

JURISDICTION:

The hearing was conducted, and this decision was made in accordance with the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17, 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, Title 5 Chapter 5-A30.

BACKGROUND AND PROCEDURAL HISTORY:

The student involved in this due process hearing ("the Student") resides with the Student's parent ("Petitioner") in the District of Columbia. The District of Columbia Public Schools ("DCPS") is the Student's local education agency ("LEA"). The Student was determined eligible for special education and related services under IDEA by DCPS on July 1, 2021, identified with a disability classification of multiple disabilities (“MD”), including visual impairment (“VI”), and other health impairment (“OHI”).

The Student was enrolled in a DCPS school (“School A”) during school year (“SY”) 2022-2023, where he/she also attended for SY 2023-2024, until Petitioner withdrew the Student from DCPS effective September 18, 2023. In July 2024, Petitioner enrolled the Student in a private school (“School B”) operating in the District of Columbia. Petitioner filed a due process complaint (“DPC”) on January 31, 2025, and an amended DPC on March 4, 2025, against DCPS² alleging denial of a free appropriate public education (“FAPE”) for, inter alia, allegedly developing an inappropriate individualized educational program (“IEP”), and failing to develop an IEP and proposing an educational placement for the Student for SY 2024-2025.

Petitioner requests a ruling that the Student was denied a FAPE for SY 2023-2024 and SY 2024-2025. Additionally, Petitioner asks for a determination that School B is an appropriate placement for reimbursement and an order directing DCPS to pay School B directly for the full cost of tuition and services provided to the Student at School B. Petitioner also seeks an order requiring DCPS to cover the costs of an independent educational evaluation (“IEE”), including assessments such as an independent psychological assessment, educational needs assessment, assistive technology (“AT”) evaluation, neuropsychological evaluation, and any other necessary evaluations by a qualified provider of the parent’s choosing at a reasonable market rate, along with any additional relief the hearing officer deems appropriate.

LEA Response to the amended DPC:

² Petitioner’s original DPC and amended DPC were filed against both DCPS and the Office of the State Superintendent of Education (“OSSE”), the state education agency (“SEA”). During the February 27, 2025, PHC, the IHO determined that the DPC explicitly alleged claims regarding only the extended school year following SY 2023-2024 and SY 2024-2025, and granted Petitioner authorization to file an amended DPC to expressly allege violations for the entire school year, not just the ESY period(s). Petitioner filed an amended DPC on March 4, 2024. On February 12, 2025, Counsel for the OSSE filed a motion to dismiss. On March 3, 2025, Petitioner filed an opposition to OSSE’s Motion. On March 10, 2025, the IHO issued an order granting OSSE’s Motion to Dismiss, concluding that neither Petitioner’s original DPC or the amended DPC cited specific violations of IDEA by OSSE.

DCPS filed a response to the amended DPC on March 20, 2025. In its response, DCPS stated, inter alia, the following:

DCPS denies that it failed to develop an appropriate IEP, placement, and location of services for the Student for SY 2023-2024, including the extended school year (“ESY”). On April 23, 2023, the Student’s IEP was updated to include ESY. Petitioner attended the April 2023 IEP meeting at which it was determined that the Student’s least restrictive environment (“LRE”) was a full-time setting in an early learning support (“ELS”) classroom, and the Student was eligible to receive ESY and transportation. The team relied on various sources of information in developing the IEP. DCPS asserts that the Student’s IEP was appropriate at the time developed and was reasonably calculated to enable the Student to make appropriate progress considering the Student’s circumstances.

At the beginning of SY 2023-2024, Petitioner withdrew from DCPS and did not seek a FAPE from DCPS after withdrawing the Student. DCPS did not receive a unilateral notice from Petitioners until June 21, 2024, one day before the end of the school year. The unilateral notice requested funding for ESY for SY 2023-2024. DCPS had no contact with the Student and was unable to determine whether School B was an appropriate location of service for SY 2023-2024 ESY.

The unilateral placement letter sent in June 2024 indicated that Petitioner was seeking placement for the 2023-2024 ESY and did not put DCPS on notice that Petitioner was seeking a FAPE for SY 2024-2025, including ESY. As stated above, the Petitioner did not indicate her intent to reenroll within DCPS for SY 2024-2025; thus, DCPS does not owe the Student a FAPE.

Notwithstanding the above, if it is determined that the unilateral placement letter is valid as notice for enrollment at School B for SY 2024-2025, including ESY, DCPS denies that it allegedly failed to develop an appropriate IEP and location for SY 2024-2025, including ESY. DCPS has not developed an IEP as it has not had access to the Student.

After the filing of the DPC, DCPS was put on notice that the Petitioner was seeking a FAPE. On or about February 26, 2025, DCPS requested a release of records so that it could begin the evaluative process. DCPS also informed the Petitioner that DCPS requires updated enrollment information and proof of DC residency, and sent an enrollment packet for completion. As of the filing of its response, Petitioner had not sent the required information, thus delaying DCPS’s ability to offer a FAPE.

DCPS denies that School B is an appropriate placement. The school does not possess a certificate of approval (“COA”) from the OSSE, and based on information and belief, the school does not possess the necessary special educators and service providers needed to implement the Student’s IEP.

At the time the Student was enrolled, School A could implement the Student’s IEP with fidelity; therefore, an alternative placement on the continuum was not required. DCPS denies that the Student was denied a FAPE by failing to provide an appropriate location. The Student was attending School A, an appropriate location of service. DCPS also denies that the Student was denied a FAPE by allegedly failing to provide appropriate or timely evaluations, failing to

recommend appropriate and necessary related services, and allegedly failing to address parent concerns in the IEP meeting and document them in the IEP.

Resolution Meeting and Pre-Hearing Conference:

Petitioner and DCPS participated in a resolution meeting on February 21, 2025, regarding the original DPC, and on March 18, 2025, for the amended DPC. The parties did not mutually agree to shorten the 30-day resolution period on either DPC. The amended DPC was filed on March 4, 2025, and the 45-day period began on April 4, 2025, and ended (and the Hearing Officer's Determination ("HOD")) was originally due on May 18, 2025. The parties were not available for the hearing dates offered, and requested later hearing dates. Petitioner filed a motion to continue the hearing and extend the HOD due date to June 9, 2025. At the conclusion of the hearing, Petitioner requested another extension of the HOD due date to file written closing arguments. The parties filed subsequent motions to continue, allowing for written closing arguments. The HOD is now due on July 3, 2025.

The IHO conducted a pre-hearing conference ("PHC") on the amended DPC on March 17, 2025, and on April 17, 2025, and issued a pre-hearing order ("PHO") on March 26, 2025, and a revised PHO on May 1, 2025, outlining, inter alia, the issues to be adjudicated.

The issues to be adjudicated are:

1. Did DCPS deny the Student a FAPE by failing to provide or recommend an appropriate IEP for the SY 2023-2024 including the extended school year period, because the April 21, 2023, IEP prescribed insufficient services in frequency and duration and did not include: (a) music therapy, (b) vision education services, (c) parent counseling and training, (d) an extended school day, (e) one-to-one nursing services (f) supplementary aids and service programs such as a one to one paraprofessional or a paraprofessional to assist the Student with school activities, or activities of daily living, (g) assistive technology services including augmentative and alternative communication ("AAC") devices, and training for school personnel, (h) a placement with similar peers rather than in a general education school, (i) specific special transportation to include wheelchair accessible transportation, paraprofessionals/nurse, climate control vehicle, or limited travel time, and (j) notation of the concerns raised by the Parent in relation to the needs of the Student?
2. Did DCPS deny the Student a FAPE, in violation of 5-A DCMR § 3005.2 & § 3005.4, by failing to provide the Parent any school location letter or prior written notice ("PWN") from the LEA/DCPS for the Student's placement for SY 2023-2024 and ESY?
3. Did DCPS deny the Student a FAPE by failing to, in advance of SY 2024-2025 and the extended school year period: (a) contact Petitioner to request or conduct evaluations or assessments of the Student, (b) send Petitioner a PWN or any communication to schedule an IEP meeting for the Student, (c) conduct an IEP meeting for the Student and develop or recommend any IEP for the Student (d) make any recommendations for an appropriate special education program and placement or appropriate school location for the Student?
4. Did DCPS deny the Student a FAPE by failing to respond to multiple records requests to which it has provided incomplete information in violation of 5A DCMR § 3030.1, or no

response in violation of 5-A DCMR §3020.3?

5. Did DCPS deny the Student a FAPE by committing the following procedural violations of the IDEA (some of which are duplicative of the issues described above):
 - (1) Provide Procedural Safeguards Notice,
 - (2) Conduct evaluation or reevaluation,
 - (3) Provide Parent with mandated notices, such as Meeting Notices, PWNs, IEPs, evaluations,
 - (4) Provide Parent with information on how to request an IEE at public expense,
 - (5) Acknowledge/listen to/accommodate Parent's concerns at the IEP meeting,
 - (6) Develop an IEP for each school year at issue,
 - (7) Identifying the Student's needs,
 - (8) Develop appropriate goals to match the Student's needs,
 - (9) Address the Student's management needs,
 - (10) Explain whether the Student is to be educated with non-disabled peers, and when,
 - (11) Conduct IEP meetings,
 - (12) Timely or actually conduct an annual CSE review and develop an IEP, and
 - (13) Timely or actually provide an appropriate school location notice?

6. Did DCPS deny the Student a FAPE by committing the following substantive violations of the IDEA (some of which are duplicative of the issues described above):
 - (1) the Student's disability and unique needs from that disability are not properly identified in the IEP,
 - (2) there were no current or appropriate evaluations done prior to the development of each IEP,
 - (3) the IEP does not fully explain each service the Student will receive and whether the teachers and providers are trained in that service,
 - (4) the IEP does not provide training for (a) assistive technology, (b) two-person transfers, (c) seizures, and other medical needs of the Student,
 - (5) the IEP does not reflect meaningful progress, nor does the level of progress correctly reflect the Student's potential,
 - (6) there are no appropriate accommodations on the IEP,
 - (7) it is not clear how classwork, testing, or curriculum are modified for this Student.
 - (8) the Student is not educated alongside appropriate peers,
 - (9) the failure to recommend appropriate and necessary related services, and,
 - (10) the failure to recommend appropriate related services in terms of frequency of duration?

7. Was/is School B an appropriate placement for the Student for SY 2023-2024 and ESY, and SY 2024-2025 and ESY? If so, should Petitioner be awarded reimbursement or direct funding for tuition at School B?

Due Process Hearing :

The Due Process Hearing was held on May 29, 2025, and May 30, 2025, using a video teleconference on the Microsoft Teams platform. The parties submitted written closing arguments on June 24, 2025.

DCPS Motion to Dismiss:

On May 21, 2025, DCPS filed a Motion to Dismiss the amended DPC, asserting that Petitioner had not proven that she is a resident of the District of Columbia and had not indicated her intent to return to DCPS. On May 27, 2025, Petitioner’s counsel filed a Response to the Motion to Dismiss. At the outset of the hearing, the motion was addressed, and prior to Petitioner’s resting her case in chief, DCPS acknowledged that by the second day of the hearing, Petitioner had met the requirements to prove residency in the District of Columbia. Based upon these representations by the parties made on the record, the IHO concluded that the Petitioner is a resident of the District of Columbia and that there was no longer any dispute as to the jurisdiction of the IHO to adjudicate the claims raised by Petitioner against DCPS in her amended DPC. Accordingly, DCPS’s Motion to Dismiss is hereby denied.

Relevant Evidence Considered:

The IHO considered the testimony of witnesses³ and the documents submitted in each party’s disclosures (Petitioners’ Exhibits 1 through 30, DCPS’s Exhibits 1 through 27) that were admitted into the record and are listed in Appendix 2.

Summary of Decision:

DCPS held the burden of persuasion on issue #1 after Petitioner presented a prima facie case on that issue. Petitioner held the burden of persuasion on all the remaining issues. DCPS met the burden of persuasion by a preponderance of the evidence on issue #1. Petitioner met the burden of persuasion by a preponderance of the evidence on issue #3, but did not meet the burden on all other issues. The IHO directed DCPS to conduct evaluations of the Student once parental consent is provided, develop an IEP for the Student, offer an educational placement, and reimburse Petitioner’s costs for the Student’s attendance at School B for SY 2024-2025, consistent with the rates prescribed by OSSE for private school tuition and related services.

Findings of Fact:⁴

³ Petitioner presented four witnesses: (1) an educational consultant to School B, (2) School B’s director of special education, (3) School B’s related services provider, and (4) the Student’s mother (Parent). DCPS presented two witnesses, (1) DCPS director of the centralized IEP team, who testified as an expert and (2) School A’s director of specialized instruction who also testified as an expert. The IHO found the witnesses credible unless noted otherwise in the conclusions of law. Any material inconsistencies in the testimony of witnesses identified by the IHO are discussed in the conclusions of law.

⁴ The evidence (documentary and/or testimony) that is the source of the Findings of Fact (“FOF”) is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained or the PDF page number of the entire disclosure document. When citing an exhibit that has been submitted by more than one party separately, the Hearing Officer may only cite one party’s exhibit.

1. The Student resides with the Student's parent, Petitioner, in the District of Columbia. DCPS is the Student's LEA. The Student was determined eligible for special education and related services pursuant to IDEA by DCPS Early Stages on July 1, 2021, identified with a disability classification of MD, including VI and OHI. (Parent's testimony, Respondent's Exhibits 4, 5)
2. The Student has several medical diagnoses, including cerebral palsy, cortical vision impairment ("CVI"), global developmental, intellectual, and physical delays. Student is non-verbal, non-ambulatory. Student depends on a wheelchair for mobility and a G-tube for feeding and nutrition, and electronic devices to assist her/him with communication. (Parent's testimony, Witness 3's testimony)
3. The Student was referred to DCPS Early Stages for initial evaluation as part of the transition process from OSSE Strong Start early intervention to special education services. Under an individualized family service plan ("IFSP"), the Student received physical therapy ("PT"), occupational therapy ("OT"), feeding therapy, and speech-language therapy. The Strong Start evaluators administered the Assessment, Evaluation, and Programming System-Second edition (AEPS) on January 15, 2021, and the Battelle Developmental Inventory-Second edition (BDI-2) on April 12, 2021.⁵ The results of the assessment indicated that the Student was functioning below the range for typically developing children in the adaptive domain at least a 50% delay in cognitive, adaptive, communication, and motor domains. (Respondent's Exhibit 1 pdf pg. 7)
4. DCPS Early Stages developed the Student's initial IEP for the Student on July 21, 2021, which included goals in the following areas: cognitive, vision, communication/speech-language, health/physical, motor skills/physical development. The IEP prescribed the following services: 20 hours per week of specialized instruction and an additional 120 minutes per month specialized instruction; 240 minutes per month of OT, 240 minutes per month of speech-language pathology ("SLP"), 240 per minutes month of PT, and the following consultative services: 60 minutes per month of adapted physical education and 60 minutes of specialized instruction. The IEP also prescribed transportation services and ESY. The IEP noted that the Student's disabilities impact his/her participation in the general education curriculum in the areas of adaptive daily living skills including toileting, eating and drinking and other self-care skills, communication/speech language, cognitive, health/physical, vision, motor skills/physical development. (Respondent's Exhibit 1)
5. On July 5, 2022, DCPS updated the Student's IEP. The July 5, 2022, IEP included goals based on the concerns from the Student's initial IEP, along with the same level of specialized instruction and related services. The June 5, 2022, IEP noted that, according to a parent update, the Student had recently started to eat yogurt and drink some water;

⁵ The Battelle Developmental Inventory 2nd Edition (BDI-2) is a standardized assessment designed to measure development across five domains: Adaptive, Personal Social, Communication, Motor, and Cognitive. Developmental Quotients (DQs) are calculated for each domain and a scaled score (ss) for each subdomain. DQs in the range of 90-110 indicate average performance in that domain

however, most nutrition was provided via G-tube. It also indicated that the Student would activate a button to get music to play, but had not yet produced a wide range of vocalizations. The Student was not yet consistently attending to spoken or nonverbal language or using verbal or nonverbal communication to express wants and needs. The IEP noted that the team recommended exploring light-tech augmentative and alternative communication (AAC) systems (e.g., picture boards, picture exchange, sign-supported speech) to determine if they can help expand understanding and use of language for various communicative functions. The IEP also mentioned that the Student was unable to sit or walk without assistance and might benefit from adapted seating and mobility equipment to access the curriculum, such as a gait trainer, orthotics, an adapted stroller with activity seat, G-tube, and stander. The IEP did not include a dedicated aide. It prescribed ESY and transportation and listed the following special equipment as necessary: ramp/lift, booster seat, assistive devices like walker/crutches, and leg/orthopedic brace. (Respondent's Exhibit 2)

6. On July 27, 2022, DCPS provided Petitioner a location of services letter placing the Student in School A's ELS classroom. The Student attended School A for SY 2022-2023. (Respondent's Exhibit 3)
7. On September 7, 2022, the Student's IEP was amended to include more detail regarding transportation. The IEP continued to include the need for a ramp lift, leg orthopedic brace, and adaptive stroller. (Respondent's Exhibit 7).
8. The Student was enrolled in School A, a DCPS school, for SY 2022-2023. During SY 2022-2023, School A provided the Student with specialized instruction, including vision services and related services of OT, PT, SLP, and consultative services, consistent with the student's IEPs. (Witness 5's testimony, Respondent's Exhibits 4, 5, 14, 17, 18, 19)
9. On April 21, 2023, School A convened an annual review IEP meeting, in which Petitioner participated. The IEP included goals in the following areas: adaptive/daily living skills, cognitive, vision, communication/speech-language, health/physical, motor skills/physical development. The IEP prescribed the following services: 25.5 hours per week of specialized instruction and an additional; 240 minutes per month of OT, 240 minutes per month of speech-language pathology ("SLP"), 240 per minutes month of PT, and the following consultative services: 60 minutes per month of adapted physical education and 60 minutes of specialized instruction. The IEP also prescribed transportation services and ESY. The IEP noted that based on parent input the Student was scheduled for a vision exam in August 2023. The IEP noted the Student's CVI and that she/he did not require Braille instruction. The IEP also noted that the Student increased participation and engagement when presented with music vs. other play and/or structured activities. The Student could not yet imitate sounds but did attempt production of some vowel sounds spontaneously, but communicated using eye gaze and noted that the Student continued to demonstrate difficulty with maintaining or assuming a standing position as well as inability to participate in any form of independent mobility. The Student's April 21, 2023, IEP and placement in the ELS classroom at School A were effective until April 25, 2024. (Respondent's Exhibit 9)

10. At School A, the student received specialized instruction daily and attended specials, which included adapted physical education, music, art, and Spanish. The ELS students received basic music instruction, which involved listening to songs and playing instruments. The Student was supported in music class as well as other specials by the teacher, who provided instruction, and a paraprofessional who attended to the classroom. Due to the structure of the ELS classroom, there was no need for the Student have a dedicated aide because the classroom teacher and two paraprofessionals supported the Student's classroom. A paraprofessional and/or teacher was with the Student throughout the day. The paraprofessional assisted with toileting and took the Student to the nurse on a set schedule. The Student interacted with non-disabled peers during recess, school events, and field trips. Additionally, the Student had access to a specialized playground. The teacher of the visually impaired worked directly with the Student and collaborated with the ELS classroom teacher and paraprofessionals. (Witness 5's testimony)
11. School A had an extended school day (after school), which lasted until 6:30 pm. The after-school program was staffed by teachers and aids. All parents were informed of the after-school program, and if there was a need, Petitioner could have requested that the Student attend. School A did not receive a request from the Petitioner for the Student to attend the after-school program. Petitioner also never asked for counseling or training to help with the Student's needs. The School A staff regularly interacted with Petitioner during drop-off and pick-up times. Petitioner chose to personally bring the Student to and from school, even though the Student qualified for transportation services. (Witness 5's testimony)
12. On May 2, 2023, DCPS conducted an AT worksheet for the Student to initiate an AT assessment for the use of AT devices. (Respondent's Exhibit 8)
13. The Student attended School A at the start of SY 2023-2024, until Petitioner withdrew the Student from DCPS effective September 18, 2023. (Petitioner's Exhibit 15)
14. On March 4, 2024, DCPS issued a prior written notice ("PWN"), which noted that DCPS proposed to withdraw the Student because the Student had enrolled in schooling outside of DCPS, effective September 18, 2023, and was no longer attending DCPS. The PWN noted that the IEP team reviewed the withdrawal paperwork, including communication with the parent/guardian and confirmation of enrollment by the receiving school (School B). (Respondent's Exhibit 10)
15. On May 19, 2023, DCPS issued a PWN to Petitioner noting that the Student was found eligible for ESY services as part of the annual IEP process. The PWN noted that School A had reached out to Petitioner on May 3, 2023, regarding the Student's participation in ESY, and Petitioner indicated that the Student would not be utilizing ESY services for summer 2023. The PWN noted the steps Petitioner should take if she changed her mind about ESY. (Respondent's Exhibit 11)

16. An attorney representing Petitioner drafted a letter, dated June 21, 2024, entitled “Ten Day Notice” addressed to OSSE. The letter stated, inter alia, the following:

“Pursuant to 20 U.S.C. §1412 (a)(10)(C)(iii) and 34 C.F.R. §300.148 (d)(1)), and on behalf of our Clients, we are providing the D.C. Office of the State Superintendent of Education, the Student’s local educational agency (“SSOE”), ten (10) business days’ notice of the Parent’s intent to remove the Student from the SSOE’s recommend school placement because of their failure to offer or provide the Student with a Free Appropriate Public Education (“FAPE”) for the 2023-2024 extended school year. The Parent intends to place the Student at the [School B] for the 2023-2024 extended school year [... located at ...] Washington DC, and is a specialized educational program designed to educate students, like [the Student] who suffer from a brain injury or brain-based disorder. Parent will seek public funding for this placement. This notice is sent in addition to our Clients having expressed their concerns, disagreements, and rejection of the SSOE’s recommendations at the most recent Individualized Education Program (“IEP”) meeting attended by the Parent on July 5, 2022. Our Clients are rejecting the SSOE’s recommended program and placement for [the Student] to be implemented during the 2023-2024 extended school year as outlined in the proposed Individualized Education Program (“IEP”) dated July 5, 2023. Further, and to date, the SSOE has failed to inform the Parent of the proposed school location for the 2023/2024 school year. Our Clients remain willing and ready to entertain an appropriate program and an appropriate public or approved non-public school placement that can provide the required intensive academic and related services program [the Student] requires. Accordingly, the Parent requests that the IEP team at Early STAGES at [a DCPS school] reconvene for this purpose. At this time, however, the Parent has no choice other than to enroll [the Student] in [School B], which is an appropriate placement for her child.”

The letter stated that it was delivered by electronic mail. There was no email address noted on the letter, only a physical address for OSSE. There was no verification presented that the letter was ever sent to or received by anyone in OSSE, DCPS, or any other District of Columbia LEA. ⁶ (Petitioner’s Exhibit 1)

17. Petitioner chose to enroll the Student in School B because it was a private school with children with disabilities, including brain injuries. When she heard about the School B opening in the District of Columbia, she did not hesitate to enroll her child, believing that a private school was a better option than a public school. Petitioner signed a contract with School B, dated July 19, 2023, obligating Petitioner to pay for the Student’s attendance, including tuition and related services at School B for SY 2023-2024, starting July 26, 2023, to June 28, 2024. (Petitioner’s Exhibit 3).
18. Petitioner also signed a contract with a private health care company to provide the Student nursing services School B, obligating Petitioner to pay for a private duty nurse for the Student during school hours, starting September 7, 2023, to June 28, 2024. (Petitioner’s Exhibit 5).

⁶ The IHO notes that DCPS did not dispute receiving the letter; however, it was unclear from the evidence when and by whom the letter was received.

19. Petitioner signed a contract with School B, dated July 19, 2023, obligating Petitioner to pay for the Student's attendance, including tuition and related services at School B for SY 2023-2024, starting July 2, 2024, to June 7, 2025. (Petitioner's Exhibit 4).
20. Petitioner also signed a contract with a private health care company to provide the Student nursing services School B, obligating Petitioner to pay for a private duty nurse for the Student during school hours, starting July 2, 2023, to June 27, 2025. (Petitioner's Exhibit 6).
21. At School B, the Student receives OT, SLP and academics. School B provides Petitioner a weekly report about what the Student has done and his/her progress and recommendations of what Petitioner can do at home to support the Student. The Student has a one-to-one aide at School B. Because the Student cannot walk or talk, the aide changes the Student's diaper and takes the Student to the nurse for feeding and to therapy services. Petitioner is satisfied with the related services and academic instruction the Student is receiving at School B. (Parent's testimony)
22. School B conducted evaluations of the Student, including a vision assessment in April 2023, as part of the initial evaluation process. This assessment included a one-on-one evaluation, observation, and parent interview. School B prepared a report and an education plan for the Student for SY 2024-2025. (Petitioner's Exhibit 7)
23. School B is a private specialized school for students with severe and profound special needs who are nonverbal and non-ambulatory. School B's director of special education is based in New York City and provides guidance and oversight for IEPs, progress reports, and staff training. She holds a NY teacher certification. School B classrooms typically include six to eight students based on the students' level of functioning. The target students are non-verbal and non-ambulatory. Every student receives a one-to-one aide, with class sizes adjusted according to the students' abilities. Most of the students are diagnosed with traumatic brain injury ("TBI"), and require a high level of medical management. The school offers vision instruction, assistive technology, hearing education services, and speech support. Therapists work with teachers to provide both push-in and pull-out services. The Student's School B IEP is based on assessments from all disciplines and includes assessment data, instructional needs, and parent priorities. Goals are set, related services are recommended, and the IEP is a living document that is updated throughout a student's time at School B. (Witness 2's testimony)
24. The Student's School B progress reports reflect that Student has made progress in a range of areas. The Student is more curious and interested in interacting and communicating with people, use of functional vision and responsiveness to Braille. The Student can participate more in self-care routines and making choices. (Witness 2's testimony)
25. In June 2024, the Student did not have a form of AAC at School B. As a result, School B's related service provider started with a low-tech option to see how the Student would respond to picture symbols. The Student was able to use picture symbols, as well as mid-tech devices quickly, and participate in basic cause-and-effect activities, such as prerecorded messages for hello and goodbye. The Student needed a customizable device

and has now been given access to a high-tech device – an iPad – to help expand vocabulary using finger isolation to tap on the screen. The Student progressed from using low-tech to high-tech in one year. (Witness 3’s testimony)

26. Once DCPS received the Petitioner’s DPC in January 2025, the DCPS central IEP team contacted the Petitioner and her counsel to request the necessary information for DCPS to make an offer of FAPE for the remainder of the 2024-2025 school year. However, DCPS only received proof of residency or a release from the Petitioner to begin the process after the due process hearing started. Now that the Petitioner has established residency, the DCPS child find team will request the release of information to begin collecting data and observing the Student at School B to determine if any formal assessments are needed and to make an offer of a FAPE. (Witness 4’s testimony)

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 the 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 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. West*, 546 U.S. 49, 126 S.Ct. 528 (2005). The burden of persuasion shall be met by a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii). DCPS held the burden of persuasion on issue #1 after Petitioners presented a prima facie case on that issue. Petitioners held the burden of persuasion on the other issues. 7

⁷ DC Code § 38-2571.03 (6) provides:

(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

(i) Where there is a dispute about the appropriateness of the child's individual educational program 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

ISSUE 1: Did DCPS deny the Student a FAPE by failing to provide or recommend an appropriate IEP for the SY 2023-2024 including the extended school year period, because the April 21, 2023, IEP prescribed insufficient services in frequency and duration and did not include: (a) music therapy, (b) vision education services, (c) parent counseling and training, (d) an extended school day, (e) one to one nursing services (f) supplementary aids and service programs such as a one to one paraprofessional or a paraprofessional to assist the Student with school activities, or activities of daily living, (g) assistive technology services including AAC devices, and training for school personnel, (h) a placement with similar peers rather than in a general education school), (i) specific special transportation to include wheelchair accessible transportation, paraprofessionals/nurse, climate control vehicle, or limited travel time, and (j) notation of the concerns raised by the parent in relation to the needs of the Student?

Conclusion: Respondent sustained the burden of persuasion by a preponderance of the evidence that the Student's April 21, 2023, IEP was reasonably calculated to enable the Student to make appropriate progress considering the Student's circumstances.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special education and related services that' are 'provided at public expense, under public supervision ...;' and that 'meet the standards of the State educational agency;' as well as 'conform[] with [each disabled student's] individualized education program.'" *Charles H. v. District of Columbia*, 2021 WL 2946127 (D.D.C. June 16, 2021) (quoting 20 U.S.C. § 1401(9)) (alterations in original). "Special education" is defined as "specially designed instruction, at no cost to parents, [that] meet[s] the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services," on the other hand, are defined as "such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." *Id.* § 1401(26)(A).

"Under [the] IDEA and its implementing regulations, students with disabilities ... are entitled to receive [a] FAPE through an Individualized Education Program (or IEP)." *Charles H.*, 2021 WL 2946127 (quoting 20 U.S.C. § 1401(9)(D)). An IEP is a written document that lays out how the student will obtain measurable annual goals and that mandates specific special education and related services that the student must receive. 20 U.S.C. § 1414(d)(1)(A)(i). It is created for each student by a special "IEP Team," consisting of the child's parents, at least one regular-education

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.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement, provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

teacher, at least one special-education teacher, and other specified educational experts. Id. § 1414(d)(1)(B). An IEP is the main tool for ensuring that a student is provided a FAPE. See *Charles H.*, 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

The second substantive prong of the *Rowley* inquiry is whether the IEP developed was reasonably calculated to enable Student to make progress appropriate in light of Student's individual circumstances. In *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the "educational benefits" requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated into the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Andrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits."

The key inquiry regarding an IEP's substantive adequacy is whether taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP offered was reasonably calculated to enable the specific student's progress...."Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra, 137 S. Ct. 988.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34 C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006)

“The IDEA requires that children with disabilities receive education in the regular classroom whenever possible” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. at 999 (quoting Rowley, 458 U.S. at 202)

“[T]he court judges the IEP's goals at the time of its implementation.” *Thompson R2-J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148-49 (10th Cir. 2008); *District of Columbia v. Walker*, 2015 WL 3646779, *6 (D.D.C. Jun. 12, 2015) (the “adequacy of an IEP can be measured only at the time it is formulated, not in hindsight.” IEPs must include “A statement of measurable annual goals, including academic and functional goals” designed to meet the child’s needs and enable them to participate and make progress ... and meet any other educational needs resulting from their disability.” 34 C.F.R. §300.320(a)(2)(i).

When assessing a student's progress, courts should defer to the administrative agency’s expertise. See *Roark ex rel. Roark v. Dist. of Columbia*, 460 F. Supp. 2d 32, 44 (D.D.C. 2006) (“Academic success is an important factor ‘in determining whether an IEP is reasonably calculated to provide education benefits.’”). “Limited academic progress does not ipso facto signal a violation of the IDEA any more so than does the existence of substantially similar IEPs year over year.” *J.B. ex rel. Belt v. District of Columbia*, 325 F. Supp. 3d 1, 9 (D.D.C. 2018); see also *Teters v. Peoria Unified Sch. Syst.*, No. 19-cv-5038, 2020 WL 5810061, at *6 (D. Ariz. Sept. 30, 2020) (“The fact that an IEP has only minor changes does not mean it does not provide a FAPE.”); *Jackson v. District of Columbia*, No. 19-cv-197, 2020 WL 3318034, at *14 (D.D.C. June 2, 2020) (similar), report and recommendation adopted, 2020 WL 3298538 (D.D.C. June 18, 2020); *Red Clay Consol. Sch. Dist. v. T.S.*, 893 F. Supp. 2d 643, 648 (D. Del. 2012) (“Petitioners’ argument that J.S.’s failure to progress compels a finding that the IEPs were inappropriate is misplaced).

Petitioner asserted that the IEP that DCPS developed for the Student on April 2023, was inappropriate because it prescribed insufficient services in frequency and duration and did not include music therapy, vision education services, parent counseling and training, an extended school day, one to one nursing services, supplementary aids and service programs such as a one to one paraprofessional, or activities of daily living, assistive technology services including AAC devices, and training for school personnel, a placement with similar peers instead of a general education school, specific special transportation to include wheelchair accessible transportation, paraprofessionals/nurse, climate control vehicle, or limited travel time, and notation of the concerns raised by the Parent in relation to the needs of the Student.

Petitioner presented three witnesses in addition to Petitioner. But for Petitioner, none of the witnesses had any personal knowledge of the Student at the time the April 21, 2023, IEP was developed. None of the witnesses were qualified as experts or had more than a general understanding of the contents of the Student’s DCPS April 21, 2023, IEP. Thus, their testimony was ineffectual in assessing the appropriateness of the IEP. Each of these witnesses were either employed by or contracted with School B and simply testified that the Student needed the level of services that School B apparently provides to all its students.

Two of Petitioner’s witnesses had never met the Student or ever observed him/her in the classroom setting, and the only witness who had worked with the student had only done so since June 2024. Petitioner’s first did not remember the IEP and the services that were being provided but generally

knew that that School B provided more related services. He first made aware of the Student in May 2024, never met the Student in person and never seen her/him in an educational setting at School B.

Witness 2, the Special Education Director of School B had never seen the Student in the School B setting. She was based in the School B's New York location and was first made aware of the student during the intake evaluation. She did not know when the Student began attending School B. She was uncertain of how many students were in the classroom with the Student at School B.

Petitioner was the only witness who participated in the April 21, 2023, IEP meeting, and she testified that she agreed with the contents of the IEP. Although she generally stated that she believed that the Student did not receive enough related services, her testimony was outweighed by the credible of the DCPS witness from School A who regularly interacted with the Student and was and testified to the appropriateness of the specialized instruction and related services that were prescribed in the IEP and delivered to the Student while he/she attended School A. Petitioner testified that she participated in the April 2023, IEP meeting, but did not remember details of the meeting and whether there was a discussion of the need for a one-to-one aide or the services of a nurse. She also testified that she always agreed with all the recommendations that were given for the Student.

There was no direct testimony or evidence that the April 21, 2023, IEP was lacking as a result of any of the following items: did not include music therapy, vision education services, parent counseling and training, an extended school day, one to one nursing services, supplementary aids and service programs such as a one to one paraprofessional, assistive technology services including AAC devices, and training for school personnel, a placement with similar peers instead of a general education school, specific special transportation to include wheelchair accessible transportation, paraprofessionals/nurse, climate control vehicle, or limited travel time, or notation of the concerns raised by the Parent in relation to the needs of the Student.

On the other hand, DCPS's witness credibly testified that the staffing of the teacher and two teaching assistants in the Student's School A's ELS classroom was sufficient to ensure that the Student engaged in school activities and that the Student was provided vision services from the vision teacher and who consulted with the classroom staff, and that the Student received nursing services to assist with G-tube feeding. Regarding AT and the need for AAC devices, the evidence indicated that the Student, even during her/his first year at School B, was only using low-tech AT. There was evidence that the School A IEP team had initiated the AT assessment for the Student and had provided low-tech and mid-tech AT devices. There was no testimony from Petitioner's witnesses regarding transportation needs.

The April 21, 2023, IEP prescribed transportation services, although the evidence demonstrated that Petitioner opted to bring the Student to and from School A personally. The evidence also demonstrates that in the ELS classroom, the Student was with similar peers but also had access to non-disabled peers as the IDEA mandates when appropriate. There was no evidence presented by Petitioner that the Student could not attend a school where she/he would have contact with non-disabled peers. There was also no evidence presented by the Petitioner or otherwise that she needed or requested parent counseling or training or that the Student required or requested an

extended school day, although had Petitioner requested an extended school day, an after-school program at School A was available.

When the IEP team developed Student's April 21, 2023, IEP, data was available from the Early Stages evaluations, Early Stages IEP, observations, progress reports and classroom data. This data provided sufficient information about the Student's performance for the team to measure his/her performance on the goals listed in the IEP. Additionally, the progress reports and the present level of performance sections of the IEP included progress in various areas of concern.

In sum, there was insufficient evidence from Petitioner regarding the alleged inappropriateness of the April 21, 2023, IEP, yet DCPS presented sufficient and countering evidence of the appropriateness of the IEP and the Student's placement in the School A ELS classroom. Consequently, the IHO concludes that the Student's April 21, 2023, was reasonably calculated to enable the Student to make appropriate progress considering the Student's circumstances.

ISSUE 2: Did DCPS deny the Student a FAPE, in violation of 5-A DCMR § 3005.2 & § 3005.4, by failing to provide the Parent any school location letter or PWN from the LEA/DCPS for the Student's placement for SY 2023-2024 and ESY?

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

5-A DCMR § 3005.2 provides: The LEA proposing or refusing to conduct an initial evaluation to determine if a child is a child with a disability shall provide the parent with prior written notice in accordance with Section 3032 and a copy of the procedural safeguards notice in accordance with Section 3033. The prior written notice shall also contain: (a) Information about the purpose of the evaluation process; (b) The types of child-level data being assessed; and. (c) Any additional assessments needed.

5-A DCMR § 3005.4 provides: An LEA shall: (a) Make and document reasonable efforts, as defined in this chapter, to obtain parental consent within thirty (30) days from the date on which the child is referred for an initial evaluation, and begin such efforts no later than ten (10) business days from the referral date; and (b) Evaluate and make an eligibility determination for a student who may have a disability and who may require special education services within sixty (60) days from the date that the student's parent or guardian provides consent for the evaluation;

Petitioner presented no testimony regarding this issue. Nonetheless, there was documentation in the record that evaluations had been conducted by OSSE Strong Start, which were used as part of the Student's initial IEP and subsequent IEPs. There was no evidence presented by Petitioner that she did not receive a PWN or appropriate information about the Student's initial evaluations. The Student had current evaluations and a current IEP when Petitioner withdrew the Student from DCPS effective September 18, 2022, and when DCPS offered and Petitioner refused an ESY placement for the Student in the summer of 2023. Consequently, the IHO concludes that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

ISSUE 3: Did DCPS deny the Student a FAPE by failing to, in advance of SY 2024-2025 and the

extended school year period: (a) contact Petitioner to request or conduct evaluations or assessments of the Student, (b) send Petitioner a PWN or any communication to schedule an IEP meeting for the Student, (c) conduct an IEP meeting for the Student and develop or recommend any IEP for the Student (d) make any recommendations for an appropriate special education program and placement or appropriate school location for the Student?

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

The starting point in this analysis is that “the IEP is the vehicle through which school districts typically fulfill their statutory obligation to provide a free appropriate public education and that officials must have an IEP in place for each student with a disability ‘[a]t the beginning of each school year. U.S.C. § 1414(d)(2)(A)); 34 C.F.R. 300.322(a), 300.323(a). See also *Dist. of Columbia v. Wolfire*, 10 F. Supp. 3d 89, 95 (D.D.C. 2014) (“there is no requirement that the child be currently enrolled in a public school in order to trigger the LEA’s obligation to develop an IEP for that child”); *Dist. of Columbia v. Oliver*, 2014 WL 686860, at 6 (D.D.C. 2014).

Pursuant to 34 C.F.R. § 300.323(a) (“At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.”)

5A DCMR §3020.1 requires DCPS to ensure that there is an IEP in effect for each enrolled child who has been determined eligible for special education and related services throughout the calendar year, including the summer months.

DCPS failed to hold an IEP meeting or recommend an IEP for the Student for SY 2024-2025. The evidence demonstrates that although the Petitioner withdrew the Student from DCPS, DCPS was aware that the Student was attending a private school in the District of Columbia, as indicated by the PWN that DCPS issued to the Petitioner regarding the declining of the ESY offer for summer 2023. Although DCPS claims that Petitioner did not request or initiate an offer of FAPE for the Student before filing her DPC in January 2025, this does not negate DCPS's responsibility under child find obligations to ensure it provided a FAPE offer through a current IEP based on updated evaluations.

Although it is unclear from the record when and by whom the unilateral placement notice from an attorney who indicated she represented Petitioner was received by OSSE or DCPS, DCPS broadly acknowledged that the notice existed and that it did not take any action to offer the Student a FAPE for SY 2024-2025 until after Petitioner filed her DPC in January 2025.

As Petitioner aptly pointed out her closing arguments, the IDEA and local regulations, mandates that an IEP for a disabled child must be in place “[a]t the beginning of each school year”. *Leggett, v. District of Columbia*, 417 U.S. App. D.C. 59, 63, 793 F.3d 59, 63 (2015). IDEA does not make this administrative requirement a parental obligation to “re-enroll” their disabled child. Rather, it is the obligation of the school district to offer a FAPE to every student in its jurisdiction. The child’s public school district of residence must offer a FAPE to resident students based on their need not their enrolment status. See 34 C.F.R. § 300.111; see also *Hawkins ex rel. D.C. v. District of Columbia*, 539 F. Supp. 2d 108 (D.D.C. 2008).

Consequently, the IHO concludes that DCPS failed to have an IEP in place for the Student and an offer of FAPE to the Student at the start of SY 2024-2025 and thus denied the Student a FAPE.

ISSUE 4: Did DCPS deny the Student a FAPE by failing to respond to multiple records requests to which it has provided incomplete information in violation of 5A DCMR § 3030.1, or no response in violation of 5-A DCMR §3020.3?

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

IDEA regulations provide that each agency "must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under [IDEA]." 34 CFR § 300.613 (a). "The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing or resolution session ... , and in no case more than 45 days after the request has been made." *Id.* In addition, a parent's right to inspect and review includes: (1) the "right to a response from the participating agency to reasonable requests for explanations and interpretations of the records"; (2) the "right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records"; and (3) the "right to have a representative of the parent inspect and review the records." *Id.* § 300.613 (b).

IDEA regulations afford parents and their legal representatives an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a FAPE to the student. See 34 CFR § 300.501(a); *Friendship Edison Public Charter School Collegiate Campus v. Murphy* 2006 WL 2711524, 4 (D.D.C.2006). DCPS must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. See 34 CFR § 300.613(a). Under the IDEA and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

5-A DCMR § 3030.1 provides: In accordance with the confidentiality procedures of IDEA and the Family Educational Rights and Privacy Act (FERPA), (20 U.S.C. § 1232g), the parent of a child with a disability shall be given the opportunity to inspect, review, and to copy, at no cost to the parent, all of the child's records relating to the identification, evaluation, and educational placement, and the provision of FAPE.

5-A DCMR § 3020.3 provides: The LEA shall respond to a request for educational records of a previously enrolled child by providing such records as soon as possible, but no later than ten (10) business days after the receipt of the request, even if the provision of such records necessitates the physical transfer of paper records.

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 the 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)

Petitioner presented no testimony regarding any request for records or evidence that DCPS did not provide any requested educational records. Nor was there any evidence presented that any lack of education records impeded the Student's right to FAPE, significantly impeded Petitioner's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused the Student a deprivation of educational benefits. Conversely, the DCPS witness credibly testified that DCPS responded to the Petitioner's records request and provided the records that were available. Consequently, the IHO concludes that Petitioner did not sustain the burden or persuasion by a preponderance of the evidence on this issue.

ISSUE 5: Did DCPS deny the Student a FAPE by committing the following procedural violations of the IDEA (some of which are duplicative of the issues described above):

- (1) Provide Procedural Safeguards Notice,
- (2) Conduct evaluation or reevaluation,
- (3) Provide Parent with mandated notices, such as Meeting Notices, PWNs, IEPs, evaluations,
- (4) Provide Parent with information on how to request an IEE at public expense,
- (5) Acknowledge/listen to/accommodate Parent's concerns at the IEP meeting,
- (6) Develop an IEP for each school year at issue,
- (7) Identifying the Student's needs,
- (8) Develop appropriate goals to match the Student's needs,
- (9) Address the Student's management needs,
- (10) Explain whether the Student is to be educated with non-disabled peers, and when,
- (11) Conduct IEP meetings,
- (12) Timely or actually conduct an annual CSE review and develop an IEP, and
- (13) Timely or actually provide an appropriate school location notice?

Conclusion: Petitioner did not sustain the burden or persuasion by a preponderance of the evidence on this issue.

While most of the sub-issues are duplicative of the issues adjudicated in either issue # 1 or issue # 3 above, as noted, to the extent these sub-issues are not duplicative, there was no testimony or evidence presented by Petitioner that substantiated that Petitioner was not provided procedural safeguards, mandated notices including PWNs, or was not timely provided with a school location for SY 2023-2024.

Additionally, no testimony or evidence, beyond what was discussed in issues #1 and #3 above, presented that in any way supports the conclusion that the Student's right to FAPE was impeded, that the Petitioner's opportunity to participate in decision-making regarding FAPE was significantly impeded, or that the Student was deprived of educational benefits. Therefore, the IHO concludes that the Petitioner did not meet the burden of persuasion by a preponderance of the evidence on this issue.

ISSUE 6: Did DCPS deny the Student a FAPE by committing the following substantive violations of the IDEA (some of which are duplicative of the issues described above):

- (1) the Student's disability and unique needs from that disability are not properly identified in the IEP,
- (2) there were no current or appropriate evaluations done prior to the development of each IEP,
- (3) the IEP does not fully explain each service the Student will receive and whether the teachers and providers are trained in that service,
- (4) the IEP does not provide training for (a) assistive technology, (b) two-person transfers, (c) seizures, and other medical needs of the Student,
- (5) the IEP does not reflect meaningful progress, nor does the level of progress correctly reflect the Student's potential,
- (6) there are no appropriate accommodations on the IEP,
- (7) it is not clear how classwork, testing, or curriculum are modified for this Student.
- (8) the Student is not educated alongside appropriate peers,
- (9) the failure to recommend appropriate and necessary related services, and,
- (10) the failure to recommend appropriate related services in terms of frequency of duration?

Conclusion: Petitioner did not sustain the burden or persuasion by a preponderance of the evidence on this issue.

As DCPS aptly points out in its closing arguments, in special education under the IDEA, disability eligibility is more important than the disability classification for most legal and practical purposes. Student services are determined by needs, not labels. Here, the IEP addressed the Student's needs, which is evidenced by the progress the Student made. The only IEP at issue is the April 26, 2023. Prior to the development, the Student was evaluated in July 2021. IDEA does not require a statement as to whether providers or teachers are trained in a service, and the Student received all appropriate instruction and related services while attending School A. While most of the sub-issues are duplicative of issue #1 discussed above, there was insufficient evidence, beyond what was discussed in issues #1 and #3 above, to suggest that DCPS committed additional substantive violations. Consequently, the IHO concludes that Petitioner did not sustain the burden or persuasion by a preponderance of the evidence on this issue.

ISSUE 7: Was/is School B an appropriate placement for the Student for SY 2023-2024 and ESY, and SY 2024-2025 and ESY? If so, should Petitioner be awarded reimbursement or direct funding for tuition at School B?

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence to justify reimbursement.

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision 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 is made in conformity with the least restrictive environment provisions of the IDEA; and the public agency must ensure that the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home. See 34 C.F.R. § 300.116.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34 C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

"The IDEA requires that children with disabilities receive education in the regular classroom whenever possible" *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra, 137 S. Ct. at 999 (quoting Rowley, 458 U.S. at 202)

Pursuant to D.C. Code § 38-2561.02(c) Special education placements shall be made in the following order of priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this chapter: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school; (2) Private or residential District of Columbia facilities; and (3) Facilities outside of the District of Columbia.

The legal standard under the IDEA is that DCPS "must place the student in a setting that is capable of fulfilling the student's IEP." *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013). See also *O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student's IEP requirements).

Of particular relevance is the statutory requirement that students with IEPs be provided an education with nondisabled peers "[t]o the maximum extent possible." 20 U.S.C. §1412(a)(5)(A). Plaintiff may desire a full-time special education, but that is only necessary "when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Id. Sinclair v. District of Columbia*, Civil Action No. 19-cv-0434 (TSC), 2022 U.S. Dist. LEXIS 61131, at *9 (D.D.C. Feb. 9, 2022)

Under the IDEA, parents who unilaterally decide to place their disabled child in a private school without obtaining the consent of local school officials "do so at their own financial risk." A school district may be required to pay for educational services obtained for a student by the student's parent, if the services offered by the school district are inadequate or inappropriate, the services selected by the parent are appropriate, and equitable considerations support the parents' claim, even if the private school in which the parents have placed the child is unapproved. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993) (quoting *Sch. Comm. of the Town of Burlington v. Dep't of Educ.*, 471 U.S. 359, 374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)).

Courts must consider "all relevant factors" including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement

represents the least restrictive educational environment. *Branham v. District of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005).

“As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise “proper under the Act”; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act “unreasonabl[y].” *Leggett v. District of Columbia*, 793 F.3d 59, 66–67 (D.C. Cir. 2015) (citing *Carter*, supra, 510 U.S. at 15–16, 114 S.Ct. 361; 20 U.S.C. § 1412(10)(C)(iii)(III)).

Petitioners have asserted that School B is a proper placement for the Student for SY 2024-2025. Although there was testimony that the Student has made progress at School B, as noted in the discussion of the evidence and conclusions made by the IHO on issue #1 above, the Student does not require a placement totally removed from non-disabled peers. The evidence also demonstrates that School B does not hold an OSSE COA. Consequently, the IHO concludes that School B is not an appropriate prospective placement for the Student. However, based on the Student’s progress since attending School B, the IHO concludes that it is appropriate for Petitioner’s reimbursement for the denial of FAPE that has been determined.

The D.C. Circuit has established that a private placement selected by the parent is “proper under the Act” so long as it is “reasonably calculated to enable the child to receive educational benefits.” See *Leggett v. D.C.*, 793 F.3d (D.C. Cir. 2015). Further, it is well-established that a private placement need not meet state educational standards applicable to public schools; the unilateral placement need not have IEPs for students, employ certified teachers, or the like. “Appropriateness” is measured by whether the placement is “reasonably calculated to enable the child to receive educational benefits. See *Florence County Sch. Dist. Four v. Carter* (510 U.S. 7, 15). If no suitable public school placement is available, then the district must fund an appropriate private placement. See *Branham v. D.C.* (427 F.3d at 11–12)

“As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise “proper under the Act”; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act “unreasonabl[y].” *Leggett v. District of Columbia*, 793 F.3d 59, 66–67 (D.C. Cir. 2015) (citing *Carter*, supra, 510 U.S. at 15–16, 114 S.Ct. 361; 20 U.S.C. § 1412(10)(C)(iii)(III)).

Based upon this evidence, the IHO concludes that School B meets the requirements for the Petitioners’ reimbursement for the Student’s tuition and costs of attendance for SY 2024-2025. There was no evidence of Petitioner’s action or inaction that would nullify reimbursement. The equities in this instance support reimbursement.

ORDER: ⁸

⁸ 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.

1. Within thirty (30) calendar days of issuing this order, DCPS shall conduct updated evaluations of the Student once parental consent is obtained and the Student is made available.
2. Within thirty (30) calendar days of the issuance of this order, shall convene an IEP meeting, develop an IEP for the Student, and offer the Student an educational placement and location of services for any remaining portion of ESY for summer 2025 and for SY 2025-2026.
3. Within thirty (30) calendar days of being provided proof of payment by Petitioner, DCPS shall reimburse Petitioner's costs for the Student's attendance at School B for SY 2024-2025, consistent with the rates prescribed by OSSE for private school tuition and related services.
4. All other relief requested by Petitioner is denied.

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

Coles B. Ruff, Esq.
Hearing Officer
Date: July 3, 2025

Copies to: Counsel for Petitioners
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