’s Exhibits P-1 through P-36 were admitted into evidence, including Exhibits P-10 through P-13, P-21 and P-36 admitted over DCPS’ objections. DCPS’ Exhibits R-9, R-10, R-12, R-13, R-21, R-22 and R-41 were all admitted without objection. DCPS did not offer the remaining exhibits the agency disclosed prior to the hearing. After both parties had rested on July 22, 2024, Petitioner’s Counsel and DCPS’ Counsel made oral closing arguments.

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 June 3, 2024 Revised Prehearing Order, are:

A. Whether DCPS denied the student a free appropriate public education (FAPE) by predetermining the child’s educational placement and unilaterally moving the child to a full-time Communication and Education Support (CES) classroom on April 29, 2024, in advance of a May 3, 2024 Individualized Education Program (IEP) team meeting and contrary to an April 18, 2024 Hearing Officer Determination in which Impartial Hearing Officer Keith Seat determined that a proposed “hybrid” educational placement for Student, with 10 hours per week inside general education and 10 hours per week outside of general education in the CES classroom, was appropriate;

B. Whether DCPS denied the student a FAPE by developing an IEP on or about May 3, 2024, which provided for a full-time educational placement in a CES classroom that was inappropriate because it was not the Student’s least restrictive environment and the “hybrid” CES program was determined to be appropriate for the Student by the April 18, 2024 Hearing Officer Determination.

For relief, Petitioner requests that the hearing officer:

– Find that the full-time CES placement is inappropriate for the Student and order DCPS to implement, the hybrid general education/CES Classroom placement, including dedicated aide support, that had been determined to be appropriate in the April 18, 2024 HOD and

– Order DCPS to fund compensatory education and related transportation expenses for the denials of FAPE alleged in the complaint and require that DCPS ensure that compensatory education providers are paid in a timely manner.

FINDINGS OF FACT

Findings from April 18, 2024 HOD

Petitioner brought two prior due process complaints on behalf of Student. Both cases went to hearing and were resolved by hearing officer determinations. The second case, Case No. 2024-0006, was heard by Impartial Hearing Officer Keith Seat on April 8 and 9, 2024. Hearing Officer Seat issued a hearing officer determination on April 18, 2024 (the April 18, 2024 HOD). At the due process hearing in the present case, the respective parties' counsel agreed that this hearing officer may adopt relevant findings of fact from the April 18, 2024 HOD. I adopt, as relevant to this proceeding, the following findings of fact² made by Hearing Officer Seat:

A. For the 2023-2024 school years, Student was in GRADE A at CITY SCHOOL. Student could not sustain attention in class for more than a few minutes at a time, and did not fit in general education; Student was unsafe with materials and with his/her own body, hitting adults, throwing objects, damaging or breaking things and absconding. Student puts things in his/her mouth, which was also a safety issue.

B. Student could be aggressive. The week prior to the April 8-9, 2024 hearing, Student's classmates all had to be evacuated from the classroom to be safe from Student. Evacuation of the class happened once before in 2023/2024, as Student usually could be removed from the classroom when necessary.

C. Based on Student's cognitive and social-emotional functioning, Student has trouble accessing general education independently, and would benefit from specialized

² The April 18, 2024 HOD was admitted into evidence as Exhibit P-4.

instruction, substantial supports and accommodations to address specific needs.

D. Student distracts the other children in general education when expected to engage in a non-preferred activity. Student requires a lot to engage and pulls the general education teacher from working with other students; Student needs more support than any other child in the general education class; Student needs 1:1 all the time.

E. Student's May 3, 2023 IEP provided 10 hours/week of specialized instruction inside general education and 5 hours/week of specialized instruction outside general education, along with 60 minutes/month of Physical Therapy (PT) outside general education, 180 minutes/month of Occupational Therapy (OT) outside general education, 60 minutes/month of OT inside general education, 240 minutes/month of speech-language pathology (SL) outside general education, and 90 minutes/month of SL inside general education; Student was also provided 30 minutes/month of consultation for each OT and SL. In addition, a dedicated aide was to be provided 6.5 hours/day inside general education.

F. Student's special education classification was Developmental Delay.

G. Student's communication device needs to be accessible at all times inside general education. Student cannot use the device without assistance by an adult. Developmentally, Student is significantly below same age peers and can't participate with classmates due to Student's delayed expressive and language skills. Student was not engaging with peers, but participates in parallel play with adult facilitation. Student can say some words, but speech is challenging to adults not familiar with Student.

Student can participate in group activities for only 2 minutes at a time with significant support from an adult. Student needs 100% of the special education teacher's attention to be able to participate.

H. A psychological evaluation dated September 2, 2022 noted in the Behavior Assessment System for Children, Third Edition (BASC-3) teacher report that Student scored in the clinically significant range for scales assessing hyperactivity, attention problems, atypicality, and more, while the Parent report indicated that Student did not score in the clinically significant range for any clinical scales or any adaptive scales. The teacher reports for Adaptive Behavior Assessment System 3rd Edition (ABAS-3) placed Student's overall adaptive ability at >0.1 percentile and for the Gilliam Autism Rating Scale - Third Edition (GARS-3) in the very likely category for autism spectrum disorder. In the psychological evaluation's cognitive testing, administration of the Kaufman Assessment Battery for Children (KABC-II) was discontinued because Student could only attend to the test for minimal lengths of time. Student did not attend to testing stimuli generally and was nonverbal during the evaluation.

I. Formal assessments are not appropriate for Student. Informal preschool assessment on January 12, 2023 states that Student can identify most colors and the numbers 0, 1, 3 and 5. Student has had lots of support, but minimal growth. Student's education has been negatively impacted by Covid-19. Student has not been able to consistently participate in interventions.

J. DCPS Central Office observations in June 2022 and November 2022, to consider whether Student needed a dedicated aide, recommended that Student

be placed in a self-contained special education setting, which would be more suitable than a dedicated aide. The IEP team determined such a move would be appropriate.

K. DCPS proposed a draft IEP for Student at a December 6, 2023 IEP team meeting. The draft IEP noted that Student's behavior impedes learning, with Student "yelling, crying, hitting staff, throwing objects, and disruptive behavior in the classroom." The draft IEP proposed as specialized instruction 10 hours/week push-in and 5 hours pull-out, along with 1 hour/week of related services. Communication & Education Support ("CES") classroom placement was not included in the December 4, 2023 draft IEP. The parent had no concerns about the draft IEP, but didn't want CES at Student's young age. Parent felt Student had potential but was not being given support.

L. The school IEP team noted on December 8, 2023 that the parent disagreed with placing Student in a full-time self-contained setting; the school team reviewed present levels of performance (PLOPs), benchmark data, progress reports, formal evaluations, teacher reports/observations and parent input/reports; the school team decided on a compromise to more closely align services to what Student needed in order to promote academic growth.

M. Proposal for hybrid CES program for Student was not included in the December 4, 2023 draft IEP, but was raised late in the December 6, 2023 IEP meeting. Student's hybrid schedule continued general education push-in hours, while increasing pull-out from 5 to 10 hours/week in the CES program. DCPS would have fully removed Student from general education but for Parent's desire for general education for social-emotional reasons.

N. CES is more appropriate for where Student is now. CES is built for children like Student to be successful, with more 1:1 support. Student can shift back from the CES program to general education when ready.

O. Student's general education class size was 15 students with 2 adults, a dedicated aide for Student, and sometimes another service provider. CES is a smaller setting with more trained staff members and more scaffolding. City School had 2 CES classes for Student's grade, each with 4-6 students, a teacher and 2 paraprofessionals.

P. On March 31, 2023, Petitioner filed a prior due process complaint against DCPS, alleging a failure to implement Student's earlier IEPs by providing dedicated aides. In a June 22, 2023 hearing officer determination, Impartial Hearing Officer Coles B. Ruff noted that Student's IEPs required a dedicated aide only inside general education and reduced the dedicated aide hours on the IEP to the hours that Student was inside general education.

April 18, 2024 HOD Conclusions of Law/Order

With regard to the hybrid General Education/CES classroom educational placement proposed by City School for Student at the December 8, 2023 IEP team meeting, Hearing Officer Seat wrote that "[t]he heart of this case is whether Student should continue in general education despite many challenges or whether it would be more appropriate for Student to be shifted to a self-contained CES program, at least for a significant portion of the day." Hearing Officer Seat found that the IEP proposed for

Student at the December 8, 2023 IEP team meeting was appropriate for Student.³ The Hearing Officer concluded that the proposed IEP “required a hybrid CES program, along with other services, which can be provided in CES classrooms at [City School], where the undersigned is persuaded Student will benefit.” In the final order, Hearing Officer Seat dismissed all of the parent’s claims and requests for relief with prejudice.

Additional Findings of Fact

After considering all of the evidence received at the July 22, 2024 due process hearing in this case, as well as the argument of counsel, my additional findings of fact are as follows:

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

Testimony of Mother.

2. Student is eligible for special education as a child with a Developmental Delay (DD) disability. Exhibit P-26.

3. On April 24, 2024, after the April 18, 2024 HOD issued, City School officials informed FATHER that Student would be moved to a full-time CES program on April 29, 2024 and invited the parents to visit the program. The parents visited the CES classroom and met the CES teacher on April 26, 2024. Exhibit R-12, Testimony of

³ DCPS issued a prior written notice on December 8, 2023 that the City School IEP team proposed a hybrid schedule for Student to address his/her hours outside of the general education setting; that Student’s push in hours would continue in the general education setting with his/her current case manager, while his/her pull out hours would increase from 5 hours/week to 10 hours/week and be addressed with the City School self-contained teacher through the CES program. *See* Exhibit P-22. However City School did not revise Student’s May 3, 2023 IEP until May 4, 2024. It appears that because Petitioner invoked stay-put in Case No. 2024-0006, the hybrid schedule was not implemented until the stay-put order was issued in this case on June 4, 2024.

Mother.

4. On April 25, 2024, City School scheduled an IEP team meeting for Student for May 3, 2024. City School sent the parents a draft IEP in which City School proposed to place student, full-time, in the CES classroom and remove the dedicated aide provision from Student's IEP. Exhibits R-10, P-16.

5. On April 29, 2024, City School unilaterally changed Student's educational placement to full-time placement in a City School CES classroom, from the setting provided in the May 3, 2023 IEP, namely, 10 hours per week of specialized instruction inside general education and 5 hours per week of specialized instruction outside general education. Although on April 24, 2024, a school staff member informed Father of this upcoming "new placement," the change was made without convening an IEP team meeting and without obtaining the parents' written consent. Exhibits R-12, R-14, Testimony of General Education Teacher, Testimony of Mother.

6. By email to DCPS of April 29, 2024, Petitioner's Counsel objected to changing Student's placement and requested that DCPS implement the hybrid CES program, which Hearing Officer Seat had found was appropriate for Student in the April 18, 2024 HOD. Exhibit P-16.

7. City School convened a telephone IEP team meeting for Student on May 3, 2024. Mother and Petitioner's Counsel attended the meeting by telephone. The IEP team changed Student's educational placement to full time in the CES program classroom. The IEP team determined that Student would no longer require a dedicated aide, but that Student's current aide would provide interim support to Student for the

transition through the end of the 2023-2024 school year. Exhibit P-26. Mother did not agree with the IEP team's decision to change Student's placement out of the general education setting. Exhibit P-27.

8. In Student's general education classroom at City School, there were 15-16 children taught by a teacher and a paraprofessional aide. The adults cared very deeply for Student and provided him/her as much support as they could. Student would be safer with his/her body when engaged in a preferred activity. It was very, very challenging when it was time to transition Student away from a preferred activity and it sometimes took 2 to 3 adults to get Student to a place where he/she was ready to receive instruction. Student's attention span was very short. It was a constant battle for the instructors to keep Student engaged. Testimony of General Education Teacher.

9. In the general education classroom, it was difficult for Student to engage with same-aged peers, even though Student had an assistive technology (AT) device. It was like a parallel placement for Student. Student would play tag with peers on the playground, but the child did not play reciprocally. Testimony of General Education Teacher.

10. In the 2023-2024 school year, Student had not acquired the minimum skills needed to be assessed with DIBELS (Dynamic Indicators of Basic Early Literacy Skills) or the i-Ready online program for reading and mathematics. General Education Teacher made day-to-day informal assessments of Student. She did not see any measurable progress for Student over the 2023-2024 school year. Testimony of General Education Teacher.

11. For the 2024-2025 school year, Student would be in GRADE B. The Grade B general education classroom at City School would have up to 25 children, with only one adult. This setting would be even more challenging for Student who had not solidified Grade A skills. Testimony of General Education Teacher.

12. In Student's CES classroom at City School, there are 5 to 7 students and 2 teachers. The CES curriculum is much more accessible to students, and with fewer students in the class, the children are able to get much more attention and support than in the general education classroom. Testimony of General Education Teacher.

13. Petitioner filed her due process complaint in this proceeding on May 17, 2024. On May 28, 2024, Petitioner, by counsel, filed a stay-put motion seeking an order for DCPS to implement the hybrid general education/CES classroom placement determined appropriate by Hearing Officer Seat in the April 18, 2024 HOD. By order issued June 4, 2024, I granted Petitioner's stay put motion. Exhibit P-9.

14. After the stay-put order was issued, for the last 2 to 3 weeks of the 2023-2024 school year, Student educational placement at City School was the hybrid setting. Student's homeroom was the CES classroom and he/she transitions for 10 hours per week, 11:00 a.m. to 1:00 p.m. daily, to the general education classroom. Testimony of General Education Teacher.

15. When placed in the general education classroom up to that date, Student's class grades were 1's for all core academic subjects. The grade "1" means "Does Not Meet the Standard – The student does not yet (or rarely) demonstrates through work and class participation that they are meeting standards that have been introduced for

this content area.” Student’s grades after he/she was moved to the CES classroom were all 3’s (Meets the Standard). Exhibit P-34. Student did quite well and showed excellent progress after moving to the CES classroom after April 29, 2024. Testimony of General Education Teacher.

CONCLUSIONS OF LAW

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

Burden of Proof

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

ANALYSIS

A. Did DCPS deny Student a FAPE by predetermining the child’s educational placement and unilaterally moving the child to a full-time Communication and Education Support (CES) classroom on April 29, 2024, in advance of a May 3, 2024 IEP team meeting and contrary to an April 18, 2024 Hearing Officer Determination in which Impartial Hearing Officer Keith Seat determined that a

proposed “hybrid” educational placement, with 10 hours per week inside general education and 10 hours outside of general education in the CES classroom, for Student was appropriate?

B. Did DCPS deny the student a FAPE by developing an IEP on or about May 3, 2024, which provided for a full-time educational placement in a CES classroom that was inappropriate because it was not the Student’s least restrictive environment and the “hybrid” CES program was determined to be appropriate for the Student by the April 18, 2024 Hearing Officer Determination?

Student’s May 3, 2023 City School IEP provided for the child’s placement in the general education classroom, with 10 hours per week of specialized instruction inside general education and 5 hours per week of specialized instruction outside general education, along with other related and consultation services. On December 8, 2023, DCPS issued a prior written notice to the parents that the City School IEP team was proposing a hybrid schedule for Student, where the child would remain in the general education setting for part of the school day and spend 10 hours per week in the City School self-contained CES program. When the parents objected to the hybrid proposal and Mother filed her due process complaint in Case No. 2024-0006, DCPS continued Student’s May 3, 2023 IEP programming pursuant to the IDEA’s stay-put provision. In the April 18, 2024 HOD, Hearing Officer Seat determined that the hybrid placement proposed for Student by City School in December 2023 was more appropriate than the child’s remaining the general education setting.

On April 29, 2024, without convening an IEP team meeting and without obtaining the parents’ written consent, City School changed Student’s educational placement to full-time placement in a City School CES classroom. On May 3, 2024, City School convened an annual IEP review meeting at which, over Mother’s objection, the

IEP team changed Student's educational placement from the general education setting to full-time in the CES program classroom. Petitioner contends City School's April 29, 2024 placement of Student in the CES classroom violated the IDEA and that the subsequent decision of the IEP team to change Student's educational placement to the CES classroom in the May 3, 2024 IEP was inappropriate. DCPS maintains that City School's actions were supported by Hearing Office Seat's April 18, 2024 HOD. While I agree with Petitioner that City School's unilateral change of Student's educational placement to the CES classroom on April 29, 2024 violated the IDEA's procedural requirements, the substantive issue in this case is whether the full-time CES placement in the May 3, 2024 IEP was appropriate for Student. For the reasons explained below, I find that DCPS has met its burden of persuasion that the educational placement in the May 3, 2024 IEP was appropriate for Student and I conclude that City School's procedural violations did not deny Student a FAPE.

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

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

Middleton at 128.

The parent contends that City School failed to comply with IDEA procedures

when the school unilaterally moved Student from the general education setting to the CES classroom on April 29, 2024. I agree.

[The IDEA] mandates that “whenever the local educational agency . . . proposes to initiate or change . . . the educational placement of the child,” a parent must be sent prior written notice, which must feature, among other things, a description of the proposed action, a description of other options considered by the IEP Team, and some explanation of why the other options were rejected. *Id.* § 1415(b)(3), (c)(1). The intent of prior written notice is to “provide sufficient information to protect the parents’ rights under the Act” and to “enable the parents to make an informed decision whether to challenge the DCPS’s determination and to prepare for meaningful participation in the due process hearing on their challenge.” *Jalloh v. District of Columbia*, 968 F.Supp.2d 203, 213 (D.D.C. 2013) (quoting *Kroot v. District of Columbia*, 800 F.Supp. 976, 982 (D.D.C. 1992)).

Middleton v. District of Columbia, 312 F. Supp. 3d 113, 135 (D.D.C. 2018).

In this case, DCPS did not provide the required prior written notice to the parents before moving Student from the regular education classroom to the self-contained CES classroom on April 29, 2024. This was clearly a change in educational placement, because the child was being moved from a regular classroom setting to a more restrictive “special classroom.” *See* 34 C.F.R. § 300.115 (Continuum of alternative placements). City School also failed to convene Student’s IEP team to consider this setting change *before* the placement decision. This was also an IDEA violation. The IDEA regulations, 34 C.F.R. § 300.116(a), mandate,

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—

(1) Is 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; and

(2) Is made in conformity with the [least restrictive environment] provisions of this subpart, including §§ 300.114 through 300.118;

Id.

City School's failure to provide prior written notice to the parents before moving Student to the CES classroom on April 29, 2023 and its failure to convene an IEP team meeting to make the placement decision were procedural violations of the IDEA. *See, e.g., Cooper v. District of Columbia*, 77 F. Supp. 3d 32, 37 (D.D.C. 2014) ("A school's decision to change a child's placement before formulating an IEP is, at base, a procedural violation of the IDEA.") Where a procedural violation is established, "a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process on provision of FAPE, or caused the child to be deprived of educational benefits. An IDEA claim is 'viable only if [the] procedural violations affected the student's substantive rights.' *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)." *Briscoe v. District of Columbia*, No. CV 22-3365 (CKK), 2024 WL 1366760, at *8 (D.D.C. Mar. 31, 2024).

In this case, City School convened Student's IEP team to review and revise Student's IEP on May 3, 2024, just four days after moving Student to the CES classroom. Mother and Petitioner's Counsel participated in the meeting. On these facts, I find that Petitioner has not established that City School's failure to issue a prior written

notice and failure to convene Student's IEP team before changing Student's placement to the CES classroom significantly impeded the parents' opportunity to participate in the decision making process on provision of FAPE, or caused Student to be deprived of educational benefits. Therefore, while I find that DCPS did not comply with IDEA procedures in developing the May 3, 2024 IEP, I conclude that these procedural violations did not result in denial of FAPE to Student.

The parent also contends that City School violated the IDEA by predetermining Student's educational placement in the CES classroom in advance of the May 3, 2024 IEP team meeting. Deciding a student's educational placement and then changing an IEP to fit that placement—is a procedural violation of the IDEA. *See, e.g., Dixon v. Dist. of Columbia*, 83 F. Supp. 3d 223, 230 (D.D.C. 2015). In this case, on April 24, 2024, City School officials informed Father that Student would be moved to the full-time CES program on April 29, 2024 and invited the parents to visit the program. Mother and Father visited the classroom and met the CES teacher. Subsequently, at the May 3, 2024 IEP team meeting, Mother and Petitioner's Counsel requested that Student have the hybrid CES placement determined appropriate in the April 18, 2024 HOD, but the City School IEP team members concluded that the full-time self-contained placement in the CES program was most suitable for Student. On these facts, I find that although Mother objected to moving Student full-time to the CES program, the parents were afforded the opportunity to evaluate and participate in their child's educational placement. *See Sinclair on behalf of O.S. v. District of Columbia*, No. 19-CV-0434 (TSC), 2022 WL 2513501, at *3 (D.D.C. Feb. 9, 2022). Parents' participation does not

mean control or veto power. *See Blackman v. Dist. of Columbia*, No. CV 97-1629 (PLF), 2014 WL 12946244, at *4 (D.D.C. Jan. 8, 2014). This was not a case where the parents were denied meaningful input in the placement decision.

Turning next to the substantive prong of the *Rowley* inquiry, was the May 3, 2024 IEP reasonably calculated to enable Student to make progress in light of the child's circumstances? *See Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). In *A.D. v. Dist. of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570, (D.D.C. Mar. 8, 2022), U.S. District Judge Beryl Howell explained the IDEA's IEP requirement:

A "free and appropriate public education," or "FAPE," is delivered by local education authorities through a uniquely tailored "individualized education program," or "IEP." *Andrew F. ex rel. Joseph F. v. Douglas Cnty. 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 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. "[A]n IEP's adequacy thus 'turns on the unique circumstances of the child for whom it was created,' and a reviewing court should defer to school authorities when they 'offer a cogent and responsive explanation' showing that an IEP 'is reasonably calculated to enable the child to make progress appropriate in light of [her] circumstances.'" *A.D.* at *7, quoting *Andrew F.*, *supra*, 137 S. Ct. at 1001-02.

The parent made a *prima facie* showing, through the testimony of Educational

Advocate, that Student's educational placement in DCPS' May 3, 2024 IEP was not appropriate for the child. Therefore, DCPS must shoulder the burden of persuasion on the appropriateness of the IEP.

In her due process complaint, Petitioner contends that the City School IEP team's decision to place Student in the CES program was contrary to Hearing Officer Seat's decision in the April 18, 2024 HOD. I believe that the parent misreads that decision. In December 2023, DCPS had proposed the hybrid CES program for Student. The parent objected and claimed in her due process complaint in Case No. 2024-0006 that the hybrid placement was inappropriate because it was not Student's least restrictive environment. In the April 18, 2024 HOD, Hearing Officer Seat found that the CES program was more appropriate for where Student was then. Hearing Officer Seat concluded that DCPS met its burden of persuasion that Student would benefit from the hybrid CES program and that the IEP proposed by DCPS at the December 8, 2023 IEP team meeting was appropriate for Student.

In the HOD, Hearing Officer Seat was clear that "[t]he heart of this case [was] whether Student should continue in general education despite many challenges or whether it would be more appropriate for Student to be shifted to a self-contained CES program, at least for a significant portion of the day." Hearing Officer Seat was persuaded that the latter option was more appropriate, *i.e.*, shifting to the CES program for *at least* a significant portion of the day. However, Hearing Officer Seat did not order DCPS to implement a hybrid CES program or determine that the hybrid setting was Student's least restrictive environment. In any event, Hearing Officer Seat's task was to

consider the appropriateness of the hybrid CES proposal as of the time it was offered for Student in December 2023, not what Student might need in June 2024. *See, e.g., S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008) (Measure and adequacy of an IEP can only be determined as of the time it is offered to the student.)

As to the appropriateness of Student's full-time educational placement in the CES classroom in the May 3, 2024 IEP, Petitioner's expert, Educational Advocate, opined in her testimony that the hybrid CES placement was more appropriate for Student because it would allow Student to interact with typically developing peers for part of the day. However DCPS' expert, General Education Teacher, testified that in the general education classroom, it was difficult for Student to engage with same-aged peers, even though Student had an AT device. While Student would play tag with peers on the playground, the child did not play reciprocally.

General Education Teacher also explained that in the general education classroom, Student's attention span was very short. It was a constant battle for the instructors to keep Student engaged. It was "very, very challenging" when it was time to transition Student away from a preferred activity and it sometimes took 2 to 3 adults to get Student to a place where he/she was ready to receive instruction. Transitioning between the CES classroom and the general education classroom, pursuant to the stay-put placement, had also been very challenging for Student. General Education Teacher testified that based on her day-to-day informal assessments of Student, she did not see any measurable progress for Student over the 2023-2024 school year before the child

was moved to the CES program.

General Education Teacher opined that Student's placement, full-time, in the CES classroom was the best option for Student now. This was because the CES program had fewer children in the classroom with a lower student to teacher ratio and Student was able to get much more attention and support, and because the CES curriculum was more accessible to Student so that the child was better able to show off what he/she knows. General Education Teacher observed that Student seemed very happy in the CES program.

General Education Teacher was Student's teacher for most of the 2023-2024 school year. She had observed the child in both the CES and general education settings and she had regular interactions with the CES classroom teacher. I found her opinion more credible than that of Educational Advocate, who never met or assessed Student, never observed the child at school and did not communicate with Student's educators, or visit the City School classrooms. I conclude that DCPS has offered a cogent and responsive explanation showing that the City School IEP team's May 3, 2024 decision to place Student full-time in the CES classroom was reasonably calculated to enable the child to make appropriate progress and that, in this case, the school team's decision should be deferred to. *See A.D., supra* at *7.

In summary, while DCPS committed procedural violations of the IDEA in developing the May 3, 2024 IEP, Petitioner did not establish that these violations rose to a denial of FAPE. I conclude that DCPS established the appropriateness of Student's educational placement in the self-contained CES classroom in the May 3, 2024 IEP.

ORDER

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

ORDERED:

All relief requested by the Petitioner herein is denied.

Date: *Dated in Caption*

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

NOTICE OF RIGHT TO APPEAL

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

cc: Counsel of Record
Office of Dispute Resolution