District of Columbia

Office of the State Superintendent of Education

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Confidential

Parent on Behalf of Student, [1] Petitioner, v. School A Public Charter School "School A" (Local Education Agency "LEA") and The District of Columbia Office of the State Superintendent of Education ("OSSE") (State Education Agency "LEA") Respondents. Case # 2024-0233 Date Issued: July 10, 2025	HEARING OFFICER'S DETERMINATION Hearing Dates: June 13, 2025 June 16, 2025 Counsel for Each Party listed in Appendix A Hearing Officer: Coles B. Ruff, Esq.

[1] Personally identifiable information is in the attached Appendices A & B.

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 Office of the State Superintendent of Education ("OSSE") is the Student's state education agency ("SEA"). During the relevant time of the case, the Student was attending a District of Columbia Public Charter School identified hereafter as "School A," which was the Student's local education agency ("LEA"). The Student has been determined eligible for special education and related services under IDEA, with a disability classification of multiple disabilities ("MD"). Soon after the start of school year ("SY") 2023-2024, Petitioner unilaterally placed the Student at a non-public special education school, identified hereafter as "School B." School B is a non-public special education school based in New York City, NY, with a campus location in the District of Columbia.

On December 6, 2024, Petitioner filed a due process complaint ("DPC") against both School A and OSSE ("Respondents"). Petitioner filed an amended DPC against both Respondents on March 12, 2025. Petitioner alleges that School A denied the Student a free appropriate public education ("FAPE") by, inter alia, allegedly developing an inappropriate individualized educational program ("IEP")[2] and failing to implement the Student's IEP during school year, during extended school year ("ESY") during the summer of 2024 and one month at the start of SY 2024-2025. Petitioner alleges that OSSE denied the Student a FAPE by failing to provide the Student transportation services that resulted in the Student being unable to attend School A during SY 2023-2024, and up until the DPC was filed. In addition to a finding that both Respondent's denied the Student a FAPE, Petitioner seeks an order directing Respondents to pay School B directly the costs of the Student's attendance at School B for SY 2023-2024 and to award the Student with compensatory education.[3] The District of Columbia Public Schools ("DCPS") is the Student's current local

[2] Petitioner alleges that the IEP in appropriate because it did not prescribe a litany of services such as a one-to-one paraprofessional, music therapy and an extended school day as was provided to the Student at School B.

[3] Petitioner seeks a finding of a denial of FAPE by the LEA or SEA, or both, and an award of compensatory education for the period from December 2022 to September 2023, April 2024 to mid-January 2025, the total is about 500 tutoring and 25 hours of OT, PT SLP. ESY 2023 and the month of September 2023 of about 68 hours of tutoring and some related services. In the alternative to (a), the hearing officer will order a compensatory education study—including seeking the IEP team's input as appropriate—to assist the hearing officer in crafting an appropriate award of compensatory education. A determination that School B is/was an appropriate placement for the Student during SY 2023-2024 including the extended school year period; An order directing payment by OSSE and/or School A directly to School B for the cost of full tuition for SY 2023-2024 and extended school year period pursuant to the enrollment agreement between Petitioner and School B. Petitioner asserts that OSSSE is liable for the Student's non-attendance and resulting missed services from December 2022 to September 2023 and School A is responsible from April 2024 to January 2025.

education agency ("LEA"), as of March 2024, but is not is not a party to this litigation.

LEA Response to the DPC:

School A, the LEA, filed a response to the initial complaint on December 19, 2024. The LEA did not file a response to the amended DPC. In its response, DCPS stated, inter alia, the following: School A denies that it failed to offer an appropriate IEP and/or placement for SY 2023-2024. The IEP in question was developed in collaboration with Petitioner and her attorney. The IEP team met on several occasions to consider Petitioner's feedback on the IEP and ensure that all of the Student's needs were adequately addressed. School A and Petitioner also exchanged several rounds of revisions and written feedback. School A incorporated the vast majority of Petitioner's feedback into the IEP.

Petitioner's complaint alleges that the IEP did not include vision services, a one-to-one paraprofessional, a one-to-one nurse, assistive technology services, and AAC devices. This simply is not true. All of these services and supports are included in the IEP and were not in dispute when the IEP was developed. Petitioner's complaint alleges that the IEP did not include music therapy. School A admits that the IEP does not require music therapy, but the IEP does include behavior support services to address the goals expressly agreed upon by Petitioner. School A admits that the IEP does not require an extended school day, but the IEP does include an extended school year.

School A admits that the IEP does not require parent counseling or training and further denies that such services are required. At no time during the multiple meetings or multiple rounds of written feedback exchanged did Petitioner or her attorney request music therapy, parent counseling and/or training, and/or an extended school day, or otherwise express a need for the IEP team to consider these services. School A denies that the Student requires music therapy or parent counseling/training as a related service. School A denies that the Student requires an extended school day. The team was in full agreement about the type, frequency, and duration of special education and related services included in the IEP. Those services were reasonably calculated to enable the student to make appropriate progress in light of his/her circumstances

Even if all of the services and supports that Petitioner alleges were missing had been included in the IEP, it would not have made any difference for the Student's receipt of a FAPE. The Student was not able to attend school at School A, or any school, after the IEP was developed due to issues with transportation, for which School A bears no responsibility.

SEA Response to the DPC:

OSSE filed a response to the initial DPC on December 19, 2024, and to the amended DPC on March 20, 2025. In its response to the amended DPC, OSSE stated, inter alia, the following:

During the period of December 27, 2022, to September 3, 2024, OSSE was operating under the presumption that moving the Student between the door of her/his apartment building and to the school bus was not "transportation" required under the IDEA, as confirmed both in the December 27, 2022, Hearing Officer Determination ("HOD") and the April 6, 2023, decision from the U.S. District Court of the District of Columbia. OSSE resumed transportation for the Student on January

2, 2025, and OSSE continues to transport the Student presently. OSSE neither admits nor denies the allegations contained in DPC that pertain to School A, the LEA. OSSE has no obligation to determine the development of the Student's IEP.

During the period of March 2024, to September 3, 2024, OSSE was operating under the presumption that moving the Student between the door of her/his apartment building and to the school bus was not "transportation" required under the IDEA, as confirmed both in the December 27, 2022, HOD and the April 6, 2023, decision from the U.S. District Court of the District of Columbia.

Any request from Petitioner for OSSE as the SEA to pay the cost of the Student's unilateral placement at School B for SY 2023-2024 and ESY should be denied as Petitioner did not provide OSSE with any written notice that she intended to enroll the Student in a private school at a public expense pursuant to D.C. Mun. Regs ("DCMR") D.C. Mun. Regs. tit. 5, subt. 5-A, §3039.4(b) (2022).

Resolution Meeting and Pre-Hearing Conference:

Petitioners and School A did not participate in a resolution meeting. The parties did not mutually agree to shorten the 30-day resolution period. The original DPC was filed on December 6, 2024. The 45-day period began on December 6, 2024, for the SEA and January 6, 2025, for the LEA, and it ended, with the Hearing Officer's Determination ("HOD") originally due on January 20, 2025, for the SEA and February 19, 2025, for the LEA. The parties requested and agreed to align the timelines for the cases involving both the SEA and LEA. Petitioner filed a motion to continue the hearing and extend the HOD due date for both the SEA and LEA. On March 12, 2025, Petitioner filed an amended DPC, which reset the timeline for the case. The 30-day resolution period for the amended DPC was not waived, and the parties again agreed to align the timelines for both the LEA and SEA for the amended DPC. The parties submitted subsequent motions to continue and extend the HOD due date to change the hearing dates and then to file written closing arguments. The motions were granted, and now the HOD is due on July 10, 2025.

The undersigned impartial hearing officer ("IHO") conducted a pre-hearing conference ("PHC") on January 23, 2025, for the original DPC and on April 17, 2025, for the amended DPC. The IHO issued a pre-hearing issued a pre-hearing order ("PHO") on the amended DPC on May 12, 2025, outlining, inter alia, the issues to be adjudicated.

The issues adjudicated are: [4]

1. Did OSSE deny the Student a FAPE by failing to transport the Student from her/his apartment door to School A and back from December 2, 2022, to late September 2023?

2. Did OSSE deny the Student a FAPE by failing to transport the Student from his/her apartment door to his/her DCPS school and back from April 2024 to January 2025 when transportation started?

[4] At the outset of the hearing the parties agreed that these were the issues to be adjudicated.

3. Did School A PCS deny the Student a FAPE by failing to provide the Student an appropriate IEP, dated May 10, 2023, because (a) the related services of physical therapy, occupational therapy, and speech-language therapy were insufficient in frequency and duration, and (b) the IEP did not include the following: (i) music therapy, (ii) vision education services, (iii) parent counseling and training, (iv) an extended school day, and (v) supplementary aids and services such as a 1:1 paraprofessional, 1:1 nurse, assistive technology services, AAC devices, and support for school personnel on behalf of the Student?

4. Did School A PCS deny the Student a FAPE by failing to provide the Student with appropriate homebound programming ordered by Judge McFadden? 5

5. If the Student's June 2023 IEP prescribed homebound instruction and services, did School A PCS deny the Student a FAPE by failing to implement the prescribed homebound instruction and services?

DUE PROCESS HEARING:

The Due Process Hearing was held on June 13, 2025, and June 16, 2025, using a video teleconference on the Microsoft Teams platform. The Petitioner and Respondents submitted written closing arguments on June 23, 2025, and June 26, 2025, respectively, and Petitioner submitted a rebuttal to Respondents' closing arguments on Petitioner on July 1, 2025.

RELEVANT EVIDENCE CONSIDERED:

The IHO considered the testimony of witnesses6 and the documents submitted in each party's disclosures (Petitioners' Exhibits 1 through 60, LEA's Exhibits 1 through 37 and OSSE Exhibits 1 through 16) that were admitted into the record and are listed in Appendix 2. The parties disclosed, and the IHO viewed and considered, and extracted limited findings of fact from December 27, 2022, HOD, the U.S. District Court and U.S. Court of Appeals decisions that all involve the parties these decisions. 7

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5 Petitioner alleges that in April 2023, the District Court ordered School A to add appropriate homebound services on the Student's IEP, yet School A failed to develop appropriate backup homebound services for the Student, knowing that OSSE kept refusing to transport the Student to and from school.

6 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). Respondent School A presented one witness: (1) School A former special ecuation coordinator. Respondent OSSE presented two witnesses: an OSSE program analyst and (2) OSSE's supervisory coordinator in special education. 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.

7 HOD from Case No. 2022-0161 (December 27, 2022); District Court Case: [Petitioner] v. [School A] and [Petitioner] v. [School A], (D.C. Cir. 2024)

FINDINGS OF FACT: [8]

1. The Student resides with the Student's parent, Petitioner, in the District of Columbia. The Student has been determined to be eligible for special education and related services under IDEA, with an MD disability classification. During SY 2022-2023 and SY 2023-2024 until March 2024, School A was the Student's LEA, and OSSE was and remains the Student's SEA. DCPS is the Student's current LEA, and she now attends a DCPS school. (Mother's testimony, Petitioner's Exhibit 9)

2. Due to multiple disabilities, including spastic quadriplegic cerebral palsy, the Student is nonverbal and faces limitations in all areas of functioning. She/He depends on a wheelchair to move, a tracheostomy tube to breathe, and a gastronomy tube to eat and take medication because he/she cannot swallow on her/his own through his/her mouth. Considered medically fragile, the Student requires one-on-one assistance from a nurse, as well as leg and feet braces, elbow and hand splints, a body suit, a pulse oximeter, and a suction machine. (D.C. Circuit, September 2024 opinion)

3. The Student began attending School A during the COVID-19 pandemic, and did so remotely during SY 2020-2021 and SY 2021-2022. For SY 2022-2023, however, the Student's IEP team determined she/he should attend school in person at School A. School A developed an IEP for the Student on May 16, 2023, that was amended on July 19, 2022, to prescribed transportation services for the Student from his/her apartment door to School A and back. However, OSSE refused to transport the Student between the door of her/his apartment and the school bus, citing OSSE's transportation policies and procedures. (D.C. Circuit, September 2024 opinion)

4. The Student's July 19, 2022, amended IEP under the section "Other Classroom Aids and Services" stated, inter alia the following: "[the Student] attends [School A] virtually per medical exemption. "[the Student] logs on to virtual class with the special education teacher per specialized instruction hours outlined in the IEP. Upon return to in-person learning, "[the Student] will resume 22.5 hours of specialized instruction hours per week. [the Student] will continue to receive related services virtually. "[the Student] will have opportunities to participate with [her/his] _____ grade class through live video for Morning Meeting and classroom celebrations. The Dedicated Nurse Aide will be removed from this IEP as "[the Student] attends virtually. The Dedicated Nurse Aide will be added back to the IEP upon "[the Student] resuming school in-person. If "[the Student] is required to remain home for an extended period due to medical needs, "[the Student] will receive homebound instruction, and the team will develop a plan for continuation of services. (Petitioner's Exhibit 6-21)

[8] 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.

5. On October 3, 2022, School A informed Petitioner that, in light of the lack of transportation for Student, it was attempting to locate an in-home tutor for Student. On October 11, 2002, Education Solutions notified School A that it had notified Petitioner of its ability to provide a tutor beginning that day, but Petitioner "wanted to verify things with the school and coordinate other services,' and agreed to start the next day. (December 27, 2022, HOD)

6. On October 18, 2022, School A convened a multidisciplinary team ("MDT") meeting "to review [Student's] virtual instructional and Related Service schedule to be in place pending resolution of the transportation issues with OSSE." The team agreed that School A would provide a 1:1 in-person tutor for three hours per day, five days per week, and a 1:1 in-person vision specialist each Wednesday for one hour. As the Student requires support to receive virtual related services, the tutor was designated to provide that support." (December 27, 2022, HOD)

7. On October 24, 2022, School A issued a Prior Written Notice ("PWN"), memorializing the agreements reached in the October 18, 2022, MDT meeting, to address homebound services for Student due to the lack of transportation. School A committed to provide 1:1 in-person instruction daily from 9:30 a.m. – 12:30 p.m., virtual related services (speech, occupational therapy, and physical therapy) with the support of the in-person instructor, in-person vision services for one hour per week, and the opportunity for virtual participation in read aloud with the class once a week. (December 27, 2022, HOD)

8. Because OSSE refused to transport the Student between her/his apartment door and the school bus, the Student did not attend School A in person during SY 2022-2023. School A provided some in-person and some virtual services. In-person services included vision support and an academic tutor who came to the home. Physical therapy ("PT"), occupational therapy ("OT"), and speech-language pathology ("SLP") were provided virtually. There were issues, such as the academic tutors' inconsistent attendance. Some tutors, like PT, were unable to participate in virtual sessions. When the tutor was not present during PT sessions, the goal was to turn on the computer and assist with the virtual lessons, providing academic support. If the tutor was not there, the Student could not access any of it. Additional services authorized by School A were provided with compensation to the Student for any delays or missed services. (Mother's testimony)

9. In Fall 2022, Petitioner filed a DPC to challenged OSSE's refusal to transport the Student by filing a DPC. The due-process hearing occurred on December 1 and 2, 2022. The hearing officer issued his decision on December 27, 2022, concluding that it was beyond his authority to order OSSE to transport the Student between his/her apartment door and the school bus. However, the hearing officer concluded that School A developed an inappropriate amended IEP for on July 19, 2022, because it did not include the virtually learning plan that was ultimately adopted by School A in October 2022. [9] (December 27,

[9] "School A was informed on June 21, 2022, more than a month before it developed Student's IEP, that the transportation accommodations relating to DOT entering Student's apartment building and physically carrying him/her up and down a flight of stairs contravened DOT's stated policy. When Attorney A was informed that day of OSSE's position, she immediately requested a IEP meeting to include this accommodation in the IEP. On July 26th,

2022, HOD)

10. Petitioner appealed the HOD decision regarding transportation to the federal district court. The district court concluded in its April 2024 opinion that moving the Student between the door of her/his apartment and the school bus was not "transportation" required by the IDEA. (District Court Opinion, April 2024)

11. The District Court, however, concluded on another issue raised in Petitioner appeal of the HOD that School A failed to develop an appropriate IEP for the Student on July 19, 2022, because School A did not include in the IEP the homebound instruction and related services that it had agreed and began delivering to the Student in October 2022 to provide at home while his/her transportation services were unavailable. [10] (District Court Opinion, April 2024)

12. In May 2023, School A was still providing homebound services when It convened the student's annual IEP review meeting. The meetings started on May 10, 2023, and continued into June 2023. During the IEP discussions, Petitioner requested homebound services for the Student for the following school year, as they had been provided during SY 2022-2023 due to the Student's lack of transportation. (Mother's testimony)

13. On May 5, 2023, a draft IEP was sent to the parent and her attorney in preparation for an IEP meeting scheduled for May 10, 2023. An update of that draft was sent on May 8, 2023. On May 10, 2023, the parent, through her attorney, shared a letter from the student's outpatient physical therapist for the IEP team's consideration. That letter confirmed that

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the day before the IEP meeting, a DOT investigator reiterated its policy directly to Petitioner in a visit to her apartment. On August 8, 2022, responding to another query from School A, DOT reiterated that it would not grant an exception to its policy. Thus, long before the IEP was drafted, and shortly after it was delivered to DOT, School A was on notice that DOT staff would not enter Petitioner's apartment building or physically carry Student. There was ample time between August 8th and the beginning of the school year to reconvene the IEP meeting and adopt the virtual learning plan that the parties finally agreed to on October 18, 2022. Therefore, I conclude that School A has failed to meet its burden of proving that it provided Student a FAPE by failing to provide Student an appropriate IEP before the beginning of the 2022-23 school year."

[10] The District court in that opinion stated: "After [the Student's] transportation fell through, [Petitioner] again requested a dedicated aide to assist with virtual learning. See id. at 361. Eventually, in October, the IEP team reconvened to discuss [the Student's] virtual learning. At that point, the school provided at-home support for him/her, including a one-to-one tutor and a vision specialist. See id. at 1604. But the team did not amend [her/his] IEP to reflect those services. The Court agrees with [Petitioner] that the IEP should have included a provision for an in-person aide given [the Student's] unique challenges when learning from home. While the IEP's language may have given the school flexibility, it did not adequately specify the special education and related services that [the Student] would require at home. Indeed, the record reflects that [Petitioner] first asked for an in-home aide at the July IEP meeting. See AR P-22 at 9:10-10:20. And the school responded that they could discuss it if [the Student] could not get to school in the fall. See id. But the school knew that [the Student] could not reach school because of the transportation issue as early as July after the District's inspector visited the apartment building. More, as all parties acknowledge, the school has been providing [the Student] an in-person tutor for three hours a day, five days a week, and a vision specialist every Wednesday for one hour since mid-October. See HOD at 8; see also AR at 1603-04. The post-hoc provision of these services suggests that the IEP was not reasonable at the time it was written. See Z.B., 888 F.3d at 524. Indeed, the school could have reconvened the IEP team much earlier to ensure that these same backup services were in place by [the Student's] first day of school….For these reasons, the Court finds that the July IEP was inappropriate."

the student was receiving outpatient PT and OT services at a frequency of one hour per week. That letter did not recommend more school-based occupational or physical therapy services. On May 15, 2023, another updated draft of the IEP was sent to the parent and her attorney. (LEA Exhibits 2, 3, 4, 5)

14. On May 18, 2023, Petitioner, through counsel, notified School A that she would be sharing notes and proposed edits to the draft IEP and that the Student's outpatient providers may be attending the IEP meeting scheduled for May 22, 2023. The parent also shared a letter from the student's nurse. That letter made recommendations specific to the need for nursing and transportation services, nothing else. (LEA Exhibit 6)

15. On May 19, 2023, the parent, through counsel, shared some notes and proposed edits to the draft IEP as well as posed some questions to the team. Specifically, Petitioner typed comments into the draft IEP and signed the front page certifying that she approved all of the comments. Petitioner did not express concern about the need for more speech and language therapy, occupational therapy or physical therapy, nor did the student's outpatient providers, music therapy, parent counseling/training, or an extended school day. Petitioner requested that vision therapy be listed as a related service, but it was included as specialized instruction. Petitioner did not raise concern about the provision of a dedicated nurse and/or dedicated aide. The only request made by the parent related to assistive technology and alternative augmentative communication ("AAC") device was to add a provision related to updating the devices annually and as needed and was added to the IEP at Petitioner's request. (LEA Exhibits 7, 20)

16. On May 22, 2023, Petitioner, through her attorney, shared additional feedback from the Student's outpatient physical therapist. LEA-9. That feedback did not include any questions or concerns about the frequency and duration of physical therapy services. Id. On May 26, 2023, School A provided a revised draft of the IEP, which incorporated the Petitioner's feedback and updates discussed and agreed upon at the previous meeting. (LEA Exhibits 9, 10)

17. On June 7, 2023, Petitioner, through her attorney, provided proposed edits and comments to the revised draft circulated on May 26, 2025. Again, the parent typed comments into the draft IEP and signed the front page certifying that she approved all of the comments. Petitioner never expressed concern about the need for more speech and language therapy, occupational therapy or physical therapy, nor did the Student's outpatient providers. Petitioner never expressed concern about the need for music therapy, parent counseling/training, or an extended school day. Petitioner did not object to School A listing vision instruction as specialized instruction. Petitioner never raised concern about the provision of a dedicated nurse and/or dedicated aide. (LEA Exhibit 11)

18. The team met again on June 20, 2023, and School A circulated another draft with additional changes that same day. Petitioner, through her attorney, responded on June 22, 2023, with three specific requests related to the IEP. On June 23, 2023, School A responded with the final IEP, addressing the specific items raised in the email. LEA-15. School A issued a

PWN on June 23, 2023, detailing the remaining issues in dispute and explaining the rationale behind the IEP. (LEA Exhibits 12, 14, 18)

19. School A's revised IEP for the Student is dated May 10, 2023, although it was finalized on June 23, 2023. The IEP prescribed that the Student attend School A in person and receive specialized instruction and related services, including PT, OT, and SLP. The IEP did not include music therapy, vision education services, parent counseling and training or an extended school day. (Witness 5's testimony, LEA Exhibit 19)

20. The Student's final May 10, 2023, IEP, School A included the following language in "Other Classroom Aids and Services" regarding homebound services: "If [the Student] is required to remain home for an extended period (10 school days or more) due to his/her health conditions, as governed by [School A's Home Hospital Instruction Policy ("HHIP"), [School A] will provide [the Student] with in-person homebound specialized instruction and related services. n-person homebound services will include: 12 hours per week of specialized instruction, 1 hour per week of vision instruction, and 1 hour/week [of] occupational therapy . . . physical therapy[, and] . . . speech language pathology services." (Petitioner's Exhibit 8 pg. 85)

21. Petitioner submitted an application of HHIP in mid to late June 2023, along with a letter of medical necessity. On July 5, 2023, School A denied Petitioner's request for HHIP. [11] School A did not agree to HHIP services because the Student OSSE was not providing transportation after June 2023. The Student was not receiving homebound instruction from School A during the summer of 2024, and from the start of the 2023-2024 school year through the end of September 2024. HHIP – she did not appeal the HHIP process to OSSE that she can recall. (Mother's testimony, Witness 5's testimony, Petitioner's Exhibit 13, LEA Exhibits 13, 20)

[11] In its denial letter, School A stated, inter alia, the following: "The medical certification submitted states that [the Student] is unable to attend school because [her/his] parents are unable to get him/her up and down the stairs of [her/his] apartment building. As a result, [the Student] is unable to access the transportation services available from the Office of the State Superintendent of Education ("OSSE"). [School A] does not view this as a valid justification for HHI. [School A] and OSSE have made appropriate transportation services available to [the Student] through [her/his] IEP. Assisting [the Student] with getting up and down the stairs in [her/his] apartment building exceeds the scope of OSSE and [School A's]' transportation responsibilities under the Individuals with Disabilities Education Act ("IDEA") and thus is the responsibility of the family. As you know, this issue has been heard by an impartial hearing officer with OSSE's Office of Dispute Resolution as well as the United States District Court for the District of Columbia. Both the hearing officer and District Court judge determined that OSSE and[School A] are not responsible for providing "supports, services, carriers and/or conveyances" that enable [the Student] to get up and down the stairs in [his/her] apartment building. Rather, the District Court judge identified other options that you should explore such as arrange for private lifting services, seek assistance from another public program, move to an ADA-compliant home, or arrange for your husband to carry [the Student]. [School A] suggests that you also explore arranging support through your home nursing services or the purchase of a mobile stair-lift or climbing trolley. The IEP team recently met and agreed that [the Student's] least restrictive environment is not a homebound setting, but rather is attending school in person at [School A] where [she/he] has access to non-disabled peers. Accordingly, providing HHI under these circumstances is not consistent with [the Student's] least restrictive environment. You have a right to appeal this decision if you disagree with it. The Office of the State Superintendent of Education (OSSE) is required to administer the appeal process. If you wish to appeal [School A's] determination, you must submit a written request for an appeal to OSSE within ten (10) days of the issuance of this letter."

22. In April 2023, Petitioner found out about School B from a parent support social media group. She went to School B website and learned about them. The website was marketing evaluations – she looked into that and completed that part and went to the evaluation promoted by their website and they evaluated him/her – SL, OT, PT, vision. School B accepted the Student and sent Petitioner an enrollment agreement for enrollment in July 2023. Petitioner signed the enrollment agreement on August 10, 2023. Petitioner signed a contract with School B, dated July 26, 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. (Mother's testimony, Petitioner's Exhibit 33).

23. 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 May 16, 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 May 10, 2023. Further, and to date, the SSOE has failed to inform the Parent of the proposed school location for the 2023-2024 extended 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 [School A] 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. The attorney sent a similar letter to School A dated October 9, 2024. It too was sent by way of email, but there was an email address for School A noted on the letter. (Petitioner's Exhibits 48, 49)

24. School B is a private specialized school based in New York City, with a recently opened campus in Washington, D.C., for students with severe and profound special needs who are nonverbal and non-ambulatory. School B does not have a OSSE certificate of approval ("COA") to operate a private special education school in the District of Columbia. School

B was of the opinion that the Student required additional services than were prescribed on the Student's School A July 2023, IEP, including a one-to-one paraprofessional, related services of one hour per week, music therapy, assistive technology and an extended school day. (Witness 2's testimony, Witness 3' testimony, Witness 6's testimony)

25. The Student began receiving services from School B starting in October 2023, including OT, PT, SL, AT, vision, music, and academics. These services were provided in the Student's home. The Student had an in-person paraprofessional present every day. Two days per week, the Student received in-person services, while three days involved virtual sessions. The paraprofessional was consistently there daily. Sometimes, the OT and PT providers would co-treat. Nursing services were provided during the school day and paid for by the Student's insurance. (Mother's testimony)

26. The Student's school day at home started around 8:30 a.m. and ended at 3:00 p.m. Services were consistently provided in October 2023, but then tapered off in November or December 2023. Vision therapy was consistent. OT remained steady until February 2024. PT was consistent until March 2024. Academics were always maintained, but due to a staff change or the teacher's illness, the Student did not receive services that day. SLP was relatively consistent, but there was a period when the provider changed, leading to a gap until School B found a new provider. The contracted nursing company never provided services to the Student after shadowing the home nurse supplied by the Student's insurance. School B did not credit for any missed services, and the Petitioner did not receive a proration or refund of tuition. The Petitioner has not paid anything to School B but is obligated to pay under the contract. Petitioner sent a letter to School B in November 2023 expressing concerns about the inconsistency of services. She was dissatisfied with the progress when she sent the letter. School B responded that they were investigating and working on it, so she gave them a chance to fix the issues. By March 2024, the situation had not improved enough, and Petitioner enrolled the Student in DCPS. Petitioner has not made any payments under the contract with School B. (Mother's testimony)

27. Petitioner appealed the District Court's decision, which found that OSSE was not required to transport the Student. On September 3, 2024, the D.C. Circuit Court held that the IDEA's transportation service "includes moving the Student between the door of [her/his] apartment and the vehicle that will transport [him/her] to and from school." The D.C. Circuit concluded that OSSE has the duty to provide the Student with appropriate transportation services. Because OSSE refused to transport the Student from the door of her/his apartment to School A and back starting December 3, 2022, the Student did not attend School A during SY 2022-2023, including ESY during the summer of 2023 and the month of September 2024, and did not receive any homebound services from School A from June 2023 until the Student began receiving services from School B in October 2023. (Mother's testimony, D.C. Circuit's September 3, 2024, decision)

28. In March 2024, Petitioner enrolled the Student in DCPS, and she/he was assigned to a DCPS school in April 2024. From March 2024, when the Student enrolled in DCPS, OSSE did not transport the Student to his/her DCPS school until January 2025. Transportation began on January 14, 2025. The Student has been physically attending his/her DCPS

school since January 14, 2025. The Student received no special education services from March 2024 until OSSE started transporting the Student to his/her DCPS school on January 14, 2025. (Mother's testimony, Petitioner's Exhibit 50)

29. Petitioner engaged the services of a special education consultant to prepare a compensatory education plan to compensate the Student for the alleged denials of FAPE. The consultant calculated at the Student missed a total of services as result of the alleged denials of FAPE by both OSSE and School and a opined the Student should be compensated with the following compensatory services of in 507 hours of tutoring across the academic areas and 25 hours each of SLP, OT, and PT. [12] (Witness 4's testimony, Petitioner's Exhibit 59)

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 Petitioner'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:

[12] Petitioner's witness in his compensatory education proposal calculated that the Student was denied a FAPE from December 2022 through June 2023 and also missed ESY (in her/his School A program) for approximately 18 weeks + 4 weeks of ESY (which he calculated as 2 weeks in ESY is usually a shortened day) totaling 20 weeks (at this time the Student's IEP said - 22.5 hours of special education- vision was listed as related service) totaling 450 hours of missed special education instruction and 10 hours of SLP, OT, and PT each. (This writer notes that K received homebound services - 50 hours of homebound was received, worth 100 hours of missed specialized instruction). Adjusted for the homebound instruction provided means K should have received 350 hours of specialized instruction for the time period. School A dropped home-based for ESY of 2023 and September programming. The Student missed 90 hours of specialized instruction in September of 2023, 2 hours of Speech, OT, and PT each. Therefore, the witness also recommended compensatory education for this time frame. The Student was enrolled in School B from October 2023 to April 2024, so no hours for compensatory education are considered for this timeframe. The Student was then enrolled in DCPS May through June - 8 weeks (IEP said 24.5 hours including School A vision therapy in sped hours) totaling 196 hours of missed special education and 4 hours of SLP OT, and PT each. From the fall of 2024 year until mid-January 2025 - OSSE failed to transport the Student to school. He/she has 23.5 hours of specialized instruction on [her/his] IEP and missed 18 weeks totaling 423 hours of missed special education and 9 hours of Speech, OT, and PT. Combined, the Student missed approximately 50 weeks of specialized instructions totaling 1014 hours. Based on the denial of FAPE for the last 2+ years Student missed approximately 50 weeks of specialized instruction totaling 1014 hours. Based on the denial of FAPE for the last 2+ years the Student missed approximately 50 weeks of specialized instruction. This writer acknowledges that compensatory education does not need to be awarded to match the missed hours of special education instruction. Given the recommendation for compensatory education will likely be delivered in a 1:1 format, it was the witness's opinion that the services for the denial of FAPE could be delivered in 507 hours (roughly half) across the academic areas and 25 hours of SLP, OT, and PT each (if hours of these services were received during homebound instruction they should be deducted from this total).

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. Weast*, 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). School A held the burden of persuasion on issue #3 after Petitioner presented a prima facie case on that issue. Petitioner held the burden of persuasion on all other issues. [13]

OSSE's alleged denial of FAPE due to failure to transport:

ISSUE 1: Did OSSE deny the Student a FAPE by failing to transport the Student from her/his apartment door to School A and back from December 2, 2022, to late September 2023?

ISSUE 2: Did OSSE deny the Student a FAPE by failing to transport the Student from his/her apartment door to his/her DCPS school and back from April 2024 to January 2025 when transportation started?

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence that OSSE denied the Student a FAPE by failing to transport the Student from her/his apartment door to School A and back from December 2, 2022, to late September 2023, and from April 2024 to January 2025 when transportation started.

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

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[13] 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 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.

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

In the federal regulations, transportation is specifically listed as a related service. In the District of Columbia, the applicable regulations also specifically indicate that transportation is a related service that must be made available by the LEA. It should be noted that a local federal court has ruled that the LEA in the District of Columbia remains legally responsible for providing transportation to its students. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270 (D.D. C. 2011).

34 C.F.R §300.34(c)(16) provides that related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.

5A DCMR 3012.18 provides the IEP Team shall determine whether a child with a disability requires any related services to benefit from special education, and includes transportation as a related service and (a) includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment, if required to provide special transportation for a child with a disability; and (b)s hall be provided if the IEP Team determines that the provision of transportation services is necessary for the provision of FAPE and the child is eligible for transportation, using State-established criteria as prescribed in State-level policy.

For a failure to implement claim, the IDEA is violated only when a school district deviates materially from a student's IEP. See *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016); The IDEA is violated when a school district deviates materially from a student's IEP. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011) (citation omitted). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by that child's IEP. *Holman v. District of Columbia*, No. 14-1836, 2016 WL 355066 (D.D.C. 2016) (citing *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist*. 5J, 502 F.3d 811, 822 (9th Cir. 2007)). In other words, for the court to find a failure to implement an IEP, the school board or local authorities must have "failed to implement substantial or significant provisions of the IEP." *Wilson*, 770 F. Supp. 2d at 274 (citing *Houston Indep. Sch. Dist. v. Bobby R*., 200 F.3d 341, 349 (5th Cir. 2000)). There is no requirement that the child suffer educational harm in order to find a violation; rather, the proportion of services mandated compared with those provided is "the crucial measure for purposes of determining whether there has been a material failure to implement" an IEP.

OSSE asserts in its closing argument that the evidence presented at the hearing does not support a legal determination that OSSE has any liability for the alleged denial of a FAPE, citing the December 2022 HOD, and the April 2022 District Court case, and stating that OSSE had no obligation to provide transportation to the Student because carrying a student up and down stairs was not determined to be a related service under the IDEA.

However, OSSE's position in this regard is contrary to the Circuit court's decisive ruling otherwise. As the Circuit court points out in its opinion, "the obligation to provide the

transportation service [the Student] requires falls on the District [OSSE], not [his/her] school. Recall that the District [OSSE] has assumed the responsibility to provide IDEA-mandated "transportation" services. D.C. Code §§ 38-2901(12), 38-2907(a). The District contends, however, that it retains discretion to provide statutorily obligated services only to the degree it deems appropriate. That position rests on a misreading of the IDEA's operative provision."…. "The relevant provision states that, when a "[s]tate educational agency" (here, OSSE) assumes responsibility for "provid[ing] ... related services directly to children," that agency may provide ... [the] related services ... in such manner and at such locations ... as [it] considers appropriate. Such education and services shall be provided in accordance with this subchapter." "In sum, the IDEA entitles [the Student] to be transported from [her/his] apartment to the vehicle that will take him/her to school, and, by assuming the responsibility to provide transportation services under the statute, the District must perform that task. Insofar as the district court on remand determines that injunctive relief is appropriate, we clarify one aspect of our decision. Until now, the parties have suggested that moving [the Student] between [his/her] apartment and the vehicle would require physically lifting and carrying [her/him]. The District, though, could fulfill its statutory obligation in a "manner it considers appropriate." 20 U.S.C. § 1413(g)(2); see, e.g., 34 C.F.R. 300.34(c)(16)(iii) (providing that transportation under the IDEA includes use of "lifts" and "ramps")

As Petitioner points out in closing arguments, the D.C. Circuit's decision applies retroactively. When a federal court of appeals applies "a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate the announcement of the rule." *Children's Hosp. of Tex. v. Azar*, 507 F. Supp. 3d 249, 254 (D.D.C. 2020) (applying the rule from *Harper v. Virginia Dep't of Tax*, 509 U.S. 86, 95-97 (1993).

Clearly, based upon the circuit court's ruling, OSSE was obligated to provide the Student transportation which included transporting him/her from the door her/his home to the bus and back and it's failure to do so was contrary to the court's interpretation of OSSE's obligations pursuant to IDEA. As result of OSSE failure to transport the Student, he/she missed significant education services, some of which were made up by School A's homebound services and the services the Student received from School B. However, the evidence demonstrates that from the December 2, 2022, to late September 2023 and from April 2024 to January 2025, the Student the Student was not being transported to school and a result suffered the loss of significant special education and related services in compliance with the Student's School A IEP and was thus denied a FAPE.

School A's alleged denial of FAPE due to an inappropriate IEP:

ISSUE 3: Did School A PCS deny the Student a FAPE by failing to provide the Student an appropriate IEP, dated May 10, 2023, because (a) the related services of physical therapy, occupational therapy, and speech-language therapy were insufficient in frequency and duration, and (b) the IEP did not include the following: (i) music therapy, (ii) vision education services, (iii) parent counseling and training, (iv) an extended school day, and (v) supplementary aids and services such as a one-to-one paraprofessional, one-to-one nurse, assistive technology services, AAC devices, and support for school personnel on behalf of the Student?

Conclusion: School A sustained the burden of persuasion by a preponderance of the evidence that the IEP it developed for the Student, dated May 10, 2023, and finalized in June 23, 2023, was reasonably calculated to enable the Student to make progress appropriate in light of the Student's individual 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 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 Petitioners; (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 the Student to make progress appropriate in light of the Student's individual circumstances. In *Endrew 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. *Endrew 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 *Endrew 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)

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.")

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." *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)). "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 Petitioners was otherwise "proper under the Act"; and (3) the equities weigh in favor of reimbursement—that is, Petitioners 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)).

"[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)

Petitioner asserts that the Student's School A IEP was inappropriate IEP because (a) the related services of PT, OT and SLP were insufficient in frequency and duration, and (b) the IEP did not include the following: (i) music therapy, (ii) vision education services, (iii) parent counseling and training, (iv) an extended school day, and (v) supplementary aids and services such as a one-to-one paraprofessional, on-to-one nurse, assistive technology services, AAC devices, and support for school personnel on behalf of the Student.

Petitioner acknowledged during her testimony that the IEP included several of the services that her due process complaint alleged were missing. She acknowledged that the IEP prescribed a dedicated nurse aide, despite the amended DPC alleging that it did not. Petitioner acknowledged that the IEP prescribed vision education services despite the complaint alleging that it did not. Petitioner acknowledged that the IEP prescribed assistive technology and AAC, despite the complaint alleging that it did not.

The IEP included ESY, but, Petitioner never asked for extended school day, and although the Petitioner witnesses from School B, testified that an extended school day was necessary for the Student, Petitioner testified that when the Student received services from School B at home, the services were provided from around 8:30 a.m. and ended at 3:00 p.m., which is the normal school day. Likewise, although it appears that School B arranged for the Student to have a dedicated nurse, that service never materialized beyond the shadowing period with the Student's insurance-provided nurse. Principally, Petitioner's other witnesses testified that the Student's School A IEP was lacking because it did not provide the additional services that School B represented to Petitioner that it would provide. Their testimony was unpersuasive that the Student required these additional services and level and frequency of related services in order for the Student to be provided a FAPE.

Although Petitioner's counsel presented witnesses from School A, one of the witnesses had never

met the Student, and was unfamiliar with the actual implementation of the School B services, yet still testified that the Student was in need of service, many of which the Student never received with consistency from School B. Consequently, the IHO gave little weight to these witnesses' testimony. Petitioner, on the other hand, testified that, in light of the Student not being able to attend school physically, she initially expected the Student to be able to attend School B's D.C. location in person, but that too did not materialize.

Ultimately, Petitioner gave up on School B's services because they were provided inconsistently. As to the IEP that School B developed for the Student and finalized in June 2023, the Petitioner testified that her primary concern was that the Student be provided services at home by School A if the Student ultimately could not attend School A in person. She did not, however raise any other concerns that the IEP was lacking.

Petitioner testified that she did not recall requesting music therapy, parent training as a related service, or any of the other items that Petitioner's counsel, on her behalf, claims the IEP should have included. The IHO finds the evidence presented on behalf of Petitioner in this regard unpersuasive. In contrast, the evidence that School A presented with its witness and citing the documents clearly shows that the IEP was developed with Petitioner's collaboration and that of her counsel at the time, and none of the items now allegedly missing were discussed at the IEP team meeting or raised by any IEP team member at the time. As the case law cited above states, the adequacy of an IEP can be measured only when it is formulated, not in hindsight.

Consequently, the IHO concludes that School A sustained that burden of persuasion by a preponderance of the evidence that the Student's IEP dated May 10, 2023, was not inappropriate because it did not include one hour per week of the related services of PT, OT and SLP, music therapy, vision education services as a related service, parent counseling and training, an extended school day, a one-to-one paraprofessional, one-to-one nurse, AAC devices, and support for school personnel on behalf of the Student. School A sustained that burden of persuasion by a preponderance of the evidence that the Student's IEP dated May 10, 2023, was reasonably calculated to enable the Student to make progress appropriate in light of the Student's individual circumstances.

School A's alleged denial of FAPE due failure to provide homebound services:

ISSUE 4: Did School A PCS deny the Student a FAPE by failing to provide the Student with appropriate homebound programming ordered by Judge McFadden?

ISSUE 5: If the Student's June 2023 IEP prescribed homebound instruction and services, did School A PCS deny the Student a FAPE by failing to implement the prescribed homebound instruction and services?

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence that School A denied the Student a FAPE by failing to provide the Student homebound services for ESY during the summer of 2023 and the month of September 2023.

As stated previously, for a failure to implement claim, the IDEA is violated only when a school

district deviates materially from a student's IEP. See *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016); The IDEA is violated when a school district deviates materially from a student's IEP. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011) (citation omitted). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by that child's IEP. *Holman v. District of Columbia*, No. 14-1836, 2016 WL 355066 (D.D.C. 2016) (citing *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist*. 5J, 502 F.3d 811, 822 (9th Cir. 2007)). In other words, for the court to find a failure to implement an IEP, the school board or local authorities must have "failed to implement substantial or significant provisions of the IEP." *Wilson*, 770 F. Supp. 2d at 274 (citing *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). There is no requirement that the child suffer educational harm in order to find a violation; rather, the proportion of services mandated compared with those provided is "the crucial measure for purposes of determining whether there has been a material failure to implement" an IEP.

Petitioner alleges that in April 2023, District Court Judge McFadden ordered School A to add appropriate homebound services on the Student's IEP. Yet School A failed to develop appropriate backup homebound services for the Student knowing that OSSE kept refusing to transport the Student to and from school.

The hearing officer in the previous HOD, and the District Court were reviewing the Student's July 19, 2022, IEP and the language in the Other Classroom Aids and Services section of the IEP that stated, inter alia, "If the Student is required to remain home for an extended period due to medical needs, "[the Student] will receive homebound instruction, and the team will develop a plan for continuation of services.'"

The language in the "Other Classroom Aids and Services" section of the May 10, 2023, IEP, regarding homebound services, was updated to read: "If [the Student] is required to remain home for an extended period (10 school days or more) due to [her/his] health conditions, as governed by [School A's Home Hospital Instruction Policy ("HHIP')], [School A] will provide [the Student] with in-person homebound specialized instruction and related services. In-person homebound services will include: 12 hours per week of specialized instruction, 1 hour per week of vision instruction, and 1 hour/week of occupational therapy, physical therapy, and speech language pathology services."

Although the language changed between the two IEPs, Petitioner's desire for the Student to receive services if he/she could not attend school remained the same, regardless of the reason. It appears that School A seeks to circumvent the District Court's directive regarding the July 19, 2022, IEP by attempting to "contract" away those services, stating that the Student would only receive homebound services in accordance with the school's HHIP policy.

School A also asserts that Petitioner did not appeal its denial of the homebound services. However, the appeal of the denial of services resulted in this due process hearing. The provision in the IEP regarding School A HHIP policy appears to be an attempt to focus on the letter of the law rather than the spirit of the law that IDEA is designed to enforce, and the District Court in its opinion directed that the Student be provided. School A's action of not providing homebound instruction during ESY and September 2024, resulted in the Student not being provided any services. The

IHO suspects that School A included the Student in its student count for any funding or credit it received for providing its students with educational services.

The IHO is unconvinced by School A's arguments regarding it reasons for not providing the Student homebound services during ESY in the summer of 2023, and in the month of September 2023, before the Student began receiving services from School B. Consequently, the IHO concludes that School A denied the Student a FAPE by not providing him/her homebound services during that period.

Remedy:

Compensatory Education:

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.)

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his/her loss of FAPE and the specific compensatory measures needed to best correct those deficits." Id. at 526.

When a hearing officer finds denial of FAPE, he has "broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education.... [A]n award of compensatory education must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.)

The IHO has concluded that School A denied the Student a FAPE by failing to provide the Student homebound services during the limited time of ESY of summer of 2023, and the month of September 2023. The IHO concluded that OSSE denied the Student a FAPE for a much longer period: from December 2022 to September 2023, and from April 2024 to January 2025.

The Petitioner requested the compensatory education included in the plan prepared by her witness. The Petitioner's witness asserted that the Student should be compensated for denials, but did not apportion the proposed compensation between the Respondents based on their alleged liability. Additionally, there were additional shortcomings of the witness's proposal that School A aptly pointed out in its closing argument.

Petitioner has the burden of providing an entitlement to compensatory education. *See J.T. v.*

District of Columbia, Civil Action No. 21- 3002, 2023 WL 8369938 at 15 (D.D.C. Dec. 4, 2023) (plaintiff failed to demonstrate what compensatory education should be provided to the student to remedy what the plaintiff contends the student has been denied); *Phillips ex rel. T.P. v. District of Columbia*, 736 F. Supp. 2d 240, 248 (D.D.C. 2010) (plaintiff has the burden of "propos[ing] a well-articulated plan that reflects [the student's] current education abilities and needs and is supported by the record."); *Friendship Edison Public Charter School. Collegiate Campus v. Nesbitt*, 583 F.Supp.2d 169, 172 (D.D.C.2008) (to comply with the *Reid* standard, the petitioner must propose a well-articulated plan that reflects the student's current educational abilities and needs and is supported by the record); *Smith v. District of Columbia*, Report and Recommendation, Case No. 1:22-cv-027555 at 8 (D.D.C. July 31, 2023).

Pursuant to the D.C. Circuit's decision in *Reid v. District of Columbia, 401 F.3d 516 (D.C. Cir. 2005)*: [J]ust as IEPs focus on disabled students' individual needs, so must awards compensating past violations rely on individualized assessments… In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.*Id.* at 524; *see also*, *B.D. v. District of Columbia*, 817 F.3d 792, 799-800 (D.C. Cir. 2016).

Accordingly, the parent must show (1) what educational harm the student suffered as a result of the alleged denial of FAPE, (2) what type and amount of compensatory services the student requires to put him/her in the position s/he would be had there been no denial of FAPE, and (3) the assessments or educational, psychological, or scientific studies that support the type and amount of services requested. *See Gill v. District of Columbia,* 751 F.Supp.2d 104, 111-12 (D.D.C. 2010) (petitioners offered neither reasoning nor factual findings to support the appropriateness of their proposed compensatory education plan), further proceedings, 770 F.Supp.2d 112, 116-18 (D.D.C. 2011).

Petitioner's witness's recommendation did not meet the *Reid* standard. School A aptly pointed out that the recommendation does not identify the educational harm suffered or consider the progress made during SY 2022-2023. The expert admitted that he did not review the Student's IEP progress reports or consider what services were provided and/or authorized by School A. The witness did not cite any data establishing the Student's expected growth or lack thereof during the period in question. Instead of examining evidence of progress made, or lack thereof, the witness simply used a mathematical calculation to determine the amount of service hours missed and owed, directly contradicting what *Reid* requires. Petitioner's witness never met or observed the Student in any setting—educational or otherwise. There are no evaluations or assessments of the Student. As a result, instead of granting specific compensatory education for the denied FAPE, the IHO in the order below grants Petitioner authorization to obtain an independent educational evaluation ("IEE") of the Student, specifically to assist in calculating the amount and type of compensatory education owed and the apportionment of any award to each Respondent.

Tuition Reimbursement:

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)).

"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)).

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).

Due to the unsuccessful attempt to secure School A's agreement to provide homebound instruction for the Student during the 2023-2024 school year, the Petitioner decided to unilaterally place the Student in School B. The evidence demonstrated that School B principally operates in New York and held an "intake event" in the District of Columbia in the spring of 2023 and ultimately enrolled four or five students, including the Student. School B had not previously operated in the District of Columbia.

Petitioners have asserted that School B is a proper placement for the Student for SY 2024-2025 and reimbursement. In addition, Petitioner's counsel asserts that any award of reimbursement should be made directly to School B, as Petitioner has testified that she has not paid School B in accordance with the contract she signed.

The evidence demonstrates that School B consistently provided the Student services in October 2023, but then the services tapered off in November or December 2023, and in the subsequent months the Student missed services due to staffing changes and staff absences or illness. The contracted nursing company never provided services to the Student after shadowing the home nurse supplied by the Student's insurance. School B did not credit for any missed services, and the Petitioner did not receive a proration or refund of tuition. Petitioner sent a letter to School B in November 2023 expressing concerns about the inconsistency of services and was dissatisfied with the progress when she sent the letter. By March 2024, the situation had not improved enough, and Petitioner enrolled the Student in DCPS. The evidence also demonstrates that School B does not hold an OSSE COA.

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 on this evidence, the Student received some educational benefit from the services provided by School B; however, the evidence does not support that School B should be reimbursed for the full amount that Petitioner contractually agreed to pay. The IHO concludes that School B meets the requirements for the Petitioner's reimbursement, limited to the services that School B actually provided to the Student, if and when the Petitioner presents evidence to OSSE showing she has paid for those services.

ORDER: [14]

1. OSSE shall, within ten (10) business days of the issuance of this order, provide Petitioner with authorization to obtain an IEE at the OSSE-prescribed rate to determine the appropriate compensatory education for the denials of FAPE determined in this HOD. If necessary, Petitioner is authorized to seek appropriate compensatory education for the Student from OSSE and/or School A based on this evaluation in a subsequent due process hearing.

2. Within thirty (30) calendar days of Petitioner presenting OSSE with appropriate documentation of her payment(s) to School B, OSSE shall reimburse Petitioner for the payment(s) she personally made to School B for the Student's attendance at School B for the portion of SY 2023-2024 that Student was provided services by School B consistent with the rates prescribed by OSSE for private school tuition and related services.

3. All other relief requested by Petitioner is denied.

[14] 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.

APPEAL PROCESS:

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

/S/ *Coles B. Ruff*

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Coles B. Ruff, Esq.
Hearing Officer
Date: July 10, 2025

Copies to: Counsel for Petitioners
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