

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 03, 2025

PARENTS, on behalf of STUDENT, ¹)	Date Issued: July 3, 2025
)	
Petitioners,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2025-0026
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Dates:
Respondent.)	June 18, 20, 24 and 25, 2025
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner parents under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the parents seek private school reimbursement from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied Student a free appropriate public education (FAPE) by, *inter alia*, failing to offer him/her an appropriate Individualized Education Program (IEP) for the 2024-2025 school year and failing to provide a location of services in time for the start of the school year.

Petitioners' Due Process Complaint, filed on February 6, 2025, named DCPS as Respondent. The undersigned hearing officer was appointed on February 7, 2025.

¹ Personal identification information is provided in Appendix A.

The parties met for a Resolution Session Meeting on February 18, 2025 and did not resolve the issues in dispute. On February 20, 2025, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters.

On February 25, 2025, Petitioners, by counsel, filed a motion for enforcement of “Stay Put” rights (the Stay-Put Motion), pursuant to the “stay-put” provision of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(j). By order issued March 4, 2025, I denied the stay-put motion. On April 2, 2025, the Petitioners filed a motion for summary decision, which I denied by order issued April 20, 2025.

With the parents’ consent, the due process hearing was held online and recorded by the hearing officer using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on June 18, 20, 24 and 25, 2025. MOTHER and FATHER appeared online for the hearing and were represented by PETITIONERS’ COUNSEL. Respondent DCPS was represented by CIEP SPECIALIST and by DCPS’ COUNSEL. Petitioners’ Counsel made an opening statement. Petitioners called as witnesses Mother, EDUCATIONAL ADVOCATE and PRIVATE SCHOOL DIRECTOR. DCPS called as witnesses CIEP SOCIAL WORKER, MONITORING SPECIALIST, SPECIAL EDUCATION DIRECTOR and CIEP Specialist. Petitioners re-called Mother as a rebuttal witness.

Petitioners' Exhibits P-1 through P-21, P-22 (Pages 6 and 7 only), P-23 through P-25, P-28, P-30, P-31, P-33, P-34 and P-35 (Pages 8 and 9 only) were admitted into evidence. I sustained DCPS' objections to Exhibits P-22 (Pages 1 through 5), P-29 and P-35 (Pages 1 through 7). Exhibits P-26, P-27, P-32 and P-36 through P-28 were withdrawn or not offered. DCPS' Exhibits R-2 through R-19, R-21, R-23 through R-26, R-29 through 39, R-41 through and R-50, R-53 and R-56 were admitted into evidence without objection. I sustained Petitioners' objections to Exhibits R-1A, R-1B, R-52 and R-57. Exhibits R-20, R-22, R-27, R-28, R-40 and R-51 were withdrawn or not offered.

On June 25, 2025, after the close of all the evidence, Petitioners' Counsel and DCPS' Counsel made oral closing arguments. There was no request to file written closings but the hearing officer granted leave to counsel to submit citations by email to legal authorities which they deemed relevant to this matter. On June 27, 2025, counsel for both parties submitted by email citations to authorities.

Hearing Scheduling

At the February 20, 2025 prehearing conference, a 4-day due process hearing was originally scheduled for March 31 through April 3, 2025. On February 25, 2025, DCPS' Counsel advised that DCPS had a conflict on the scheduled dates. Following numerous emails among counsel and the hearing officer seeking mutually available replacement dates, the hearing was reset for May 27-30, 2025. On April 18, 2025, to accommodate the new hearing dates, I granted Petitioners' unopposed motion to extend the final decision due date to June 27, 2025.

On May 19, 2025, Petitioner and DCPS submitted by email their respective prehearing disclosures. DCPS' email disclosure of proposed exhibits was too large to be handled by the receiving computer at Petitioners' Counsel's office. On May 21, 2025, at the request of Petitioners' Counsel, DCPS split its disclosure document into several files and resent the disclosures to Petitioners' Counsel. On May 22, 2025, Petitioners' Counsel requested that the due process hearing be postponed again because, not being able to access DCPS' disclosures until May 21, 2025, counsel did not have enough time to prepare Petitioners' witnesses for their hearing testimony. Following a conference with the hearing officer and numerous scheduling emails, the due process hearing was continued to the next mutually available hearing dates – June 18, 20, 24 and 25, 2025. On June 23, 2025, I granted DCPS' unopposed motion to further extend the final decision due date to July 11, 2025 to allow sufficient time for the hearing offer to review the evidence at the conclusion of the hearing and prepare a written decision.

The IDEA regulations provide that a final decision in due process hearings must be reached not later than 45 days after the expiration of the 30 day resolution period. *See* 34 C.F.R. § 300.515(a). In closing argument, Petitioners' Counsel submitted that the failure to ensure that the final decision in this case was issued within 45 days after the resolution period expired on March 8, 2025 was a separate denial of FAPE by DCPS. This issue was not raised in pleadings prior to the due process hearing and I decline to consider it. *See* 34 C.F.R. § 300.511(d) (Petitioner may not raise issues at the due

process hearing that were not raised in the due process complaint unless the other party agrees otherwise.)

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issues raised by Petitioners against DCPS are as follows:

A. Did DCPS deny Student a FAPE by failing to propose an appropriate IEP for the 2024-2025 school year? Specifically, did DCPS deny Student a FAPE by proposing, in the July 2024 IEP, twenty hours of pull-out support a week in light of the parents' request for a full-time special education placement that could program for Student's needs as a twice exceptional student?

B. Did DCPS deny Student a FAPE by identifying him/her in July 2024 as a student with an emotional disability?

C. Did DCPS deny Student a FAPE by failing to allow the parents' educational consultant to observe the proposed program and placement at CITY SCHOOL 2 in fall 2024?

E. Did DCPS deny Student a FAPE by failing to provide a location of services (LOS) to implement the July 2024 IEP before September 11, 2024?

At the start of the due process hearing, Petitioners' Counsel withdrew an additional issue raised in the due process complaint, namely, whether DCPS denied Student a FAPE in October 2024 by failing to evaluate and find him/her eligible for Occupational Therapy services on the IEP. Based upon the parents' withdrawal, I dismissed that issue with prejudice.

For relief in this case, the Petitioners request that the hearing officer order DCPS to reimburse them for private school tuition and related services paid to PRIVATE SCHOOL for the 2024-2025 school year. For the reasons explained below, I conclude that the parents are entitled to private school reimbursement.

FINDINGS OF FACT

Prior Case

On October 27, 2023, the parents filed a prior due process complaint against DCPS (Case No. 2023-0209), alleging that DCPS denied Student a FAPE because, *inter alia*, DCPS proposed an inappropriate IEP and placement for Student for the 2023-2024 school year. In that proceeding, the parents sought reimbursement for their school year 2023-2024 Private School expenses and an order for DCPS to prospectively place Student at Private School. Following a 4-day hearing in April and May 2024, Impartial Hearing Officer Coles Ruff issued a hearing officer determination on June 14, 2024 (the June 14, 2024 HOD), in which Hearing Officer Ruff determined, *inter alia*, that DCPS met its burden of persuasion that it had proposed an appropriate IEP for Student for the 2023-2024 school year, but that the District failed to establish that its proposed placement of Student in a DCPS Behavior and Education Supports (BES) program classroom was appropriate. Hearing Officer Ruff ordered DCPS to reimburse the parents for Student's attendance at Private School for the 2023-2024 school year.

At the prehearing conference in the present case, counsel agreed that I may adopt relevant findings of fact from the June 14, 2024 HOD. I adopt the following findings of fact from Hearing Officer Ruff's HOD:

A. In January 2019 when Student attended a DCPS neighborhood school, the parents obtained an independent neuropsychological evaluation of Student. The evaluation results revealed that Student had superior cognitive scores and variable academic scores, with some reading and math scores on grade level and some slightly below grade level. The evaluator surmised that Student's attention and executive functioning weaknesses resulted in Student's academic challenges. The evaluator diagnosed Student with an attention-deficit/hyperactivity disorder, combined presentation (ADHD) and a specific learning disorder (SLD) in reading and written expression.

B. On August 2, 2021, Petitioners provided DCPS notice of their intent to place Student at Private School. On August 24, 2021, DCPS responded to the parents by letter declining to fund Student's placement at Private School. Student began in-person learning at Private School in September 2021. On November 4, 2021, Petitioners filed a due process complaint against DCPS seeking funding for Private School for School Year 2021-2022 (Case Number 2021-0154). DCPS and Petitioners settled the due process complaint on April 7, 2022.

C. In May and June 2022, a DCPS psychologist, completed a psychological reevaluation of Student with an evaluation report dated June 27, 2022. In her report

summary, the DCPS psychologist reported that Student's effort levels were varied. Student was resistant and reluctant to complete writing tasks and at times would only complete the minimal that was required. Student's teacher reported that in the classroom, Student was also resistant to complete more challenging tasks and was not completing any homework. The evaluation report also stated: Student presents with anxious behaviors and rigid thinking. On the Behavior Assessment System for Children, Third Edition (BASC-3), teacher ratings yielded clinical elevation on the Internalizing Problems composite scale and At-Risk elevation on the Externalizing Problems, Behavioral Symptoms Index, School Problems, and Adaptive Skills. Student's teacher rated significant concerns related to anxiety, depression, and somatization. She reported that Student often was easily upset, related to anxiety and depression at home. She wrote that Student presented with emotional, learning, and attention problems that were significantly impacting Student's education performance. The DCPS psychologist concluded that Student continued to meet the criteria for special education services as a student with Multiple Disabilities (MD).

D. On July 14, 2022, DCPS convened a meeting to discuss the results of the assessments. Upon discussion of Student's eligibility, the DCPS psychologist recommended that Student be found eligible for services as a student with the MD disability classification, including SLD, Other Health Impairment (OHI) and Emotional Disturbance (ED).

E. On August 8, 2022, Petitioners provided DCPS notice of their intent to place Student at Private School for the 2022-2023 school year. On August 25, 2022, DCPS responded with a letter declining to fund Student's placement at Private School.

F. On September 20, 2022, DCPS issued a prior written notice (PWN) reflecting Student's eligibility for special education with the MD classification, including ED and OHI.

G. On August 3, 2023, Petitioners met with DCPS to develop Student's IEP for School Year 2023-2024. The IEP developed prescribed 20 hours per week of specialized instruction outside of the general education setting, 180 minutes of Behavior Support Services (BSS) and 60 minutes per month of BSS consultation. During the August 3, 2023 IEP meeting, there was general agreement by the entire IEP team, including Petitioners and their representatives, regarding the present levels of performance and the goals in each area of the IEP. The primary objection by Petitioners to the IEP was the level of specialized instruction. Petitioners and their educational consultant insisted that Student needed specialized instruction outside the general education setting for all subjects throughout the school day.

H. On August 4, 2023, Petitioners provided DCPS notice of their intent to maintain Student's enrollment at Private School for School Year 2023-2024. On August 21, 2023, Petitioners received a response to their notice from DCPS denying funding for Student's placement at Private School and informing the parents that the August 3, 2023 IEP would be implemented in the Behavior and Education Support (BES)

classroom at CITY SCHOOL 1. On October 5, 2023, DCPS issued an updated location of services (LOS) letter for Student for the BES program at City School 1.

I. On October 27, 2023, Petitioners filed their due process complaint in Case No. 2023-0209 seeking reimbursement for tuition and related services already paid to Private School for School Year 2023-2024 and an order for DCPS to fund Student's placement at Private School for the remainder that school year.

Exhibit R-42.

Findings of Fact from June 2025 Proceedings

After considering all of the evidence received at the due process hearing in the current case on June 18, 20, 24 and 25, 2025, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE youth, resides with the parents in the District of Columbia. Testimony of Mother.
2. Student is eligible for special education as a student with Multiple Disabilities (MD) concomitant impairments. Exhibits P-8, P-21.
3. Since the 2021-2022 school year, Student has been unilaterally enrolled by the parents at Private School, where in the 2024-2025 school year, he/she was in GRADE. Testimony of Mother, Testimony of Private School Director.
4. In the June 14, 2024 HOD (Case No. 2023-0209), Impartial Hearing Officer Coles Ruff determined, *inter alia*, that DCPS met its burden of persuasion that it had proposed an appropriate IEP for Student for the 2023-2024 school year. That IEP

provided for Student to receive 20 hours per week of specialized instruction outside of the general education setting, 180 minutes of Behavior Support Services (BSS), and 60 minutes per month of BSS consultation. Exhibit P-5.

5. In the June 14, 2024 HOD, Hearing Officer Ruff found that DCPS failed to establish that its proposed setting for Student for the 2023-2024 school year—in a DCPS BES classroom at City School 1—was appropriate. With regard to the parents’ observation of the proposed program, conducted virtually from the DCPS central offices, the Hearing Officer wrote,

The evidence demonstrates that at the start of the [parents’] virtual observation at [City School 1], there was no introduction as to what class they would observe. Student’s mother observed eight students in the classroom, including one who was apparently nonverbal and had a dedicated aide. The students were sitting and apparently disengaged. The lesson being provided was simplistic with no engagement of higher levels of thought and discussion. Petitioners were later informed they were watching a BES [Observation Classroom] English class. Petitioners were not allowed to observe the general education setting at [City School 1]. They watched for a little under the hour and they were escorted out of the DCPS central office.

Hearing Officer Ruff found that the inconsistent hearing testimony from DCPS’ witnesses caused him to doubt that Petitioners had seen the actual program classroom in which Student would have been served at City School 1. Hearing Officer Ruff found that “[b]ased on the virtual observation related by Student’s mother of the simplistic instruction and the lack of intellectual exchange, she justifiably had concerns with Student being unengaged and Student’s needs not being met in the classroom she observed.” Hearing Officer Ruff concluded that although the evidence from the DCPS

websites described a program that might meet Student's needs, there was insufficient evidence that the BES classroom at City School 1 actually provided the services the website described and was otherwise appropriate for a student with Student's intellectual, academic, and social-emotional profile. Because of DCPS' failure to establish that its proposed BES classroom placement for Student at City School 1 was appropriate, Hearing Officer Ruff ordered DCPS to reimburse the parents for Student's attendance at Private School for the 2023-2024 school year. Exhibit P-5.

6. In the June 14, 2024 HOD, Hearing Officer Ruff also ordered for the 2024-2025 school year,

DCPS shall, within thirty (30) calendar days of the issuance of this order, convene an IEP meeting to update Student's IEP with any current data and to determine an appropriate placement and location of services for Student for SY 2024-2025.

Exhibit P-5.

7. DCPS Central IEP (CIEP) team convened an IEP meeting for Student on July 12, 2024. Mother, Educational Advocate, Petitioners' Counsel, Private School Director and two other representative from Private School attended the meeting. On the proposed July 12, 2024 IEP, Student's disability classification was identified as Multiple Disabilities (Emotional Disability and Other Health Impairment). The IEP goal areas were Mathematics, Reading, Written Expression and Emotional/Social/Behavioral Development. For special education and related services, the July 12, 2024 CIEP team decided that Student needed 20 hours per week of Specialized Instruction outside

general education and 3 hours per month of Behavioral Support Services. As Consultation Services, the IEP provided 1½ hours per week for Specialized Instruction and 1 hour per month for Behavioral Support. For Other Classroom Aids and Services, the IEP offered:

Verbal instruction

- Clear modeling of the solution by the teacher- verbalize the procedures, note the symbols used and what they mean, explain any decision making and thinking processes.
- Provide multiple examples of the problem and the solutions.
- Provide immediate corrective feedback to the student on his/her accuracy.
- Provide tasks that allow some challenge but are not too overwhelming.
- Explain the purpose of what Student is being asked to do.
- Provide clear expectations about increasing homework but start slowly and allow time for getting used to completing the work.
- Explicitly explain situations, expectations or other people's actions to help him/her understand. Be clear and detailed so there's no room for confusion or doubt.
- Provide Story Maps as an organizational strategy so that Student learns to outline a story prior to reading.
- Provide graphic organizers that list the main characters, main settings and basic themes to help Student better self-organize and retain information.
- Scaffold reading by discussing the subject matter prior to reading, pre-reading the end of the chapter question and bold faced headings and pausing at the end of each sentence (paragraph) to summarize or paraphrase the information.
- Focus on the ideas Student is expressing rather than on the underlying basic skills.
- Provide graphic organizers that can help Student focus on text structure "differences between fiction and nonfiction."
- Provide tools that Student can use to examine and show relationships in a text, to help him/her write well organized summaries of a text.
- Allow use of keyboard for writing assignments and note taking.
- Allow to give oral responses to tests when the object is to test skill knowledge and not his/her ability to write.
- Allow Student to audiotape his/her thoughts and then dictate them later so that he/she learns to separate the process of expressing his thoughts and ideas from the mechanics of writing.

- Preferential seating in minimal distraction areas, repeated directions, extra explanations of directions, small group testing.
- Limit distractions including visual and auditory distractions, other students, or activities that can pull Student's attention away from task.
- Allow use of fidgets.
- Frequent check-ins not only to help him/her initiate work but also to check on his/her effort levels.
- Gain Student's attention before giving instruction or directions. Use alerting cues and accompany oral direction with written or visual directions. Give one direction at a time and check for understanding by having him/her repeat directions.
- Break down long term assignments into smaller steps with teacher checkpoints to facilitate organization and planning and ensure Student is keeping pace with expectations.

Exhibit P-8.

8. There was general agreement to the present levels of performance and annual goals for the academic section of the July 12, 2024 IEP. Testimony of CIEP Specialist. Mother, Educational Advocate and Private School Director disagreed with the provision of 20 hours per week of special education services in the IEP. Mother and Educational Advocate said that Student needed "full-time" special education.

Testimony of Mother, Testimony of Private School Director.

9. By email letter of July 16, 2024, Petitioners' Counsel gave notice to DCPS that Student would continue to attend Private School for the 2024-2025 school year. Counsel write that the parents' decision was made in order to provide Student a FAPE. The parents requested that DCPS place and fund Student at Private School and reserved the right to seek funding for the private placement should DCPS refuse the parents' request. Petitioners' Counsel wrote that they did not believe that an appropriate special education program had been identified or offered by DCPS for Student for the 2024-

2025 school year. By email letter of July 29, 2024, the director of the CIEP team notified the parents that DCPS did not agree to bear the cost of Student's private placement and that it was DCPS' position that the District had made a FAPE available to Student. Exhibit P-9.

10. The parents unilaterally enrolled Student in Private School for the 2024-2025 school year and Student attended the private school for the entire school year. Testimony of Mother.

11. At the end of the July 12, 2024 IEP team meeting, the parents were told that the parents would get a location of services for Student from DCPS and should wait for that. Testimony of Mother. They were told they should hear something about the school location for Student within a few weeks. Testimony of Educational Advocate. There was a delay in getting the location of services information to the parents. After the July 12, 2024 IEP meeting, there was additional social-emotional data that needed to be included in the IEP. That summer, DCPS was switching to a new student information software program (PowerSchool). Due to a problem with launching PowerSchool, Student's July 12, 2024 IEP was not finalized until August 12, 2024. CIEP Specialist then had to send the IEP to DCPS' separate location of services team to identify a service location for Student. Testimony of CIEP Specialist.

12. CIEP Specialist did not receive the Location of Services decision letter for Student from the LOS team until September 11, 2024. In that letter, DCPS informed the parents that the Specific Learning Support program at CITY SCHOOL 2 had been

identified as Student's location of service to implement the July 12, 2024 IEP. Exhibit P-10, Testimony of CIEP Specialist. DCPS, apparently, also mailed the location of services letter to the parents, but used an out-of-date mailing address and the parents did not receive the letter by mail. Eventually, on September 20, 2024, CIEP Specialist forwarded a copy of the location of services letter to Mother, by email. Testimony of Mother, Exhibit R-46. By that time, Student had already been attending Private School under the parents' unilateral placement since approximately September 3, 2024, when classes started for the school year. Testimony of Private School Director.

13. On September 25, 2024, Mother wrote Special Education Director at City School 2 to request to observe the placement proposed by DCPS for Student at that school. Mother wrote that she and Father, along with Educational Advocate, would like to "come visit" the proposed placement. After Mother sent a follow-up email to Special Education Director and following additional delays, the parents were able to make an in-person observation on November 1, 2024. Exhibits, P-14, P-15, Testimony of Mother. Initially, Special Education Director did not confirm approval for Educational Advocate to observe the program. Exhibit P-14. Following the February 20, 2025 prehearing conference in this case, DCPS agreed to allow Educational Advocate to make an in-person observation, which took place on March 12, 2025. Testimony of Educational Advocate.

14. Private School is an independent private day school in Washington, D.C., for children, Grades 1 through 12, with average to above average intelligence and who

have mild to moderate learning disabilities. The total enrollment is around 390 students. Academic classes at Student's level have 7 to 12 students. Most of Student's teachers hold teacher certification in content areas, but not in special education. Nonpublic School issues high school graduation diplomas. The school holds a current certificate of approval (COA), issued by the Office of the State Superintendent of Education (OSSE) to operate a nonpublic special education school or program for students with disabilities. Testimony of Private School Director.

15. Student did well at Private School for the 2024-2025 school year. His/her grades at the end of the 3rd quarter were all A's and B's. Exhibit P-23. Student's progress over the school year was good and he/she ended the school year strong. Testimony of Private School Director. Student was also making progress on his/her social-emotional challenges. Testimony of Educational Advocate.

CONCLUSIONS OF LAW

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

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the parents in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the child's IEP or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on

the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

ANALYSIS

In this proceeding, the parents seek reimbursement from DCPS for their tuition and related expenses for Student to attend Private School for the 2024-2025 school years, on the grounds, *inter alia*, that DCPS allegedly denied Student a FAPE by failing to propose an appropriate IEP for Student and by failing to offer a location of services in time for the start of the school year. The parents also contend that DCPS denied Student a FAPE by identifying him/her as a student with an emotional disability and by not timely allowing their educational consultant to observe the program proposed for Student at City School 2. For the reasons explained below, I find that the parents are entitled to tuition reimbursement from DCPS because the District failed to offer Student a service location in time for the start of the 2024-2025 school year. DCPS prevails on the parents' other claims.

Reimbursement for Private School Expenses

In the Court's decision in *E.W.-G. v. District of Columbia*, No. CV 20-2806 (CKK), 2023 WL 2598680 (D.D.C. Mar. 22, 2023), U.S. District Judge Colleen

Kollar-Kotelly explained the private school tuition reimbursement remedy under the IDEA:

[P]arents who “unilaterally” place a child with a disability in a private school, without consent of the school system, “do so at their own financial risk.” *Florence Cty. Sch. Distr. Four v. Carter*, 510 U.S. 7, 15 (1993) (quoting *School Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 373-74 (1996)). To qualify for tuition reimbursement under the IDEA, a plaintiff must demonstrate that: (1) the school district failed to provide a FAPE; (2) the plaintiff’s private placement was suitable; and (3) the equities warrant reimbursement for some or all of the cost of the child’s private education. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 247 (2009).

E.W.-G. at *2 (D.D.C. Mar. 22, 2023). “[I]f there is an ‘appropriate’ public school program available . . . the District need not consider private placement, even though a private school might be more appropriate or better able to serve the child.” *Jenkins v. Squillacote*, 935 F.2d 303, 305 (D.C. Cir. 1991). *See, also, Leggett v. District of Columbia*, 793 F.3d 59, 63 (D.C. Cir. 2015) (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; (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 unreasonably.) The first, indispensable, requirement for private school reimbursement is that the District failed to offer the child a FAPE. Below, I consider the denials of FAPE alleged by the Petitioners in this case.

- Did DCPS deny Student a FAPE by identifying him/her in July 2024 as a student with an emotional disability?

On or about September 20, 2022, the DCPS eligibility team determined that Student qualified for special education and related services as a student with Multiple Disabilities, including Specific Learning Disability (SLD), Emotional Disturbance (ED) and Other Health Impairment based on Attention-Deficit/Hyperactivity Disorder (OHI-ADHD). This determination was based largely upon a comprehensive psychological evaluation completed by a DCPS school psychologist on June 27, 2022. At the July 12, 2024 IEP review meeting, the CIEP IEP team identified MD, including ED as well as LD and OHI, as Student's qualifying primary disability. In a July 11, 2024 memorandum provided to DCPS, Educational Advocate wrote that while the Learning Disabilities and Other Health Impairment designations were appropriate for Student, he/she should not be identified as a student with an Emotional Disability. The parents continue to claim that Student should not have been identified as having an ED at the July 12, 2024 IEP team meeting.

I find that this claim has no merit. Changing a student's disability classification is not the function of an IEP review meeting. That should occur at a multidisciplinary team meeting convened, with proper notice, to review existing evaluation data, including evaluations and information provided by the parents, current classroom-based assessments and observations, observations by teachers and related services providers and additional data, if any, as may be needed to determine the educational needs of the child. *See* 34 C.F.R. §§ 300.305, 300.503(a). Moreover, the IDEA does not require school districts to classify a student with a disability in a

particular category or categories. *See, e.g. Letter to Anonymous*, 48 IDELR 16 (OSEP 2006) (Child’s identified needs, not the child’s disability category, determine the services that must be provided to her). I conclude that Petitioners did not establish that DCPS denied Student a FAPE by continuing his/her ED disability eligibility at the July 12, 2024 IEP team meeting.

- Did DCPS deny Student a FAPE by failing to allow the parents’ educational consultant to observe the proposed program and placement at City School 2 in fall 2024?

On September 25, 2024, after the parents received notice from DCPS that Student’s location of services would be City School 2, Mother wrote Special Education Director to request that she, Father and Educational Advocate be allowed to observe the placement proposed for Student at that school. Initially, Special Education Director did not confirm approval for Educational Advocate to make an observation. This was contrary to District of Columbia law.

The D.C. Special Education Students’ Rights Act of 2014 provides, in relevant part,

Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child’s current or proposed special educational program:

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

D.C. Code § 38–2571.03(5)(A). The parent, or the parent’s designee, shall be allowed to view the child’s instruction in “the setting where the child’s instruction will occur if the child attends the proposed program.” *Id.*, subsec. (5)(C).

In this case, there is no dispute that Educational Advocate was the Parents’ designee and that he has “professional expertise in the area of special education being observed.” Nor was there any proffer that Educational Advocate was representing the parents or Student in litigation or had a financial interest in the outcome of the present due process case. DCPS was therefore required to afford Educational Advocate timely access to observe the program at City School 2 proposed for Student, in order to evaluate the ability of the program to support the student. I find that DCPS’ delay—from late September 2024 to March 2025—in allowing Educational Advocate to observe the proposed program at City School 2 was a procedural violation of the IDEA. *C.f. A.M. v. Bridges Pub. Charter Sch.*, No. 1:17-CV-02333-RCL, 2019 WL 1433360, at *2 (D.D.C. Mar. 29, 2019) (Even assuming that the failure to allow an observation was a procedural violation of the IDEA, it did not affect plaintiffs’ substantive rights.)

Procedural violations of the IDEA may only be deemed a denial of FAPE if the procedural inadequacies—

- (i) Impeded the child’s right to a FAPE;
- (ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or
- (iii) Caused a deprivation of educational benefit.

34 C.F.R. § 300.513(a)(2). In this case, by the time the parents requested that Educational Advocate be allowed to observe the proposed program at City School 2, they had already re-enrolled Student at Private School, where he/she had been a student since the 2021-2022 school year. Mother testified that as of November 2024, the parents would not have moved Student out of Private School. I find that, on these facts, DCPS' delay in allowing Educational Advocate's visit to City School 2 did not impede the parents' opportunity to participate in the decision making process, cause a deprivation of educational benefit or otherwise impede Student's right to a FAPE. I conclude that the Petitioners have not established that DCPS' initial refusal to allow Educational Advocate to visit the school resulted in a denial of FAPE.

– Did DCPS deny Student a FAPE by failing to propose an appropriate IEP for the 2024-2025 school year? Specifically, did DCPS deny Student a FAPE by proposing, in the July 2024 IEP, twenty hours of pull-out support a week in light of the parents' request for a full-time special education placement that can program for Student's needs as a twice exceptional student?

At the July 12, 2024 IEP review meeting, the DCPS Central IEP (CIEP) team proposed an IEP for Student which provided for 20 hours per week of Specialized Instruction outside general education, 3 hours per month of Behavioral Support Services, 1½ hours per week of consultation specialized instruction, 1 hour per month of consultation behavioral support and a host of other classroom aids and services. Under this proposal, Student would have been placed in a self-contained Specific Learning Support (SLS) classroom for 20 hours per week and would attend specials classes, lunch and recess with typically developing peers. The specials classes could be as large as 25

students. At the IEP meeting, the parents and their representatives argued that Student needed a full-time special education program and disagreed with the proposal for Student to spend any class time in the general education setting.

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

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

Middleton at 128. In this case, Petitioners have not alleged a procedural violation with respect to the July 12, 2024 IEP. Therefore, I turn to the second prong of the *Rowley* inquiry. Was the July 12, 2024 IEP “reasonably calculated to enable [Student] to make progress appropriate 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 Cty. Sch. Dist.*, 137 S. Ct. 988, 993-994 (2017); see also 20 U.S.C. §§ 1401(9)(D), 1412(a)(1). To be IDEA-compliant, an IEP must reflect “careful consideration of the child’s individual circumstances” and be

“reasonably calculated to enable the child to receive educational benefits,” *Endrew 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 *Endrew F.*, *supra*, 137 S. Ct. at 1001-02.

The parents’ expert, Educational Advocate, opined in his hearing testimony that due to Student’s executive functioning challenges, it would be impossible for him/her to learn in a class of 25 students, without any special education support. DCPS’ expert, CIEP Specialist opined in her testimony that the proposed 20-hour SLS placement was appropriate because Student would be in the smaller SLS classroom for the more intensive core academic classes and would only have electives – initially art class – in the general education classroom. DCPS’ expert, School Social Worker, opined that Student would benefit from practicing behavioral skills among typically developing peers in the “more relaxed” specials classes.

The parents made the same argument about Student’s needing a full-time program in Case No. 2023–0209, decided only 28 days before the July 12, 2024 IEP team meeting. In the earlier case, Petitioners’ witnesses asserted that the severity of

Student's attention and learning challenges was such that Student was unable to function successfully in any general education setting. As in the present case, Educational Advocate opined in his testimony that Student's superior cognitive functioning, coupled with his/her significant learning difference, made it impossible for Student to function in a general education setting even for specials classes. Hearing Officer Ruff was unconvinced by their testimony, noting that Petitioners' experts had never observed Student in a setting with nondisabled peers and their testimony lacked any sufficient basis for Student to be in a setting totally removed from nondisabled peers. The Hearing Officer found that DCPS presented a cogent and responsive explanation for why it did not accept the parents' request for a full-time placement for Student and he concluded that DCPS sustained its burden of persuasion that the IEP it developed for Student on August 3, 2023, with 20 hours per week of Specialized Instruction, was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances.

An IEP must be evaluated as of the time it was developed. *See, e.g., Z. B. v. District of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018) (Standard calls for evaluating an IEP as of the time IEP was created.) At the due process hearing in the present proceedings, the parents' witnesses acknowledged that nothing had changed in the nature or severity of Student's disability related needs between the issuance of the June 14, 2024 HOD and the July 12, 2024 IEP meeting. Because the services proposed for Student in the July 12, 2024 IEP were substantively the same as those determined

appropriate for Student by Hearing Officer Ruff in the June 14, 2024 HOD, I conclude that DCPS has met its burden of persuasion that the July 12, 2024 IEP was reasonably calculated to enable Student's progress. *See Z. B.*, 888 F.3d at 524.

– Did DCPS deny Student a FAPE by failing to provide a location of services (LOS) to implement the July 12, 2024 IEP before September 11, 2024?

Lastly, the Petitioners contend that DCPS denied Student a FAPE by not providing a school location to implement the proposed July 12, 2024 IEP before September 11, 2024. I agree. Mother's undisputed hearing testimony was that at the July 12, 2024 IEP meeting, the parents were told to wait and that they would get a location of services for Student. Because of reasons reportedly related to DCPS' technology problems over the summer of 2024, DCPS did not issue a location of services letter for Student until September 11, 2024 and the notice was not provided to the parents until September 20, 2024. This was some 20 days after the start of the DCPS school year. By that point, Student had already been in classes at Private School for two weeks.

The D.C. Circuit Court of Appeals has pronounced that school district officials must have an IEP in place for each student with a disability "[a]t the beginning of each school year." *Leggett, supra*, 793 F.3d at 67, *quoting* 20 U.S.C. § 1414(d)(2)(A). DCPS' failure to provide a school location for Student by the beginning of the 2024-2025 school year breached this requirement, a procedural violation of the IDEA. *See id.*

"[A] school district's failure to comply with the procedural requirements of IDEA

will be ‘actionable’ only ‘if those procedural violations affected the student’s substantive rights.’” *Id.*, quoting *Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C.Cir.2006) (internal quotation marks omitted). A delay does affect a student’s substantive rights, and is therefore actionable, if the student’s education would have been different but for the procedural violation. *Leggett* at 68.

The DC Circuit held in *Leggett* that the delay of somewhere between two weeks and a month after the start of the school year in finalizing Student’s IEP adversely affected the child’s educational opportunities and therefore denied her a FAPE. *Id.* at 68. I reach the same conclusion in the present case. There is no tenable argument that Student’s education would not have been different if DCPS had provided Student a school location in time for the start of school—rather 20 days into the 2024-2025 school year. Moreover, in the June 14, 2024 HOD, Hearing Officer Ruff ordered DCPS to determine an appropriate placement and location of services for Student by July 14, 2024, so DCPS was certainly on notice of the requirement. *See Leggett* at 75 (“DCPS can avoid cases like this one simply by ensuring that its employees understand and fulfill the school system’s obligations under IDEA—to provide a FAPE and to do so in a timely manner . . .”) I conclude that DCPS’ failure to provide a location of services to implement Student’s IEP until September 20, 2024 adversely affected Student’s educational opportunities and therefore was a denial of FAPE.

Other Reimbursement Requirements

Having found that DCPS denied Student a FAPE by failing to ensure he/she had

an appropriate location of services to implement the July 12, 2024 IEP in time for the start of the 2024-2025 school year, I consider the other two requirements for tuition reimbursement pronounced in the D.C. Circuit's *Leggett* decision—that the private school chosen by the parents, Private School, was proper and that the parents did not otherwise act unreasonably.

When evaluating whether a unilateral private placement was proper, the hearing officer is to employ the same standard used in evaluating the education offered by a public school district. *See M.G. v. Dist. of Columbia*, 246 F. Supp. 3d 1, 12 (D.D.C. 2017). All that is required of the parents is that the private school be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *See Leggett, supra* at 70; *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).

Private School is an independent private day school in Washington, D.C. for children, Grades 1 through 12, with average to above average intelligence and who have mild to moderate learning disabilities. The total enrollment is around 390 students. Academic classes at Student's level have 7 to 12 students. Most of Student's teachers hold teacher certification in content areas, but not in special education. Nonpublic School issues high school graduation diplomas. The school holds a current certificate of approval (COA), issued by the Office of the State Superintendent of Education (OSSE) to operate a nonpublic special education school or program for students with disabilities.

Student has attended Private School since the 2021-2022 school year and it is undisputed that he/she has made good progress at the school. DCPS' expert, CIEP Specialist, opined that it was not necessary for Student to be placed at Private School but she acknowledged in her testimony that she did not question that Student had made progress there—both socially and academically.

DCPS' expert, Monitoring Specialist, opined in his testimony that Private School was not proper for Student because most of the school's teachers are not certified in special education and because data did not support segregating Student from typically developing peers. However, this expert's opinion that Private School is not appropriate for Student for these reasons seeks to impose a higher standard than that articulated in *Leggett*. See, e.g., *M.G. v. District of Columbia*, 246 F. Supp. 3d 1, 12 (D.D.C. 2017) (DCPS' argument that private school was inappropriate because it does not address all of the child's needs seeks to impose a higher standard than that articulated in *Leggett*.)

If DCPS had identified a service location for Student early enough in the process, the Private School placement may not have been "necessary." See *Leggett, supra* at 72. But because DCPS offered Student no service location until 20 days into the 2024-2025 school year, the Private School placement was necessary for Student to obtain the educational services he/she was entitled to under IDEA. Because Private School was necessary to Student's education and because it was "reasonably calculated to provide educational benefit," it was proper under the IDEA. See *Leggett* at 72.

Lastly, the *Leggett* decision requires that the “equities weigh in favor of reimbursement — that is, the parents did not otherwise act ‘unreasonabl[y].” *Leggett*, 793 F.3d at 67. Reimbursement may be “reduced or denied” if the parents failed to notify school officials of their intent to withdraw the child or otherwise acted unreasonably. *Leggett, supra*, at 63; 34 C.F.R. § 300.148(d). Here the parents did not act unreasonably. At the July 12, 2024 IEP meeting, the DCPS representatives told the parents to wait for a location of services notification for Student. By email letter of July 16, 2024, Petitioners’ Counsel provided written notice to DCPS that Student would attend Nonpublic School for the 2024-2025 because an appropriate special education program had not been identified or offered by DCPS for the upcoming school year. Still, DCPS failed to offer the parents a service location for Student until September 20, 2025. Under those circumstances, I find that there has been no showing that the parents acted unreasonably in continuing Student’s unilateral placement at Private School for the 2024-2025 school year.

In this proceeding, the parents have met the three requirements for reimbursement of private school expenses pronounced by the D.C. Circuit in its *Leggett* decision. I conclude, therefore, that the parents are entitled to reimbursement funding from DCPS for tuition and related expenses for Student’s enrollment at Private School for the 2024-2025 school year.

ORDER

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

ORDERED:

1. Upon receipt of reasonably required documentation, DCPS shall promptly reimburse the parents for covered tuition and related expenses incurred by the parents for Student to attend Private School for the 2024-2025 regular school year;
2. All other relief requested by the Petitioners herein is denied.

Date: July 3, 2025

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