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Office of Dispute Resolution
June 24, 2016

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

PETITIONERS, on behalf of STUDENT,[1]	)	Date Issued: June 24, 2016
	)	Hearing Officer: Peter B. Vaden
Petitioners,	)	
	)	Case No: 2016-0058
v.	)	
	)	Hearing Dates: May 24-25, 2016 June 8, 2016
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
	)	Office of Dispute Resolution, Room 2006 Washington, D.C.
Respondent.	)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioners under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (D.C. Regs.). In their due process complaint, Petitioners seek reimbursement from Respondent District of Columbia Public Schools (DCPS) for Student's enrollment in a private special education day school and other relief.

Student, an AGE child, is a resident of the District of Columbia. Petitioners' Due Process Complaint, filed on March 14, 2016, named DCPS as respondent. The undersigned hearing officer was appointed on March 15, 2016. The parties convened for

[1] Personal identification information is provided in Appendix A.

a resolution session on March 23, 2016, which did not result in an agreement. On March 29, 2016, I convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters.

The 45-day period for issuance of this Hearing Officer Determination initially began on April 13, 2016. However, the Chief Hearing Officer granted continuance requests on March 31, 2016 (due to Petitioners' witness unavailability) and on June 3, 2016 due Petitioners' needing more-than-anticipated time to present their case-in-chief. As a result of these continuances, the due date for the final decision was ultimately extended to June 24, 2016.

The due process hearing was held before this Impartial Hearing Officer on May 24, May 25 and June 8, 2016 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. MOTHER appeared in person and Petitioners were represented by PETITIONERS' COUNSEL. Respondent DCPS was represented by FAMILY CARE COORDINATOR and by DCPS' COUNSEL. In lieu of making oral opening argument, the parties were allowed to file written opening statements. Only Petitioners' Counsel filed a written opening.

Mother testified and Petitioners called as additional witnesses INDEPENDENT PSYCHOLOGIST, NONPUBLIC SCHOOL HEAD OF SCHOOL, ABA CLINICAL DIRECTOR and GRANDMOTHER[2], all of whom were allowed to testify as expert witnesses. DCPS called as witnesses SCHOOL PSYCHOLOGIST, EVALUATION COORDINATOR, SPEECH-LANGUAGE PATHOLOGIST, OCCUPATIONAL

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[2] Grandmother is employed by Petitioners' Counsel as an educational advocate.

THERAPIST, CES TEACHER 1, CES TEACHER 2, LEA REPRESENTATIVE, and Family Care Coordinator. Evaluation Coordinator, Speech-language Pathologist, Occupational Therapist and Family Care Coordinator were allowed to testify as expert witnesses. Petitioners' Exhibits P-1 through P-66 were admitted into evidence, with the exceptions of Exhibits P-10, P-16, P-36, P-47 and P-49. Exhibits P-9, P-13, P-30 through P-33, P-35, P-37 through P-43, P-45, P-48 and P-65 were admitted over DCPS' objections. DCPS' objections to Exhibits P-10, P-16, P-36, and P-49 were sustained. Exhibit P-47 was withdrawn. DCPS' Exhibits R-1 through R-35 were admitted into evidence without objection. At the conclusion of the hearing counsel for the respective parties made closing arguments. At the same time, Petitioners' counsel submitted, without objection, a written citation of authorities for the hearing officer's consideration. Neither party requested leave to file a post hearing brief.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The following issues for determination were certified in the March 31, 2016 Revised Prehearing Order:

> Whether DCPS denied the student a FAPE by failing to provide the student an appropriate IEP in April of 2015 because (1) the parent was not given input into the IEP and (2) the services provided on the IEP were insufficient and inappropriate – namely partial inclusion, large school setting, inappropriate and insufficient OT services, inappropriate speech and language services, inappropriate behavioral support services, lack of integration of related support services in classroom, lack of dedicated aide/behavioral shadow; and inadequate or insufficient use of Applied Behavioral Analysis (ABA) methodology;
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> Whether DCPS denied the student a FAPE by failing to offer the student an appropriate educational placement as far back as April 21, 2015 when DCPS

offered the Communication and Education Support (CES) program at CITY SCHOOL through October 2015, when there was no longer any offer of placement on the table, because (1) the placement was inappropriate – namely because it was low functioning autism spectrum disorder class with students functioning well-lower than the student and many who were non-verbal, it was not a separate classroom or separate school, related services were not integrated in the classroom, there was a lack of sensory integration equipment in classroom and no ABA programming and Student was no offered a dedicated aide/behavioral shadow and (2) the parent was not involved in the placement decision;

Whether DCPS denied the student a FAPE through its failure to offer any IEP or educational placement/program for the student during the time frame from October 9, 2015 through February 17, 2016;

Whether DCPS denied the student a FAPE when it created the December 10, 2015 IEP because the IEP is inappropriate based on the fact (1) the parent was not given input into the IEP and (2) the services provide on the IEP were insufficient and inappropriate for most of same reasons as the prior IEP except that although inclusion services were removed, no provision was made for special education services for lunch and for recess;

Whether DCPS denied the student a FAPE when it offered the January 29, 2016 IEP because (1) the parent was not given input into the IEP and (2) the services provide on the IEP are insufficient and inappropriate, for most of same reasons as prior IEPs except that Student was placed in an inclusion setting for specials classes, no provision was made for special education services for lunch and recess, no provision was made for an aide or "shadow", and the student would receive related services inside the classroom in an isolated manner separate from the class (not integrated into the programming);

Whether DCPS denied the student a FAPE when it offered the CES program for the student at City School on February 17, 2016 because (1) the parent was not part of the placement decision and (2) the placement was inappropriate for the student for the same reasons as prior placements, except that the latest proposed placement would be in a classroom for higher functioning children with autism spectrum disorder disabilities.

For relief, Petitioners requested that the Hearing Officer order DCPS to reimburse the parents for their unilateral placement of the student at Nonpublic School from May 2015 through the present including any transportation costs, order DCPS to fund Student's ongoing enrollment at the Nonpublic School for the rest of the 2015-2016

school year with transportation[3] and order DCPS to convene Student's IEP team to review and revise, as appropriate, Student's IEP.

FINDINGS OF FACT

After considering all of the evidence admitted at the due process hearing in this case, as well as the arguments and legal memorandum of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is an AGE resident of the District of Columbia, where he resides with the parents. Grandmother resides in the same building. Testimony of Mother, Testimony of Grandmother. Student is eligible for special education and related services as a child with an Autism Spectrum Disorder (ASD) disability. Exhibit R-24.

2. Student was initially evaluated for eligibility for special education in June 2014 by DCPS Early Stages Assessment Center. The examiner who conducted the psychological evaluation concluded that Student met criteria for special education as a child with an ASD disability. Exhibit P-50. At a June 24, 2014 initial eligibility meeting, Mother and Grandmother disagreed with Student's ASD classification and withheld consent for special education services for Student. The parents requested DCPS funding

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[3] The Prehearing Order was amended to reflect changes to issues and relief requested on behalf of Petitioners on March 30, 2016. In closing argument, Petitioners' Counsel requested for additional relief that the hearing officer order DCPS to fund Student's placement at Nonpublic School for the 2016-2017 school year. Because prospective placement for the 2016-2017 school year was not a requested remedy identified in the Amended Prehearing Order, the request for prospective placement relief will not be considered by the hearing officer. *See* Amended Prehearing Order, ¶ 16 ("The parties and their counsel will be held to the matters agreed upon, ordered, or otherwise set forth in this Order. If either party believes this Hearing Officer has overlooked or misstated any item, the party is directed to advise this Hearing Officer of the omission or misstatement within three [3] business days of the date of this Order [and provide a copy to opposing counsel]. The Hearing Officer will address the party's concern promptly.")

for an Independent Educational Evaluation (IEE). Exhibits P-9, R-2, R-3.

3. On December 9, 2014, the parents obtained an IEE comprehensive psychological evaluation of Student conducted by INDEPENDENT EXAMINER. Based upon information gathered from behavior rating scales, the prior evaluations, observations by the examiner and anecdotal information from Student's teachers and Mother, Independent Examiner confirmed Student's previous diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD) and further that Student met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) diagnostic criteria for an ASD disability. Exhibit P-50.

4. Independent Examiner recommended, *inter alia*, that Student would benefit from placement in a therapeutic school with a low student-to-teacher ratio, intended for Students with ADHD and social communication deficits and that Student would benefit from receiving ABA services to help foster his social, emotional and communication skills. Exhibit P-50. Petitioners' counsel provided the IEE psychological evaluation to DCPS by email on January 12, 2015. Exhibit P-2.

5. In February 2015, Student was referred for evaluation to AUTISM CENTER by his parents due to language and social delays, aggressive behavior, over-focused and repetitive interests and concerns regarding an ASD. The Autism Center evaluators concluded that, based on his scores on the Autism Diagnostic Observation Schedule, 2nd Edition (ADOS-2), as well as observational assessment, Student met diagnostic criteria for an ASD. Exhibit P-56.

6. The Autism Center evaluators recommended, *inter alia*, that it might be best for Student to repeat preschool in the 2015-2016 school year in a preschool program designed for children with an ASD diagnosis, to include a language enriched

program, that was highly structured and afforded opportunities to develop language/communication, social interactions, learning readiness and academic skills. It was recommended that this educational program incorporate both small group and individualized instruction. The recommendation for Student to repeat preschool was to help develop Student's skills to a level where he would be able to participate in a general education Kindergarten classroom with typically developing peers the following year. Exhibit P-56. A copy of the Autism Center report on Student, completed on March 17, 2015, was provided to DCPS. Exhibit P-26.

7. On April 20, 2015 Student began attending Nonpublic School on the basis of a unilateral placement by his parents. Prior to then, he had been attending PRIVATE SCHOOL 1, which was not a special education school. Testimony of Mother, Exhibit R-8.

8. A second initial eligibility meeting for Student was convened on April 21, 2015. The eligibility team determined that Student was a child with a disability who needed special education and related services under the IDEA disability classification ASD. Exhibit P-25. At this meeting, Mother gave her consent to the initial provision of special education and related services. Exhibit P-23.

9. On April 21, 2015, DCPS convened an initial IEP meeting for Student. At that meeting, DCPS proposed an IEP for Student with annual goals for Adaptive/Daily Living Skills; Communication/Speech and Language; Emotional, Social and Behavioral Development and Motor Skills/Physical Development. The proposed IEP provided 20 hours per week of Specialized Instruction outside general education, 4 hours per week of Specialized Instruction in general education, 2 hours per month of Speech-Language Pathology in General Education, 2 hours per month, each, of Occupational Therapy

(OT), Behavioral Support Services, and Speech-Language Pathology, all outside general education and 30 minutes per month of OT as a Consultation Services. The 20 hours per week of Specialized Instruction outside general education would be provided in the CES classroom. For the remaining four hours, Student would attend "Specials" classes, Music, Art, Gym and Physical Education, with grade-level general education peers. A paraprofessional would accompany the CES students to the Specials classes. Exhibit P-4, R-8; Testimony of CES Teacher 1. A Communication and Education Support (CES) classroom at City School was proposed as the location of services. Exhibit P-4, R-8. Mother told the IEP team that Autism Center had recommended that Student attend a "regular Kindergarten" and receive support services in the classroom. At the meeting, Grandmother reported that she had many concerns about the proposed IEP. The parents did not agree to the IEP. Exhibits R-8, R-10.

10. It was reported at the April 21, 2015 IEP meeting that Student had started at Nonpublic School the day before and that Student was then being evaluated through ABA PROVIDER to see if he needed ABA interventions. Exhibit R-8. ABA Provider's report was completed on April 28, 2016. The report recommended, *inter alia*, that Student have an ABA functional behavior plan and a 1:1 shadow in school to implement the behavior plan. Exhibit P-37.

11. On or about April 29, 2015, Mother and Grandmother visited the proposed CES classroom at City School. Mother thought that the City School program was "too easy" for Student and was concerned that the other children in the program were nonverbal. Mother decided to continue Student at Nonpublic School because he had started there and was doing well. Testimony of Mother, Exhibit P-2.

12. On May 4, 2015, Grandmother wrote a letter to Family Care Coordinator stating that the CES program at City School appeared to working hard to meet the needs of current students but was not appropriate for Student. Grandmother objected specifically that she had observed that the three current students were non-verbal and that Student had superior academic skills to the children in the program. Grandmother also objected to the level of OT services offered to Student and to inadequate ABA services which lacked a 1:1 "shadow" to implement the behavior plan. Grandmother also rejected placing Student in a higher level autism class in the fall of 2015 because the Students in that class were not so high functioning as Student. Grandmother predicted that in either CES classroom at City School, Student would regress academically and his inappropriate behavior episodes would increase. Grandmother concluded that "[w]e cannot agree to the placement because of the harm that Student will experience." Exhibit R-10. By letter of May 6, 2015, DCPS Early Stages Director of Evaluations responded to Grandmother's concerns and maintained that the Early Stages team felt it had offered Student a FAPE at the City School CES program. Grandmother replied on May 12, 2015 that they were unable to accept the proposed placement. Family Care Coordinator and Grandmother had further communications on May 23, 2015 and May 28, 2015, but no agreement was reached for Student to enroll in the City School CES Program. Exhibit P-2. Student remained at Nonpublic School for the 2015-2016 school year. Testimony of Mother.

13. By letter of October 5, 2015, Grandmother wrote Family Care Coordinator to request "an offer a FAPE [for Student] including a pre-enrollment IEP meeting, a draft IEP and a proposed placement for consideration." Exhibit P-3. Family Care Coordinator responded on October 9, 2015 that the parents could enroll Student at City

School at any time. Family Care Coordinator also offered to meet to discuss Student's IEP and update it for the current school year. Family Care Coordinator also sought a release from the parents to obtain Student's records from Nonpublic School and the opportunity to speak with Student's education team there. Exhibit P-3.

14. On November 2, 2015, School Psychologist observed Student in his classroom at Nonpublic School. She noticed that Student had made progress at Nonpublic School. Testimony of School Psychologist, Exhibit R-18.

15. On November 16, 2015, Occupational Therapist observed Student at Nonpublic School. She was told by the classroom teacher that Student usually had a 1:1 aide and was very dependent on the assistance of the aide to complete an activity. She reported that Student needed significant support throughout the day, including small class size, low student to teacher ratio, visual schedules, access to hand fidgets and access to gym. Exhibit R-17. From her review of Student's Nonpublic School "Compass" the individualized education plan used by Nonpublic School, Occupational Therapist learned that Student was developing in areas of Sensory Processing (processing Auditory and Visual input), Environmental and Community Mindfulness, Self Regulation and Pro-Social Behaviors. Exhibit R-19.

16. Speech-Language Pathologist observed Student at Nonpublic School on November 17, 2015. She noted Student had made significant progress at Nonpublic School, although he was not receiving direct speech-language services, and that he communicated pretty well for his age. Social Communication appeared to still be a significant deficit. Testimony of Speech-Language Pathologist, Exhibit R-20.

17. On December 7, 2015, Mother and Grandmother returned to City School to visit the CES classroom. Head of School accompanied them on this visit.

Grandmother wrote Family Care Coordinator on December 8, 2015 that the CES program was not appropriate for Student because the children she observed there were severely language delayed, developmentally delayed and cognitively impaired, whereas Student was not cognitively delayed and only had a mild language problem. She and Mother concluded that the program at City School would not be academically challenging for Student and would not provide the supports he needed to access the curriculum. Exhibit P-3.

18. DCPS convened an IEP meeting for Student on December 10, 2015. Student's IEP was not completed at the meeting because Grandmother requested changes to the Present Levels of Performance Baseline data. Due to Mother's illness, the meeting was not reconvened until January 29, 2016. Testimony of Evaluation Coordinator, Exhibit P-3. Between the December and January IEP meetings, the DCPS Evaluation Coordinator made changes to the proposed IEP based upon the parent's concerns about Student receiving related services in the classroom, as opposed to pull-out services. The final IEP developed on January 29, 2016 provided for Student to receive 24 hours per week of Specialized Instruction outside general education, 1.5 hours per week of Specialized Instruction in general education, 120 minutes per month of OT, 2 hours per month of Behavioral Support Services and four hours per month of Speech-Language Pathology, all outside general education. The IEP also provided for 30 minutes per month of OT and 30 minutes per month of Behavioral Support Services as Consultation Services. The IEP provided for Student to attend lunch, recess and Specials classes with nondisabled peers. (At these times, the CES students would be accompanied by a special education paraprofessional.) The IEP did not provide for the services of a dedicated aide. Exhibit R-24, Testimony of Evaluation Coordinator.

19. At the January 29, 2016 IEP meeting, Mother and Grandmother agreed with the IEP goals in the proposed IEP. They did not agree with the services and placement offered in the proposed IEP. Grandmother explained their concerns in a February 1, 2016 letter to Family Care Coordinator. They maintained that Student needed a small class in a small school setting that could provide appropriate academics and related services. They objected to Student's having any interaction with nondisabled peers in a DCPS general education setting. They believed the IEP provided insufficient hours of OT services and they objected to pull-out behavioral supports. Another concern was the failure to provide for a dedicated aide. Exhibits R-25, P-33.

20. On February 17, 2016, DCPS notified the parents that the K-2 High Functioning Autism program at City School would be the setting to implement the proposed January 29, 2016, IEP. By email of March 4, 2016, Petitioners' Counsel rejected the proposed January 29, 2016 IEP and the proposed placement/location of services for Student at City School. Counsel advised that the parents would seek reimbursement for Student's enrollment at Nonpublic School. Exhibit R-33.

21. Nonpublic School is a for-profit special education day school serving students with social and communication deficits, primarily with ASD, Anxiety Disorders and ADHD. There are 54 students in the lower school. Maximum class size is 10 students, served by two special education certified teachers. All related services are integrated into the classroom program. Testimony of Head of School.

22. The tuition at Nonpublic School is approximately $35,000 per year inclusive of related services. Nonpublic School does not have a D.C. Office of the State Superintendent of Education (OSSE) Certificate of Approval. Testimony of Head of School.

23. Since his second week at Nonpublic School, Student has been assigned a full-time "ABA Shadow" to implement his behavior intervention plan. In November 2015, the school attempted "fading" of the ABA Shadow support, but when Student's problem behaviors increased, the school decided to revert to the original level of ABA Shadow support. Testimony of ABA Clinical Director.

24. Student has made educational progress at Nonpublic School. This year there has been an increase in the amount of time Student us able to focus on academic work. He had developed greater independent and is able to work on full lessons. Testimony of Head of School. He has made very good academic, social-emotional and language progress. Testimony of Grandmother.

CONCLUSIONS OF LAW

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

Burden of Proof

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioners in this case. *See* D.C. Regs. tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

Analysis

A.

> Did DCPS deny the student a FAPE by failing to provide the student an appropriate IEP in April of 2015 because (1) the parent was not given input into the IEP and (2) the services provided on the IEP were insufficient and

inappropriate – namely partial inclusion, large school setting, inappropriate and insufficient OT services, inappropriate speech and language services, inappropriate behavioral support services, lack of integration of related support services in classroom, lack of dedicated aide/ behavioral shadow; inadequate or insufficient use of ABA?

Did DCPS deny the student a FAPE by failing to offer the student an appropriate educational placement from April 21, 2015 when they offered the CES program at City School through October 2015, when there was no longer any offer of placement on the table, because (1) the placement was inappropriate – namely because low functioning autism spectrum disorder class with students functioning well-lower than the student and many non-verbal, because it was not a separate classroom or separate school, because related services are not integrated in classroom, because of a lack of sensory integration equipment in the classroom and no ABA programming, and because Student would not be provided a dedicated aide/behavioral shadow and (2) the parent was not involved in the placement decision?

Student is a child with an ASD disability. A DCPS eligibility team had originally determined Student eligible for special education as a child with an ASD disability at an initial eligibility meeting on June 24, 2014. However, at the time, Mother disagreed with Student's ASD classification and withheld consent for provision of special education services. The parents obtained independent evaluations in January and March 2015 which endorsed Student's ASD disability. Another eligibility committee meeting was convened on April 21, 2015 and Student was again determined eligible for special education as a child with an ASD disability. At this meeting, Mother gave her consent for the initial provision of special education and related services. Petitioners first contend that the DCPS IEP and placement offered to Student in April 2015 were inadequate.

Student's initial IEP, developed at an April 21, 2015 IEP meeting offered him 20 hours per week of Specialized Instruction outside general education, 4 hours per week of Specialized Instruction in general education, 2 hours per month of Speech-Language Pathology in General Education, 2 hours per month, each, of Occupational Therapy

(OT), Behavioral Support Services, and Speech-Language Pathology, all outside general education, and 30 minutes per month of OT as Consultation Services. A Communication and Education Support (CES) classroom at City School was proposed as the location of services.

The Petitioners contend that the proposed April 21, 2015 IEP and placement were inappropriate because of inadequate special education and related services. The Petitioners also objected to placing Student in the CES program at City School, because Student would be in a classroom with lower functioning children, because Student would have interaction at the school with nondisabled peers, because the classroom lacked sensory integration equipment and because of the large public school setting. DCPS maintains that based upon the information available to the IEP team in April 2015, Student was offered an appropriate IEP and placement.

In *Moradnejad v. District of Columbia*, 2016 WL 1275577 (D.D.C. Mar. 31, 2016), the Court adopted the Report and Recommendation of U.S. Magistrate Judge G. Michael Harvey, which explained how a court or a hearing officer must assess an IEP:

> The Supreme Court explained in *[Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)] that a court's assessment of an IEP involves two inquiries:
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>> First, has the State complied with the procedures set forth in the [IDEA]? And second, is the [IEP] developed through the [IDEA's] procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.
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> *Rowley*, 458 U.S. at 206–07, 102 S.Ct. 3034. Courts have consistently underscored that the "appropriateness of an IEP is not a question of whether it will guarantee educational benefits, but rather whether it is reasonably calculated to do so." *K.S. v. Dist. of Columbia*, 962 F.Supp.2d 216, 221 (D.D.C.2013) (citing *Thompson R2–J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148–49 (10th Cir.2008)); *Rowley*, 458 U.S. at 200, 102 S.Ct. 3034 (finding that the IDEA does

> not require that IEPs "maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children," only that they be "reasonably calculated to enable the child to receive educational benefits"); *N.T. v. Dist. of Columbia*, 839 F.Supp.2d 29, 33 (D.D.C.2012) ("While the District of Columbia is required to provide students with a public education, it does not guarantee any particular outcome or any particular level of education.").

Moradnejad, supra. "Courts have consistently underscored that the 'appropriateness of an IEP is not a question of whether it will guarantee educational benefits, but rather whether it is reasonably calculated to do so'; thus, 'the court judges the IEP prospectively and looks to the IEP's goals and methodology at the time of its implementation.'" *K.S. v. District of Columbia*, 962 F. Supp. 2d 216, 221 (D.D.C. 2013) (citing *Thompson R2–J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148–49 (10th Cir.2008)).

Here, Petitioners allege that DCPS violated the first prong of the *Rowley* test by not allowing the parents sufficient input in the development of the April 21, 2015 IEP and in Student's proposed placement in the CES program at City School. The IDEA requires that parents be afforded meaningful participation in the development of their child's IEP. "Absent an uncooperative parent, meaningful participation is the cornerstone of the IEP process." *Lofton v. D.C.*, 7 F. Supp. 3d 117, 124 (D.D.C. 2013), citing *J.N. v. District of Columbia*, 677 F.Supp.2d 314, 320 (D.D.C.2010) ("The IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.")

I find that Petitioners have not established that they were not afforded meaningful participation in the development of the proposed April 21, 2015 IEP and educational placement. Even though by the time of the April 21, 2015 IEP meeting, the parents had already enrolled Student in Nonpublic School, Mother and Grandmother

attended the April 21, 2015 IEP meeting. Both Mother and Grandmother, who holds a Ph.D. in Special Education and frequently testifies as an expert witness in due process hearings, were active participants. Grandmother also submitted a letter to Family Care Coordinator two days after the meeting detailing her concerns about the IEP and the proposed placement at City School. Mother and Grandmother visited the proposed CES classroom at City School a few days after the IEP meeting and had the opportunity to ask questions about the program. Subsequently, Grandmother submitted two more letters detailing her concerns about the educational setting. Although Mother and Grandmother did not agree with the April 21, 2015 IEP or DCPS' proposal to place Student at City School, I find that the parents' right to participate in the IEP formulation process was respected. *Cf. Hawkins v. District of Columbia*, 692 F.Supp.2d 81, 84 (D.D.C.2010). (Right conferred by the IDEA on parents to participate in the formulation of their child's IEP does not constitute a veto power over the IEP team's decisions.)

I turn, next, to the second prong of the *Rowley* inquiry: Was the April 21, 2015 IEP reasonably calculated to enable Student to receive educational benefits? As the Court explained in *K.S. v. District of Columbia*, 962 F.Supp.2d 216, 220 (D.D.C.2013), that standard requires that a District offer a "basic floor of opportunity" for students, *Rowley*, 458 U.S. at 201, 102 S.Ct. 3034, rather than "a potential-maximizing education." *Id.* at 197 n. 21, 102 S.Ct. 3034. Hearing officers may not "impose a potential-maximizing standard by deeming a placement inappropriate simply because another location might be better for the child in some way." *K.B. v. District of Columbia*, No. CV 13-0649, 2015 WL 5191330 (D.D.C. Sept. 4, 2015).

Petitioners contend that the proposed April 21, 2015 IEP did not offer Student a

basic floor of opportunity because the IEP provided for (a) inappropriate and insufficient OT services, (b) inappropriate speech and language services, (c) inappropriate behavioral support services, (d) lack of integration of related support services in the classroom, (e) no provision for a dedicated aide or behavioral shadow, and (f) inadequate or insufficient provision for Applied Behavioral Analysis (ABA) methodology. The Petitioners also contend that the IEP was inappropriate because it allowed for partial inclusion education in large school setting. I will consider each of these claims in turn.

a. <u>Inappropriate and Insufficient OT services</u>

The April 21, 2015 IEP provided for Student to receive two hours per month of direct OT services and for 30 minutes per month of OT consultation services. DCPS' expert, Occupational Therapist, conducted an OT evaluation of Student in July 2014. She testified that she agreed that the provision in the April 21, 2015 IEP for 120 minutes per month of OT services and 30 minutes per month of consultation services was appropriate to meet Student's IEP OT goals and to address his sensory needs. Petitioner did not call an OT expert. Grandmother, who testified as Petitioners' special education expert, noted that the provision for 120 minutes per month of OT services in the April 21, 2015 IEP was a major reduction because Student was receiving two 50 minute OT sessions per week outside of school. Occupational Therapist, of course, has more expertise in meeting children's OT needs than Grandmother and I found no reason not to credit her opinion.

Further, under the IDEA, related services, including OT, are only required to the extent that such services are necessary to enable the student to benefit from special education. *See* 34 CFR §§ 300.34(a), 300.34(c)(2). *See, also, Irving Independent Sch.*

Dist. v. Tatro, 468 U.S. 883, 890, 104 S.Ct. 3371, 82 L.Ed.2d 664 (1984). (To determine if a service is a required related service under the IDEA, court must determine whether the service is a "supportive service [ ] . . . required to assist a child with a disability to benefit from special education." 20 U.S.C. § 1401(26)(A).) The fact that the parents obtained OT services for Student outside of school does not mean that the in-school services offered in the IEP were not adequate to enable Student to benefit from special education. *See Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C.Cir.1988) ("[P]roof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act.") I find that Petitioners have not met their burden of proving that the OT services offered in the April 21, 2015 IEP were not appropriate or sufficient to assist Student to benefit from special education.

b. Inappropriate Speech and Language Services

The April 21, 2015 IEP provided for Student to receive four hours per month of Speech-Language Pathology services, including two hours outside general education. The Autism Center March 17, 2015 IEE report recommended that Student receive speech-language services to address his receptive and expressive language needs as well as his social communication needs. Speech-Language Pathologist testified that Student needed speech-language services outside general education as well as support in the classroom to improve his social interaction with peers. Mother testified that she wondered about why Student needed so many hours of speech-language services. However, Petitioners did not offer competent evidence that Student would not benefit from four hours per month of speech-language services. I find that Petitioners have not met their burden of proving that the provision in the April 21, 2015 IEP for Student to receive four hours per month of speech-language services was inappropriate.

c. Inappropriate Behavioral Support Services

The April 21, 2015 IEP provided for Student to receive two hours per month of Behavioral Support Services outside general education and for 30 minutes per month of behavioral consultation services. School Psychologist, who conducted a psychological evaluation of Student in May and June 2014, testified that these hours of services were needed to address Student's IEP annual goals for Social, Emotional and Behavioral Development. Petitioners offered no competent evidence that the provision for Behavioral Support Services in the proposed April 21, 2015 IEP was not appropriate or not reasonably calculated to assist Student to benefit from special education. Petitioners have not met their burden of proof on this issue.

d. Lack of Integration of Related Support Services in the Classroom

Petitioners object that except for 2 hours per month of Speech-Language Pathology, the April 21, 2015 IEP provided that Student would receive his related services on a "pull-out" basis outside the CES classroom. At Nonpublic School, related services are integrated in the classroom program. Assuming Nonpublic School's integrated related services approach may be a "better" program for ASD students, *see Kerkam, supra,* Petitioners offered no competent evidence that providing related services to Student in a pull-out setting, as proposed in the April 21, 2015 IEP, was not reasonably calculated to assist Student to benefit from special education. *See* 34 CFR § 300.34(a).

e. No Provision for a Dedicated Aide or Behavioral Shadow

The Petitioners also complaint that the April 21, 2015 IEP did not offer Student a dedicated aide. The IEP team must include a dedicated aide if required "to permit the child to benefit educationally from [his IEP personalized] instruction." *See Rowley,*

supra 458 U.S. at 203. Family Care Coordinator testified that because the intent of the April 21, 2015 IEP team was to place Student in a CES classroom with 8 children and a low 8:3 student to teacher ratio, the IEP team did not consider that Student required a dedicated aide. Nor does the record indicate that the parents requested that Student be provided a dedicated aide at the April 21, 2105 IEP meeting or in Grandmother's follow-up letter.

As will be discussed below, the evidence at the due process hearing established that Student was provided an ABA "shadow" at Nonpublic School and he needed this aide to make educational progress. However, Student only started at Nonpublic School the day before the April 21, 2015 IEP meeting and this information about an ABA shadow was not available to the initial IEP team. The adequacy of the April 21, 2015 IEP must be "determined as of the time it is offered to the student." *See S.S. ex rel. Shank v. Howard Road Academy, supra*, 585 F.Supp.2d at 66. I find that Petitioners have not met their burden or proving that at the time the April 21, 2015 IEP was offered for Student, the information available to the IEP team indicated that Student required a dedicated aide to be able to benefit from his IEP instruction.

f. Inadequate or Insufficient Provision for Applied Behavioral Analysis (ABA) Methodology

The proposed April 21, 2015 IEP stated Student required "intensive supports of specialized instruction outside of the general education setting to support his inattention, social interaction deficits and overall classroom participation." Petitioners contend that the IEP was deficient because it did not specify that the intensive supports would include Applied Behavioral Analysis (ABA) methodologies. ABA is an umbrella term for teaching methodologies used for some children with ASD and other disabilities.

ABA is used to assess children's behaviors, determine why the behaviors occur and develop interventions to modify those behaviors. Testimony of ABA Clinical Director.

Student's requirement for ABA services had not yet been determined as of the April 21, 2015 IEP meeting. It was reported at the IEP meeting that Student had started at Nonpublic School the day before and that Student was then being evaluated through ABA PROVIDER to see if he needed ABA interventions. ABA Provider's report, completed on April 28, 2015, recommended that Student have an ABA functional behavior plan and a 1:1 shadow in school to implement the behavior plan. The April 28, 2015 ABA Provider report was, of course, not available to the initial IEP team. I find that at least until Student's requirement for specific ABA interventions was confirmed by ABA Provider and the information was provided to DCPS, the omission of the April 21, 2015 IEP team to specify that Student's specialized instruction would use ABA methodologies did not render the IEP inadequate for provide Student educational benefits.

g. IEP Provision for Partial Inclusion Educational Services in Large School Setting

The proposed April 21, 2015 IEP provided for Student to receive 24 hours per week of Specialized Instruction, of which four hours would be provided in the General Education setting. For the four hours outside general education, Student would attend lunch and Specials classes with nondisabled peers. He would be accompanied to lunch, recess and to Specials Classes by a special education paraprofessional. The IDEA requires that to the maximum extent appropriate, children with disabilities be educated with children who are nondisabled. *See* 34 CFR § 300.112(a)(2)(i). Although Petitioners now contend that the proposed IEP provision for Student to interact with

general education peers at lunch and recess and in Specials classes was inappropriate, at the April 21, 2015 IEP meeting, Mother told the IEP team that Autism Center had recommended a general education setting for Student. I find that based upon the information available to the IEP team at the time the April 21, 2015 IEP was offered to Student, including the information in the March 17, 2015 Autism Center evaluation of Student, it was not inappropriate for the IEP team to provide that Student would receive services in an inclusion setting for lunch, recess and Specials classes.

h. Lack of Sensory Integration Equipment

Mother and Grandmother testified that when they visited the CES classroom at City School, they did not see sensory integration equipment, such as a trampoline, which Student had a Nonpublic School to mitigate his behavior issues. However, CES Teacher 2 testified that the school had appropriate sensory integration equipment to meet the needs of current students and that if some type of additional equipment were needed for a particular student, they would find a way to get it. I find that Petitioners have not shown that the proposed IEP placement at City School was inappropriate for want of necessary sensory integration equipment.

i. Proposed Placement of Student in CES Classroom with Lower Functioning Children with Autism Spectrum Disorder

Lastly, Petitioners contend that the classroom proposed for Student at the April 21, 2015 IEP meeting, a CES classroom at City School, was not appropriate for Student because he was higher functioning than the other children in the classroom. They base this claim on the observations made by Mother and Grandmother at the school following the April 21, 2015 IEP meeting. However, CES Teacher 1 testified that it was not true that the CES classroom at City School was a low functioning classroom and that

the seven children in the class had a range of abilities including some children who were on grade level. I credit the testimony of the classroom teacher as to the level of the other children's functioning. "Ultimately, the [appropriateness of an educational placement] turns on whether a placement—public or private—is "reasonably calculated to enable the child to receive educational benefits." *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 364 (2d Cir. 2006), quoting *Rowley, supra*, 458 U.S. at 207. I find that Petitioners have not met their burden of proving that the proposed placement of Student in the CES classroom at City School, as offered at the April 21, 2015 IEP meeting, was not reasonably calculated to enable Student to receive educational benefits.

B.

> Did DCPS deny the student a FAPE through its failure to offer any IEP or educational placement/program for the student during the time frame from October 9, 2015 through February 17, 2016?

In May 2015, Mother rejected DCPS' proposed April 21, 2015 IEP for Student and the offer of placement at City School. On October 5, 2015, Grandmother wrote Family Care Coordinator a renewed request for "an offer a FAPE [for Student] including a pre-enrollment IEP meeting, a draft IEP and a proposed placement for consideration." Family Care Coordinator responded on October 9, 2015 that the parents could enroll Student at City School at any time. Family Care Coordinator also offered to meet to discuss DCPS proposed April 21, 2015 IEP and update it for the current school year. In November 2015, DCPS evaluators conducted observations of Student at Nonpublic School, where he had been enrolled by Petitioners for the 2015-2016 school year. On December 10, 2015, DCPS convened an IEP meeting for Student. The IEP team met again on January 29, 2016 and completed development of a new IEP for Student. On February 17, 2016, DCPS notified the parents that the K-2 High Functioning Autism

program would be the location to implement the January 29, 2016 IEP. By email of March 4, 2016, Petitioners' Counsel rejected the proposed January 29, 2016 IEP and the proposed placement/location of services for Student at City School.

Petitioners contend that DCPS denied Student a FAPE by not offering him an IEP or educational placement from October 9, 2015 through February 17, 2016. The claim has no merit. DCPS developed an IEP for Student on April 21, 2015. As Family Care Coordinator wrote on October 9, 2015, the parents were invited to enroll Student at City School at any time. Mother testified that she know all along that the CES program at City School was on the table and that the parents just did not agree with the proposal. I find that Petitioners have not met their burden of proving that DCPS did not offer Student an IEP and educational placement from October 9, 2015 through February 17, 2016.

C.

> Did DCPS deny the student a FAPE when it created the December 10, 2015 IEP because the IEP is inappropriate based on the fact (1) the parent was not given input into the IEP and (2) the services provided on the IEP are insufficient and inappropriate for most of same reasons as prior IEPs except that although inclusion services were removed, no provision was made for special education services for lunch and for recess?

For this issue, the Petitioners challenge the appropriateness of a December 10, 2015 draft IEP proposed for Student. There was an IEP meeting on December 10, 2015, which Mother, Grandmother and Head of School attended and a draft IEP was discussed at the meeting, however the IEP team did not finalize the IEP because Mother and Grandmother had concerns about the Baseline data stated in the draft IEP. The IEP team was scheduled to meet again on January 11, 2016, but the meeting had to be postponed due to Mother's illness. The IEP meeting was eventually reconvened on

January 29, 2016 at which time the IEP was finalized. The December 10, 2015 IEP was only a draft document. Petitioners' complaint that the draft IEP was inappropriate must be dismissed for failure to state a claim for which relief under the IDEA may be granted.

D.

> Did DCPS deny the student a FAPE when it offered the January 29, 2016 IEP because (1) the parent was not given input into the IEP and (2) the services provided on the IEP are insufficient and inappropriate, for most of same reasons as prior IEPs except that Student was placed in inclusion settings for specials classes, no provision was made for special education services for lunch and for recess, no provision for aide or "shadow", and the student would get related services inside the classroom in an isolated manner separate from the class (not integrated into the programming?
>
> Did DCPS deny the student a FAPE when it offered the CES program for the student at City School on February 17, 2016 because (1) the parent was not part of the placement decision and (2) the placement was inappropriate for the student for the same reasons as prior placements, except that the latest proposed placement would be in a classroom for higher functioning children with autism spectrum disorder disabilities?

The final IEP developed on January 29, 2016 provided for Student to receive 24 hours per week of Specialized Instruction outside general education, 1.5 hours per week of Specialized Instruction in general education, 120 minutes per month of OT, 2 hours per month of Behavioral Support Services and four hours per month of Speech-Language Pathology, all outside general education. The IEP also provided for 30 minutes per month of OT and 30 minutes per month of Behavioral Support Services as Consultation Services. The IEP did not provide for the services of a dedicated aide. Petitioners contend that the January 29, 2016 IEP was inappropriate for most of the same reasons they asserted in their objection to the April 21, 2015 IEP. I have determined above in this decision that Petitioners failed to establish that, based upon the information then available to the IEP team, the April 21, 2015 IEP was not reasonably calculated to confer educational benefits when it was initially offered to

Student.

However, by the time Student's IEP team reconvened in December 2015, the DCPS IEP team had been provided much additional data on Student's needs. This included observations at Nonpublic School by School Psychologist, Occupational Therapist and Speech-Language Pathologist. Notably, at Nonpublic School, Student is provided a full-time dedicated aide, in the form of an "ABA Shadow", to manage Student's behaviors at school. Head of School and ABA Clinical Director both testified that Student absolutely requires a one-on-one aide to make educational progress. Head of School testified that Student is the only child in the school who requires such intensive behavioral support. She testified that attempts to "fade" this service out were not successful because Student's problem behaviors increased. As justification for the January 29, 2016 IEP team's decision not to provide Student a dedicated aide, DCPS' witness, School Psychologist, asserted that on her visit to Nonpublic School, Student's teacher said that having a 1:1 aide was a "crutch" for Student. However, I found the opinions of Head of School and ABA Clinical Director more credible because they both have worked first-hand with Student since he enrolled at Nonpublic School in April 2015 and they testified from their personal experience that Student, in fact, requires a dedicated aide, even in the highly structured setting at Nonpublic School. As noted above in this decision, an IEP must provide for a dedicated aide if required "to permit the child to benefit educationally from [his IEP personalized] instruction." *See Rowley, supra* 458 U.S. at 203. I conclude that Petitioners have established that the decision of the January 29, 2016 IEP team that Student did not require a dedicated aide in order to benefit from his IEP was wrong and that Student was denied a FAPE as a result.

The Petitioners also complain that the proposal to place Student in a K-2 High

Functioning Autism program at City School was not determined by the January 29, 2016 IEP team. That decision was made by a DCPS location of services team following the January 29, 2016 meeting. The parents were not notified that Student would be placed in the High Functioning autism program until February 17, 2016. The IDEA requires that DCPS ensure that the educational placement decision for a child with a disability be made the student's IEP team, including the parents and other persons knowledgeable about the student. *See* 34 CFR § 300.116(a). Whether or not DCPS is required to have parents participate in school site selection decisions is an unsettled question in this jurisdiction. *See, e.g., Aikens v. District of Columbia*, 950 F.Supp.2d 186, 191 (D.D.C.2013) ("[E]ducational placement refers to 'the classes, individualized attention and additional services a child will receive—rather than the 'bricks and mortar' of the specific school.'" *Id.*, citing *T.Y. v. N.Y.C. Dep't of Educ.*, 584 F.3d 412, 419 (2d Cir.2009); *But see Eley v. District of Columbia*, 2014 WL 2507937, 11 (D.D.C. Jun. 4, 2014) (Location where educational services are to be implemented is a vital portion of a student's educational placement.) However, in the present case, the parents were not only not involved in the "bricks and mortar" decision of what school Student would attend, they were also excluded from the decision making process that Student would be placed in a self-contained High Functioning autism program. Under 34 CFR § 300.116(a), the decision as to the type of program to be offered, as opposed to the physical location of the program, is a placement decision reserved for the IEP team. I find that the failure of DCPS to ensure that the parents were part of the team that decided that Student would be placed in a High Functioning autism program deprived the parents of their participation rights in the development of the education program for their son. *See Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir.

2006) (Procedural violations of the IDEA which seriously deprive parents of their participation rights are actionable.)

With regard to Petitioners' remaining complaints about the January 29, 2016 IEP, I addressed similar claims regarding the April 21, 2015 IEP above in this decision. For the same reasons, I find that Petitioners have not met their burden of proof to show that the January 29, 2016 IEP was inadequate for the additional reasons alleged by the parents.

<u>Remedy</u>

On February 1, 2016, Grandmother notified DCPS that the parents did not believe that Student had been offered a FAPE by DCPS in the January 29, 2016 IEP and that the parents intended to seek reimbursement from DCPS for Student's private school placement at Nonpublic School. For their remedy in this case, the parents seek an order for DCPS to reimburse them for their unilateral placement of the student at Nonpublic School from May 2015 through the present including any transportation costs, an order for DCPS to fund Student's ongoing enrollment at Nonpublic School for the rest of the 2015-2016 school year with transportation and an order that DCPS convene Student's IEP team to review and revise, as appropriate Student's IEP.

The U.S. Court of Appeals for the District of Columbia recently enunciated the IDEA standard for tuition reimbursement to parents who unilaterally enroll their child in a private school:

> Although Congress envisioned that children with disabilities would normally be educated in "the regular public schools or in private schools chosen jointly by school officials and parents," *Florence County School District Four v. Carter By and Through Carter*, 510 U.S. 7, 12, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993), it provided that parents who believe that their child's public school system failed to offer a free appropriate public education—either because the child's IEP was inadequate or because

> school officials never even developed one—may choose to enroll the child in a private school that serves her educational needs. *Id.* Specifically, IDEA provides that if parents "enroll the child in a private . . . school without the consent of [the school district], a court or a hearing officer may require the [school district] to reimburse [them] for the cost of that enrollment. . . ." 20 U.S.C. § 1412(10)(C)(ii). The statute requires reimbursement, however, only where the school district has failed to "ma[k]e a free appropriate public education available to the child." *Id.* Reimbursement, moreover, may be "reduced or denied" if the parents fail to notify school officials of their intent to withdraw the child, *id.* § 1412(10)(C)(iii)(I), deny them a chance to evaluate the student, *id.* § 1412(10)(C)(iii)(II), or . . . otherwise act "unreasonabl[y]," *id.* § 1412(10)(C)(iii)(III).

Leggett v. District of Columbia, 793 F.3d 59, 63 (D.C.Cir. 2015). The *Leggett* decision further explained that, "[a]s 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*, 793 F.3d at 66-67 (citing *Carter*, 510 U.S. at 15–16, 114 S.Ct. 361; 20 U.S.C. § 1412(10)(C)(iii)(III)). A parent's unilateral private placement is proper under the IDEA so long as it is "reasonably calculated to enable the child to receive educational benefits." *Leggett* at 71 (citing *Rowley*, 450 U.S. at 207.)

In this decision, I have determined that DCPS' proposed January 29, 2016 IEP was inadequate and failed to offer Student a FAPE. In addition, DCPS deprived the parents of their IEP participation rights by excluding them from the decision of the type of educational program, *i.e.*, the High Functioning autism program, that would be offered to Student. Although the parents' private placement, Nonpublic School, does not hold a certificate of approval from OSSE, the hearing evidence was undisputed that Student has received educational benefits there. I find, therefore, that the private

placement chosen by the parents was proper under the IDEA. Finally, DCPS does not contend that the parents acted unreasonably in enrolling Student enrollment at Nonpublic School for the 2015-2016 school year. In sum, I conclude that the parents have established that DCPS failed to offer Student a FAPE at the January 29, 2016 IEP meeting and that the parents' private placement of Student at Nonpublic School after that date was proper under the IDEA. Therefore, the parents are entitled to reimbursement from DCPS for their costs for Student to attend the private school, including transportation expenses, from January 29, 2016 through the end of Nonpublic School's 2015-2016 school year.

Petitioners also request that I order DCPS to convene Student's IEP team to review and revise Student's proposed IEP. Because the parents elected to refuse the IEP offered by DCPS on January 29, 2016 and because the 2016-2017 regular school year has ended, ordering DCPS to convene an IEP team to revise January 29, 2016 IEP would serve no purpose. Notwithstanding, if the parents request DCPS to provide Student an IEP for the 2016-2017 school year, the District must do so. *See District of Columbia v. Vinyard*, 971 F.Supp.2d 103 (D.D.C.2013); *District of Columbia v. Wolfire,* 10 F. Supp. 3d 89, 94 (D.D.C. 2014) (DCPS obligated to offer parentally-placed private school student a new IEP when his parent made the request.)

ORDER

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

1. Upon receipt of documentation of payment by the parents, as may be reasonably required, DCPS shall, within 30 calendar days, reimburse the parents the costs of tuition, transportation and related covered expenses for Student's enrollment at Nonpublic School for the period from January 29, 2016 through the end of Nonpublic School's 2015-2016 regular school

year;

2. Petitioners' claim that the purported December 10, 2015 IEP was inappropriate is dismissed with prejudice and

3. All other relief requested by the Petitioners herein is denied.

Date: June 24, 2016

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
Chief Hearing Officer
OSSE - SPED
DCPS Resolution Team