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OSSE  
Office of Dispute Resolution  
June 14, 2024

**Confidential**

<p>Parents on Behalf of Student, <sup>1</sup></p>  <p>Petitioners,</p>  <p>v.</p>  <p>District of Columbia Public Schools (Local Education Agency “LEA”)</p>  <p>Respondent.</p>  <p>Case # 2023-0209</p>  <p>Date Issued: June 14, 2024</p>	<p><b>HEARING OFFICER’S DETERMINATION</b></p>  <p>Hearing Dates: April 9, 2024 April 10, 2024 April 11, 2024 May 22, 2024</p>  <p>Counsel for Each Party listed in Appendix A</p>  <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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<sup>1</sup> Personally identifiable information is in the attached Appendices A & B.

## **JURISDICTION:**

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and 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 who is the subject of this due process hearing (“Student”) resides with Student's parents (“Petitioners”) in the District of Columbia, and the District of Columbia Public Schools (“DCPS”) is Student's local education agency (“LEA”).

DCPS first determined Student eligible for special education services on September 8, 2020, when Student was attending Student’s neighborhood DCPS school (“School A”). DCPS developed Student’s initial individualized education program (“IEP”) on October 2, 2020. Student’s most recent IEP was developed on August 3, 2023.

Student currently attends a non-public day school (“School B”) where Petitioner’s unilaterally placed Student for school year (“SY”) 2023-2024. Petitioners filed a due process complaint (“DPC”) on October 27, 2023, and an amended DPC on January 3, 2024, alleging that DCPS denied Student a free appropriate public education (“FAPE”) because, inter alia, the IEP and placement that DCPS proposed for Student for school year (“SY”) 2023-2024 are allegedly inappropriate.

Petitioners are seeking DCPS reimbursement for Student’s placement at School B and that DCPS place and fund Student at School B for the remainder of SY 2023-2024, including tuition and related services.

### **LEA Response to the Complaint:**

DCPS filed a response to the amended DPC on January 3, 2024. In its response, DCPS stated, inter alia, the following:

On May 20, 2021, the IEP team provided Student an IEP that was reasonably calculated to provide Student with meaningful educational benefit in light of Student’s unique circumstances. The IEP provided a placement of 7 hours per week of specialized instruction, 120 minutes per month of behavior support outside of the general education setting, and 30 minutes per month of behavior support consultation. Additionally, the IEP contained the following other aides and services:

“[Student] benefits from supports within the general education such as closer proximity to the teacher, frequent breaks, and extended time. [S/he] also benefits from writing supports such as dictated response, in order to keep pace with the class assignment or when the length of the activity requires it...”

DCPS made a FAPE available to Student. The parents were provided the IDEA required opportunity to participate fully in the IEP process and understood the IEP and placement being proposed. Indeed, the parents made an informed decision and rejected the FAPE which DCPS had made available to them and had already secured placement for Student in a private school. The parent was given a prior written notice (“PWN”) on May 27, 2021.

On September 20, 2022, an eligibility meeting was held and the team determined that Student was eligible with multiple disabilities (emotional disturbance, other health impairment). Thereafter, on September 17, 2022, an IEP meeting was held and the team proposed an IEP that was reasonably calculated to provide Student with meaningful educational benefit in light of Student’s unique circumstances. The IEP provided a placement of 20 hours per week of specialized instruction, 180 minutes per month of behavior support outside of the general education setting, and 60 minutes per month of behavior support consultation. Additionally, the IEP contained the following other aides and services:

“[Student] requires small group testing, extended time on assignments and assessments, eliminating or limiting copying activities, allowing [him/her] to audiotape lessons, use of devices such as speech to text, preferential seating, prompting, frequent breaks, and teacher redirection.”

On December 19, 2022, DCPS issued the location of service (“LOS”) letter for Student’s neighborhood middle school (“School C”). Further, the choice of the LOS is discretionary for the LEA and is not the IDEA placement, as the placement is contained in the IEP. DCPS’ LOS is appropriate. DCPS made a FAPE available to Student.

On August 3, 2023, DCPS proposed an IEP with a placement of 20 hours per week of specialized instruction, 180 minutes per month of behavior support outside of the general education setting, and 60 minutes per month of behavior support consultation. Additionally, the IEP contains the following other aides and services:

“Clarification/Repetition of Directions, Redirect Student to Test/Materials, Speech to text accommodation, Extended Time, Flexibility in Scheduling, Frequent Breaks, Noise Buffer or Headphones, Preferential Seating, Location with Minimal Distractions.”

DCPS made a FAPE available to Student.

Student’s claim as to speech-language pathology (“SLP”) should also be denied. Student was given an SLP assessment, and a report dated July 15, 2021. The multidisciplinary team (“MDT”) team met on August 3, 2023, and determined that Student was not eligible for SLP services. The parents were also provided a PWN on August 3, 2023, which addresses the SLP eligibility in this matter. On or about October 5, 2023, DCPS issued an updated LOS letter for School C which is able to implement Student’s IEP.

There has been no denial of FAPE related to observations or visits at or to the DCPS school. On December 12, 2023, both parents attended a visit to School B and were given a tour lasting nearly

one hour in which they were able to see the proposed special education program at School C. The parents have sufficient information to make an informed decision about School C and or the IEP and placement.

Petitioners engaged an advocate/investigator who engages in advocacy which “constitutes representation of the parents in furtherance of their rights under IDEA.” Therefore, as the IDEA does not require an observation or visit and since the investigator/advocate does not satisfy the definition of “designee” under D.C. law there has been no FAPE violation.

Petitioners filed a DPC but failed to allege sufficient facts to establish that School B will ensure that the child is provided special education and related services in conformance with the IEP, at no cost to the parents, that can meet the standards that apply to education provided by OSSE and DCPS expectation for the highly qualified teacher requirement, and with the child having all the rights as if served by DCPS. Due to the OSSE corrective action plan results, School B is not proper or appropriate. Therefore, DCPS has not denied Student a FAPE and this matter should be dismissed.

### **Resolution Meeting and Pre-Hearing Conference:**

Petitioners and DCPS participated in a resolution meeting on November 8, 2023. The parties did not mutually agree to shorten the 30-day resolution period. The 45-day period began on November 13, 2023, and ended [and the Hearing Officer’s Determination (“HOD”) was originally due] on January 10, 2024. Petitioners filed a motion to amend their DPC on December 22, 2023, and the timeline for the case restarted on December 22, 2023, with the granting of Petitioner's motion to amend. The DPC amendment extended the timeline for the HOD to March 6, 2024. The parties and their witnesses were unavailable until the hearing dates agreed upon. Petitioners filed a motion to continue, extending the HOD due date to April 21, 2024. With the granting of subsequent motions to continue, the HOD is now June 14, 2024.

The undersigned Independent Hearing Officer (“IHO”) conducted a pre-hearing conference on the amended DPC on February 5, 2024, and issued a pre-hearing order (“PHO”) on February 15, 2024, outlining, inter alia, the issues to be adjudicated.

### **ISSUES:**<sup>2</sup>

The issues adjudicated are:

1. Did DCPS deny Student a FAPE by failing to propose an appropriate IEP for SY 2023-2024?
2. Did DCPS deny Student a FAPE by identifying Student with an emotional disability vs. SLD?

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<sup>2</sup> The Hearing Officer restated the issues at the hearing, and the parties agreed that these were the issues to be adjudicated.

3. Did DCPS deny Student a FAPE by proposing an inappropriate program in the Behavior Educational Support (“BES”) classroom at School C?
4. Did DCPS deny Student a FAPE by failing to propose speech/language services on the August 3, 2023, IEP?
5. Did DCPS deny Student a FAPE by failing to allow Petitioners' educational consultant to observe the proposed program and placement in the BES program at School C?
6. Is School B an appropriate placement for Student ?

### **DUE PROCESS HEARING:**

The Due Process Hearing was convened on April 9, 2024, April 10, 2024, April 11, 2024, and May 22, 2024. It was conducted via video teleconference. The parties submitted written closing arguments on June 4, 2024.

### **RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the testimony of the witnesses and the documents submitted in each party’s disclosures (Petitioner’s Exhibits 1 through 46 and Respondent’s Exhibits 1 through 42) that were admitted into the record and are listed in Appendix 2.<sup>3</sup> The witnesses testifying on behalf of each party are listed in Appendix B.<sup>4</sup>

### **SUMMARY OF DECISION:**

Respondent held the burden of persuasion on issues #1 and #3 after Petitioner established a prima facie case on those issues. Petitioner held the burden of persuasion on the remaining issues. Based on the evidence adduced, the Hearing Officer concluded that Respondent sustained the burden of persuasion by a preponderance of the evidence on issue #1, but did not sustain the burden of persuasion by a preponderance of the evidence on issue #3. Petitioner did not sustain the burden of persuasion on issues #2, #4 #5, and #6. The IHO directed DCPS to reimburse Petitioners for the tuition for Student's attendance at School B for SY 2023-2024, and to convene an IEP meeting

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<sup>3</sup> Any item disclosed and not admitted or admitted for limited purposes was noted on the record and in Appendix A.

<sup>4</sup> Petitioner presented four witnesses: (1) the Student's mother ("Petitioner") and the following individuals who were designated as expert witnesses: (2) an independent educational consultant, (3) a School B Administrator, and (4) an independent clinical psychologist. Respondent presented seven witnesses designated as expert witnesses: (1) a DCPS Psychologist, (2), (3) a DCPS social worker, (4), (5) a DCPS special education teacher/LEA representative for School C, (6) DCPS LEA non-public monitor, (7) DCPS special education teacher/LEA representative/DCPS Central IEP Team. The Hearing Officer found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the testimony of witnesses that the Hearing Officer found are addressed in the conclusions of law.

to update Student's IEP for SY 2024-2025 and determine an appropriate placement/location of service for Student to implement Student's IEP for SY 2024-2025.

### **FINDINGS OF FACT:<sup>5</sup>**

1. Student resides with Petitioners, Student's parent, in the District of Columbia, and the DCPS is Student's LEA. Student has been determined eligible for special education and related services pursuant to IDEA with a disability classification of multiple disabilities ("MD"), including specific learning disability ("SLD"), emotional disability ("ED"), and other health impairment ("OHI"). Student currently attends School B, a non-public special education day school, where Petitioners unilaterally placed Student for SY 2023-2024. (Mother's testimony, Petitioner's Exhibits 16, 18)
2. In January 2019, when Student was \_\_\_\_ years old, in \_\_\_\_ grade, and attending Student's neighborhood DCPS school, Petitioners obtained an independent neuropsychological evaluation. The evaluator assessed Student's cognitive, academic, and social/emotional functioning. The evaluation results revealed Student had superior cognitive scores and variable academic scores with some reading and math scores on grade level and some slightly below grade level. Student's written language scores were one year below grade level. The evaluator surmised that Student's attention and executive functioning weaknesses resulted in Student's academic challenges. The evaluator diagnosed Student with an attention deficit hyperactivity disorder, combined presentation ("ADHD"), a specific learning disorder in reading or dyslexia, a specific learning disability ("SLD") in written expression, and dysgraphia. (Petitioner's Exhibit 2)
3. In February of 2019, DCPS developed and implemented a Section 504 Plan for Student to provide accommodations related to ADHD, which included extended time, frequent breaks, visual cues and prompts, and preferential seating. For SY 2019-2020, Student continued with a Section 504 Plan. Due to the national pandemic, Student finished SY 2019-2020 virtually, struggling to complete work and often not logging onto virtual classes. (Petitioner's Exhibit 4-3)
4. On September 8, 2020, during SY 2020-2021, while Student was in \_\_\_\_\_ grade, DCPS first determined Student eligible for special education services with an SLD disability classification. DCPS developed Student's initial IEP on October 1, 2020, which included academic goals in reading and written expression and goals in emotional, social, and behavioral development and prescribed seven hours per week of specialized instruction with three of those hours in general education and four hours outside general education, 120 minutes per month of behavioral support services ("BSS") and thirty minutes per month of consult BSS. (Petitioner's Exhibit 4-3, Respondent's Exhibit 4)

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<sup>5</sup> 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. When citing an exhibit submitted by more than one party separately, the Hearing Officer may only cite one party's exhibit.

5. On May 20, 2021, DCPS convened its annual review and update of Student's IEP. The IEP included academic goals in reading and written expression and goals in the emotional, social, and behavioral development and prescribed seven hours per week of specialized instruction, with three of those hours in general education and four hours outside general education, 120 minutes per month of BSS and thirty minutes per month of consult BSS. Additionally, the IEP contained the following other aides and services:

"[Student] benefits from supports within the general education such as closer proximity to the teacher, frequent breaks, and extended time. [Student] also benefits from writing supports such as dictated response, in order to keep pace with the class assignment or when the length of the activity requires it..." (Respondent's Exhibit 6)

6. Petitioners, along with their attorney and educational consultant, participated in the May 20, 2021, IEP meeting. During the meeting, Petitioners requested that DCPS evaluate Student to determine whether speech-language services were warranted. (Respondent's Exhibits 6, 7)

7. On June 15, 2021, DCPS convened an analysis of existing data ("AED") meeting at which speech-language services were discussed. The IEP team proposed to proceed with a speech-language evaluation based on the parent's request, which was made at the IEP meeting held on May 20, 2021. DCPS issued a prior written notice ("PWN") dated June 17, 2021, following the meeting that stated the following regarding speech-language services: "Although no concerns were noted by the school-based team, nor surfaced through the screener conducted by the speech-language pathologist at [School A], the team proposed to proceed based on parent request. Their request was based on a [School B] recommendation due to lower subtest scores (Story Memory/WRMAL-2 and Sentence Expression CASL-2) from a previous independent evaluation completed in 2019.... The team reviewed all relevant data in the AED, particularly under the Speech/Communication section. Speech data that was utilized in making an assessment decision were: Clinical Evaluation of Language Fundamentals 5th Edition Screening Test (2021 Wills) and independent neuropsychological report from Empower Assessments. The team also reviewed data within the neuropsychological evaluation, provided by the parents. This data included: WRMAL-2 subtest Story Memory, CASL-2 subtest Sentence Expression" (Respondent's Exhibits 9, 10)

8. On July 1, 2021, DCPS completed its speech-language assessment of Student and found that Student presented with skills that were age-appropriate and within the average to above average range. The evaluated noted: "[Student's] Expressive vocabulary and receptive vocabulary were judged to be within the average range, based upon test performance in other assessed areas and previous testing data that was reviewed. Results of additional formal evaluations reveal articulation, expressive and receptive language skills that were within the average range. [Student] demonstrated solid average to above average abilities as it related to [redacted] oral communication skills. [Student] demonstrated significant strength in the area of Word Classes, which looked at [Student's] ability to understand logical relationships". (Respondent's Exhibit 11)

9. DCPS convened a meeting on July 30, 2021, and determined Student did not require speech-language services. (Respondent's Exhibit 12)
10. On August 2, 2021, Petitioners provided DCPS notice of their intent to place Student at School B. On August 24, 2021, DCPS responded with a letter declining to fund Student's placement at School B. Student began in-person learning at School B in September 2021. On November 4, 2021, Petitioners filed a DPC seeking funding for School B for SY 2021-2022. DCPS and Petitioners settled the DPC on April 7, 2022. (ODR Case # 2021-0154)
11. In May and June 2022, a DCPS psychologist completed a psychological reevaluation of Student with an evaluation report dated June 27, 2022. The psychologist reviewed Student's prior evaluations and educational records, conducted parent, teacher, and student interviews, a classroom observation, and administered the following assessments: "Woodcock-Johnson Test of Academic Achievement-Fourth Edition (WJ-IV), Wechsler Individual Achievement Test-Fourth Edition (WIAT-4), Behavior Assessment System for Children-Third Edition (BASC-3) – Teacher & Parent Forms, Behavior Assessment System for Children-Third Edition (BASC-3) Self-Report Form Attempted, Behavior Rating Inventory of Executive Function-Second Edition (BRIEF-2) - Teacher & Parent Forms, Conners-Third Edition – Parent & Teacher Forms, Conners-Third Edition Self-Report Form Attempted." (Witness 10's testimony, Respondent's Exhibit 24)
12. The DCPS psychologist opted not to conduct cognitive testing because Student's mother indicated that Student was resistant to testing. Thus, the DCPS psychologist relied upon and included in her report the cognitive scores from Student's 2019 neuropsychological evaluation. Student's academic achievement scores were variable with most in the average range. Student's scores are reflected below:

WJ-IV Summary Table

<b>CLUSTER/Test</b>	<b>Standard Score</b>	<b>Qualitative Description</b>
Broad Reading	92	Average
Broad Math	97	Average
Broad Written Language	79	Low
*Letter-Word Identification	105	Average
*Passage Comprehension	98	Average
*Sentence Reading Fluency	83	Low Average
Word Attack	97	Average
Oral Reading	77	Low
*Spelling	86	Low Average
*Writing Samples	79	Low

WIAT-4

*Sentence Writing Fluency	79	Low
*Calculation	100	Average
*Math Facts Fluency	94	Average
*Applied Problems	99	Average
<b>CLUSTER/Test</b>	<b>Standard Score</b>	<b>Qualitative Description</b>
Reading Comprehension	100	Average
Listening Comprehension	104	Average
Sentence Composition	87	Low Average
Sentence Writing Fluency	97	Average
Essay Composition	77	Very Low

(Respondent's Exhibit 24)

13. In her evaluation report the DCPS psychologist recounted details from her interview with one of Student's School B classroom teachers and the School B psychologist who provides Student with weekly therapy: The evaluation report noted the following from the therapist:

"[Student] is currently receiving once weekly 45 minutes individual psychotherapy sessions, which started toward the middle of the academic year. According to ■ Psychotherapy Summary report, [Student's] therapist, [Name] reported that [Student] had been able to establish a nice rapport with her and chooses to spend their time talking. She noted that much of the work for [Student] centers around [Student's] anxiety and that [Student] has a difficult time effectively managing [Student's] anxious feelings and this sometimes makes [Student] feel overwhelmed. She added that [Student] is also very sensitive to any form of feedback or help from [Student's] teachers. As a result, there are times that [Student] struggles to feel comfortable coming to school, or to participate in activities during the school day. She reported that [Student] expresses this anxiety to [Student's] parents and is able to identify those feelings in sessions. Another struggle that [Student] talks about is [Student's] ability to feel confident in [Student's] social interactions. She reported that [Student] has been able to verbalize [Student's] feelings and talk about [Student's] anxiety. [Student] reportedly has begun to increase [Student's] coping skills; however, [Student] continues to need to work to learn self-advocacy and consistently manage [Student's] stress and anxiety."

"[School B's psychologist] reported that they have built a good rapport, and [Student] is engaged in their sessions. She reported that there have been times when [Student] has been anxious and told [Student's] parents that [Student] does not want to come to school, but [Student] has never refused to see her. She described [Student] as trying to project a "super cool and

relaxed” image but that [Student] presents as one of her more anxious students. She noted that [Student] is anxious about a number of things such as [Student's] learning profile and so it is hard for [Student] to receive feedback from [Student's] teachers. [Student] perceives it as critical and is very sensitive to feedback. She added that [Student] is very anxious and concerned about social interactions, and because [Student] is younger than [Student's] peers, interactions can be perplexing to [Student] and can make [Student] anxious. Although [Student] does not actually use the word “anxious” to describe [Student's] feelings, [Student] will say that [Student] is confused. She reported that [Student's] mother will reach out to her if [Student] has a bad day. She noted that [Student's] strengths are [Student's] verbal skills and that [Student] is well-liked. She stated that what works well with [Student] is listening to [Student] and trying to work with a compromise. She noted that forcing the issue with [Student] may cause [Student] to shut down. She reported that she has not been working closely with [Student] teachers so far but is available to them if they need to talk to her about anything. She reported that she is working with [Student] on shifting [Student's] rigid patterns and getting [Student] to identify the feeling states of anxiety and being able to verbalize them and developing self-soothing and coping strategies and to generalize them at home and in the classroom. She reported that in sessions, [Student] uses fidgets and not yet worked on more coping strategies as they have been working on identifying feelings and talking things through stages.”

“She reported that [Student] does not often ask for help. She reported that [Student] responds to breaking things down, clear expectations, and movement breaks. She stated that [Student] can try and get involved in power struggles. In regard to [Student's] peer relationships, she reported that [Student] is friendly and jokes around with [Student's] peers and has side-bar conversations with them. However, she noted that [Student] can “boss” other students around and does not like to lose and can be very competitive with [Student's] peers. [Student] has problems coping with any perceived rules that [Student] considers to be against [Student] or if [Student] believes someone has cheated or that [Student] should have won. Then, [Student] has difficulty navigating those social situations. However, she noted that [Student] has gotten better about being a good sport. She reported that she began working individually with [Student] in February of this school year and meets with [Student] weekly for 45 minutes. She reported that [Student] can be very anxious and rigid in [Student's] thought patterns. She noted that [Student] got [Student's] “heels in” with [Student's] speech therapist, who was not a good fit for [Student], and so [Student] refused to work with them.” (Respondent's Exhibit 24)

14. The evaluation report noted the following from Student's math and English and language arts (“ELA”) teacher:

"[Student's] math and writing teacher was interviewed to provide information regarding [Student's] classroom behaviors and school performance. [Name] reported that she has taught [Student] all school year. She described [Student's] strengths as being highly intelligent and having a good sense of humor. However, she noted that [Student] can be rigid and defiant in class. She explained that [Student] is very resistant to challenging work and often complains of being tired. She reported that [Student] is capable of completing the work, but [Student] can be passive aggressive. She stated that [Student] stopped completing [Student's] homework months ago. She noted that on the wall she has a chart with each student and their homework completion and [Student] is the only student at 0 percent. She noted that [Student] has a lot of excuses about why [Student] does not want to complete any homework. She stated that [Student's] in class work is also inconsistent, and it depends on what the task is and whether [Student] wants to do it or not. She reported that [Student] has struggles with organization of [Student's] materials and forgetting to bring home materials or losing things."

"She reported that [Student] has wonderful ideas and loves to share verbally but getting [Student] to translate them on paper has been challenging. [Student's] perseverance and stamina are limited when asked to write a complete a paragraph. [Student] is better with typing than handwriting but does not like to use speech to text. She noted that [Student] is starting to apply more spelling rules and word patterns but continues to struggle with encoding. She reported that [Student] retains what [Student] reads but needs guidance and prompting to recall what [Student] has learned from the text and to put it into words. When asked comprehension questions, [Student] tends to automatically use information in [Student's] long-term memory but with prompting [Student] is able to find the answer within the text. She reported that [Student] enjoys verbal intercourse and problem-solving. She added that [Student] also enjoys negotiating and questions a lot of what is asked of [Student.]" (Respondent's Exhibit 24)

15. Based on the evaluation results, the DCPS psychologist considered Student's eligibility under the following disability classifications: SLD, ED and OHI. In summary, the DCPS psychologist summarized her findings as follows: [Student's] effort levels were varied throughout the evaluation and impacted [Student's] performance at times. [Student] is very resistant and reluctant to complete writing tasks and at times will only complete the minimal that is required of [Student]. [Student's] teacher reported that in the classroom, [Student] is also resistant to complete more challenging tasks. [Student] is also currently not completing any homework. (Witness 10's testimony, Respondent's Exhibit 24)
16. The evaluation report also stated: [Student] also presents with anxious behaviors and rigid thinking. [Student's] current therapist reported that she is working with [Student] to help develop coping strategies to manage [Student's] anxiety. On the BASC- 3, teacher ratings yielded clinical elevation on the Internalizing Problems composite scale and At-Risk

elevation on the Externalizing Problems, Behavioral Symptoms Index, School Problems, and Adaptive Skills. [Student's] teacher rated significant concerns related to anxiety, depression, and somatization. She reported that [Student] often is easily upset, is pessimistic, is negative about things, and is irritable. Parent ratings also indicated concerns related to anxiety and depression at home. [Student] did not complete enough items on the self-report measures to be scored but ■ did not complete items that indicated concerns related to attention problems and a negative attitude towards school. Given the test results, [Student] presents with emotional, learning, and attention problems that are significantly impacting [Student] education performance. Thus, [Student] continues to meet the criteria for special education services as a student with a Multiple Disability (MD). However, the MDT Team makes the final determination for a student's eligibility for special education and related services based on the data and evidence presented. (Witness 10's testimony, Respondent's Exhibit 24)

17. On June 12, 2022, a DCPS social worker completed an observation and a Strengths and Difficulties Questionnaire ("SDQ") of Student. The social worker observed that Student required repeated redirection from the teacher to stay on task during the observation. The SDQ was completed by the parent, but the school staff to not provide results. The questionnaire yielded concerns in the areas of emotional distress, hyperactivity, and concentration difficulties. (Witness 7's testimony Petitioner's Exhibit 3)
18. On July 14, 2022, DCPS convened a meeting to discuss the results of the assessments. Upon discussion of Student's eligibility, the DCPS psychologist recommended that Student be found eligible for services as a student with MD disability classification, including SLD, OHI, and ED. (Respondent's Exhibit 26-4)
19. Petitioners participated in the eligibility meeting along with their attorney and educational consultant. The consultant objected to ED disability classification and asserted that SLD was Student's primary disability. The DCPS psychologist agreed that there are learning issues at play, but asserted that Student's emotionality and behaviors are the primary factors preventing Student from engaging in the educational environment. Based upon the interview with the treating psychologist at School B, Student displayed rigid thinking which was an area they were working on in therapy. The psychologist discussed with the therapist that the Student did not get along with the School B speech therapist who identified Student's rigidity. The psychologist also noted that Student self-reported problems with attention and executive functioning. Student had high ratings on emotional rating scales from the teacher, somatization that could be tied to Student's anxiety. (Witness 10's testimony, Respondent's Exhibit 26)
20. The DCPS psychologist summarized her findings that Student continued to qualify for special education services and recommended that team find Student eligible under MD to highlight all of those areas of concern: OHI, SLD and ED. The consultant asked that SLD be "listed first." Asserting that Student's emotional challenges were secondary to the learning disability and ADHD. DCPS psychologist stated that the data reflected that there would be no change in Student's academics without addressing Student's emotional needs. The DCPS psychologist also noted that Student's work with the School B therapist was to

assist Student to be more compliant in the classroom and to complete the academic that Student refused to complete. The DCPS psychologist pointed out that eligibility is not about what “goes first” and that the definition of MD classification is the combination of disabilities. (Witness 10’s testimony, Respondent’s Exhibit 26)

21. A School B administrator stated during the eligibility meeting that a delicate dance is required for everyone who deals with Student, and the School B teachers were able to do that. The administrator also noted that School B needed to prioritize the psychological services so that Student could dive into Student’s learning disability, and that the emotionality affects Student across the entire school day. The DCPS psychologist then summarized that at the end of the day, Student is MD: SLD, OHI, ED. (Witness 10’s testimony, Respondent’s Exhibit 26)
22. On August 8, 2022, Petitioners provided DCPS notice of their intent to place Student School B. On August 25, 2022, DCPS responded with a letter declining to fund Student’s placement at School B. (Respondent’s Exhibit 27)
23. On September 20, 2022, DCPS issued a PWN reflecting Student’s eligibility for special education with the MD classification including ED and OHI. (Respondent’s Exhibit 30)
24. DCPS convened a meeting to develop Student’s IEP on September 27, 2022. Upon discussion of service hours, DCPS proposed 20 hours of self-contained instruction for all core academic classes with a classroom size of approximately 12 students to 2 teachers, with specials and lunch in the general education setting. (Respondent’s Exhibits 31, 32)
25. Student’s September 27, 2022, IEP provided a placement of 20 hours per week of specialized instruction, 180 minutes per month of behavior support outside of the general education setting, and 60 minutes per month of behavior support consultation. Additionally, the IEP contained the following other aides and services  

“[Student] requires small group testing, extended time on assignments and assessments, eliminating or limiting copying activities, allowing ■■■ to audiotape lessons, use of devices such as speech to text, preferential seating, prompting, frequent breaks, and teacher redirection.” (Respondent’s Exhibit 32)
26. On November 10, 2022, DCPS provided Petitioners the IEP and a prior written notice (“PWN”) from the September 27, 2022, IEP meeting. (Respondent’s Exhibit 33)
27. On November 10, 2022, DCPS issued the location of services (“LOS”) letter for Student’s IEP to be implemented in the Behavior and Education Support (“BES”) in Student’s neighborhood DCPS \_\_\_\_\_ school (“School C”). (Respondent’s Exhibit 34)

28. Petitioners filed a DPC on November 15, 2022, challenging the IEP and DCPS's proposed placement. The parties settled the DPC on December 19, 2022. (ODR Case # 2022-0201)
29. On August 3, 2023, Petitioners met with DCPS to develop Student's IEP for SY 2023-2024. The IEP developed prescribed 20 hours per week of specialized instruction outside of the general education setting, 180 minutes of BSS, and 60 minutes per month of BSS consultation. Additionally, the IEP contains the following other aides and services:
- “Clarification/Repetition of Directions, Redirect Student to Test/Materials, Speech to text accommodation, Extended Time, Flexibility in Scheduling, Frequent Breaks, Noise Buffer or Headphones, Preferential Seating, Location with Minimal Distractions.” (Respondent's Exhibit 36)
30. During the August 3, 2023, IEP meeting, there was general agreement by the entire IEP team, including Petitioners and their representatives, regarding the present levels of performance and the goals in each area of the IEP. The primary objection by Petitioners to the IEP was the level of specialized instruction. Petitioners and their educational consulted insisted that Student needed specialized instruction outside the general education setting for all subjects throughout the school day. (Witness 11's testimony, Petitioner's Exhibit 36)
31. DCPS informed Petitioners that a “locations team” would be in touch with them in the weeks to follow, but it would likely not be Student's neighborhood school. DCPS informed Petitioners they would be contacted by the school where the IEP would be implemented to visit the program. (Mother's testimony)
32. On August 4, 2023, Petitioner provided DCPS notice of their intent to maintain Student's enrollment at School B for SY 2023-2024. On August 21, 2023, Petitioners received a response to their notice denying funding for Student's placement at School B and informing the parents that the IEP would be implemented in the BES classroom at School C. (Petitioner's Exhibit 18)
33. On September 13, 2023, Petitioners contacted School C, as directed in the letter received from DCPS, requesting to observe the BES classroom at School C. (Mother's testimony)
34. On October 5, 2023, DCPS issued an updated LOS letter for the BES program at School C. (Respondent's Exhibit 37)
35. DCPS provided, and Petitioners signed an observation confidentiality agreement they were required to sign before they observed the program at School C. They observed one class virtually. Petitioners went to DCPS central office to observe. (Mother's testimony, Petitioner's Exhibit 22)

36. At the start of the virtual observation, there was no introduction as to what class they would observe. Student's mother observed eight students in the classroom, including one who was apparently nonverbal and had a dedicated aide. The students were sitting and apparently disengaged. The lesson being provided was simplistic with no engagement of higher levels of thought and discussion. Petitioners were later informed they were watching a BES [REDACTED] grade English class. Petitioners were not allowed to observe the general education setting at School C. They watched for a little under the hour, and they were escorted out of the DCPS central office. Petitioners shared what they saw with their educational consultant, who was not allowed to participate in the observation. Based upon what they shared, the consultant produced an observation report pointing out the problems with what Petitioners observed. (Mother's testimony, Petitioner's Exhibit 43)
37. The DCPS representative who hosted Petitioners at the DCPS central office and facilitated the virtual observation noted that School C's assistant principal managed the video feed from School C. The observation lasted from 1:45 p.m. to 12:30 p.m., which was the allotted time. Although the observation did not include students entering the classroom and any warm-up exercise, most of the class time was observed. The students were reading a short story from a book and engaged in a discussion with the teacher, and then engaged in some partnering and individual work. (Witness 5's testimony)
38. Based on the virtual observation of the BES classroom at School C, Student's mother could not imagine Student in that classroom. She believes that Student would not put up with such simplistic instruction. Student loves to discuss, debate, participate and move around the class. The students she observed not seem to have the level of intellectual exchange that Student experiences at School B. In addition, the Student's mother had concerns with Student being unengaged and not being provided sufficient support, being distracted, and Student's academic confidence diminishing. (Mother's testimony)
39. There are currently forty BES classrooms across DCPS. School C has one BES classroom. She is familiar with that classroom that currently has two students. Students in the BES program at School C take electives courses and have lunch and recess with non-disabled peers. The DCPS BES classroom is described on DCPS's website as follows:

The BES classroom helps students with moderate to severe emotional and behavioral disorders. Students in the program have behaviors that impact their learning and require intensive behavioral support and interventions. The BES classroom staff uses many ways of teaching, like reading programs proven to work, math lessons based on research, and ways to help students change their negative or harmful behavior. Students who need the BES classroom have trouble learning because of their behavior. They need help to manage their emotions and actions. The BES classroom staff uses tools like:

- Functional Behavior Assessments (FBAs),
- Behavior Intervention Plans (BIPs),
- Behavior Support Services.

Before putting a student in the BES classroom, the IEP team should consider whether there are other ways to help them in their general classroom. The IEP

team should also have information about what kind of behavior help, support, or intervention the student has gotten and whether the student has or needs an FBA and a current BIP. Students in the BES classroom graduate with a High School Diploma. (Witness 9's testimony, Petitioner's Exhibit 29)

40. On October 27, 2023, Petitioners filed the current DPC seeking reimbursement for the tuition and related services already paid to School B for SY 2023-2024 and Student's placement at School B for the remainder of SY 2023-2024. (ODR Case # 2023-0209)
41. School B is an independent school in Washington, D.C., for students with language-based learning differences. School B holds an OSSE certificate of approval ("COA"), which was most recently granted in October 2023 for a four-year period. School B does not accept students whose primary disability classification is ED. (Witness 1's testimony)
42. Currently, the number of students in Student's classes at School B are between four and ten students. Student takes the following eight courses at School B: Algebra, Social Studies (Democracy), English, Music (Band), Reading, Robotics, Science, and Physical Education. Two of Student's eight teachers have certification in special education, four of the teachers have content area certifications but no certification in special education, and two teachers have no teaching certification at all. School B has been cited in the past by OSSE for not providing students instruction by certified teachers. School B does not provide specialized instruction during lunch and recess. (Witness 1's testimony, Witness 6's testimony)
43. Student is described by School B staff as a generally capable student who is, however, defensive about his/her areas of academic weakness. Student presented with a defensive coping mechanism of task avoidance or non-compliance during sixth grade, Student's first year at School B. Algebra is an area of insecurity for Student, and as a result, Student is currently taking the subject for second time at School B. Student can be hard on him/herself when Student does not get an answer correct, but rather than shut down in response as Student did during Student's first year at School B, Student has begun to ask for help. Student currently receives occupational therapy ("OT") and psychological services (or BSS) at School B once per week. (Witness 1's testimony)
44. Student's School B report cards indicate that Student is making progress, and the report cards reflect a description of what level of support Student needed to achieve the assigned grade. Although Student displays social/emotional challenges, Student has been offered readmission to School B for SY 2024-2025 and Student's parents have been provided a contract to commit to Student's attendance at School B for SY 2024-2025. (Witness 1's testimony, Petitioner's Exhibit 27)
45. School B staff participated collaboratively in the development of Student's August 3, 2023, DCPS IEP, adjusting goals and sharing information about Student during the meeting. School B staff who participated in the meeting agreed with the level of behavior support and consultative services that were in the IEP because such services are being provided to Student at School now and are leading to Student's success and ability to ask for and accept help. Student's parents and their educational consultant disagreed with the ED disability classification. The School B representative who testified opined that in a general education

setting, Student might shut down completely and regress to the behaviors Student displayed when Student first arrived at School B when Student did not feel good about his/her abilities and would act out. (Witness 1's testimony, Witness 2's testimony, Petitioner's Exhibit 16)

## CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides: A free appropriate public education or FAPE means special education and related services that-- (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c), Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. West*, 546 U.S. 49, 126 S.Ct. 528 (2005).

Respondent held the burden of persuasion on issues #1 and #3 after Petitioner established a prima facie case on those issues. Petitioner held both the burden of production and persuasion on the remaining issues. 6 The burden of persuasion shall be met by a preponderance of the evidence.

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<sup>6</sup> 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.

The normal standard is 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).

**ISSUE 1:** Did DCPS deny Student a FAPE by failing to propose an appropriate IEP for SY 2023-2024?

**Conclusion:** Respondent sustained the burden of persuasion by a preponderance of the evidence that the IEP that DCPS developed for Student on August 3, 2023, was reasonably calculated to enable a Student to make progress appropriate in light of Student’s circumstances.

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

“The IEP is the “centerpiece” of the IDEA’s system for delivering education to disabled children,” *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (quoting *Polk v. Cent. Susquehanna Intermediate Unit* 16, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

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 second, substantive, prong of the *Rowley* inquiry is whether the IEP DCPS developed was reasonably calculated to enable Student to make progress appropriate in light of Student’s individual circumstances.

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

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 school districts to place disabled children in the least restrictive environment possible.")

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

In developing an IEP, the Supreme Court has explained that IDEA's mandate to place a disabled student in their least restrictive environment must be balanced with the requirement that an IEP be "reasonably calculated to enable a child to make progress appropriate in light of [their] circumstances." *Endrew F.*, 137 S. Ct. at 999, 1101.

Petitioners assert that DCPS denied Student a FAPE by proposing twenty hours of pull-out support per week despite Petitioners' request for a full-time LRE in a separate school special education placement.

The evidence demonstrates that Student is diagnosed with an attention deficit hyperactivity disorder, combined presentation ("ADHD"), a specific learning disorder in reading or dyslexia, a specific learning disability ("SLD") in written expression, and dysgraphia. DCPS first determined Student eligible for special education and related services on September 8, 2020, while Student was in [REDACTED] grade and attending Student's neighborhood DCPS school, School A.

Student's IEP, dated October 1, 2020, included academic goals in reading and written expression and goals in the emotional, social, and behavioral development and prescribed seven hours per week of specialized instruction with three of those hours in general education and four hours outside general education, 120 minutes per month of BSS. and thirty minutes per month of consult BSS. On May 20, 2021, DCPS updated Student's IEP for SY 2021-2022 with the same level of special education and related services.

On August 2, 2021, Petitioners provided DCPS notice of their intent to unilaterally place Student at School B. Student began School B at the start of SY 2021-2022. DCPS declined to fund Student at School B. On November 4, 2021, Petitioners filed a DPC seeking funding for School B for SY 2021-2022, which DCPS and Petitioners settled on April 7, 2022.

On August 8, 2022, Petitioners provided DCPS notice of their intent to place Student School B for SY 2022-2023. DCPS again declined to fund Student at School B.

DCPS updated Student's IEP on September 27, 2022, proposing 20 hours of self-contained instruction for all core academic classes with a classroom size of approximately 12 students to 2 teachers, with specials and lunch in the general education setting.

On November 10, 2022, DCPS issued the LOS letter for School C. Petitioners filed a DPC on November 15, 2022, which the parties settled on December 19, 2022.

On August 3, 2023, Petitioners met with DCPS to develop the IEP for SY 2023-2024. The IEP developed prescribed 20 hours per week of specialized instruction outside of the general education setting, 180 minutes of BSS, and 60 minutes per month of BSS consultation, which DCPS later proposed to implement in the BES program at School C.

On October 27, 2023, Petitioners filed the current DPC seeking reimbursement for the tuition and related services already paid to School B for SY 2023-2024 and Student's placement at School B for the remainder of SY 2023-2024.

Student is currently in \_\_\_\_\_ grade and has attended School B for the past three school years due to Petitioners' unilateral placement. Presumably, Student has attended School B with public funding under prior settlement agreements of prior DPCs filed by Petitioners challenging the IEPs and placement proposed by DCPS in LRE placements that prescribed that Student have some level of instruction in with general education and interaction with non-disabled peers.

At issue now is Student's most recent DCPS IEP developed on August 3, 2023, for SY 2023-2024. That IEP, same as the previous IEP, proposed an LRE with 20 hours per week of specialized instruction outside of the general education setting, 180 minutes of BSS outside general education.

Petitioners presented four witnesses, including Student's mother, two employees of School B, one of whom provides Student psychological services, and the Petitioners' education consultant. Of the four witnesses, only one had provided Student services in the school setting, and two of them had observed Student in the classroom setting at School B. In their testimony, all witnesses asserted that the severity of Student's attention and learning challenges were such that Student is unable to function successfully at in any general education setting. The IHO was unconvinced by their testimony in this regard.

Petitioners' consultant argued that Student's superior cognitive functioning coupled with Student's significant learning differences makes it impossible for Student function in a general education setting. However, this witness as well as the witnesses from School B have never observed Student in a setting with non-disabled peers. The consultant advised Petitioners in placing Student in School B, and the School B witnesses have an may be considered a personal interest having Student remain at School B. As the DCPS monitor for School B notably testified that in his years of monitoring School B, he has never known School B personnel to ever target or produce a plan for any of its student to exit and return to a less restrictive setting.

Petitioners' educational consultant believes that Student's LRE is a small class environment that affords Student frequent check-ins teachers. In his testimony, he acknowledged that most, if not all, the feedback he provided DCPS in developing Student's IEP in terms of present levels of performance and goals and behavior support services were appropriate. The one sticking point for both the consultant that the School B witnesses was the number of hours of specialized instruction Student would be provided outside general education and the fact the IEP would result in Student having some classes in the general education setting with non-disabled peers. Nonetheless, the evidence demonstrates that during time that Student is not in classes at School B for lunch and recess there is no instruction being provided. These are certainly times in which Student could interact with a benefit from being with non-disabled peers.

There was no testimony that any of Petitioners' witnesses provided that differentiated what Student is currently receiving at School B, other than that School B holds a OSSE COA as a non-public special education day school and can provide Student with classes with low student to teacher ratio. There was no evidence presented of the special education instructional techniques that Student is being or would be provided. The evidence even demonstrated that at School B, Student has some instruction from teachers who are not certified in special education and some individuals who are not even certified teachers. The crux of the testimony supporting Student's continued attendance at School B is that Student is engaged, likes school more, is making educational progress and Petitioners want Student to remain there. However, there testimony was unconvincing that Student's unique needs could not be met in a setting that provided Student with some interaction with non-disabled peers.

DCPS witnesses on the other hand who participated in developing Student's August 3, 2023, IEP and determining the level of specialized instruction and the LRE, credibly testified that they are required by the mandates of IDEA to justify any and all services that require that a student be removed from the general education setting. They credibly testified that the goals that the IEP team developed and all members agreed to could be effectively implemented within the 20 hours of specialized instruction that the IEP prescribed.

They testified that the accommodations and other support services that were in the IEP could reasonably and effectively support Student in the remaining time of the academic week in which the Student might be in a general education setting in classes such as physical education and other non-academic electives. They also credibly testified that there was no data that Petitioners, their representatives, or the School B personnel presented that justified additional hours of specialized instruction, and they made no request for any particular number of hours of specialized instruction beyond the 20 hours that were proposed. They simply requested that Student's IEP prescribe a setting totally moved from general education. Although Petitioners argue that their witnesses have more knowledge of Student's capabilities and needs and their opinions and testimony should be given greater weight, as noted, their testimony lacked any sufficient basis for Student to be in a setting totally removed from non-disabled peers.

DCPS presented a cogent and responsive explanation for why it did not accept the parental requests and opinions by outside experts about the program and placement at the IEP meeting. The IHO concludes that Respondent sustained the burden of persuasion by a preponderance of the evidence that the IEP it developed for Student on August 3, 2023, was reasonably calculated to enable

Student to make progress appropriate in light of Student's circumstances.

**ISSUE 2:** Did DCPS deny Student a FAPE by identifying Student with an emotional disability vs. SLD ?

**Conclusion:** Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS denied Student a FAPE by identifying Student with an emotional disability vs. SLD.

IDEA requires that upon completion of an eligibility evaluation, the LEA eligibility team, including the parents, determines whether the child is a child with an IDEA disability who, by reason thereof, needs special education and related services. See 34 C.F.R. § 300.8. Regardless of the disability classification for special education eligibility relied upon by the LEA, the LEA must ensure that IEP special education and related services are tailored to the unique needs of each child. See *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017).

IDEA does not require school districts to classify a student with a disability in a particular category or categories. See, e.g. *Letter to Anonymous*, 48 IDELR 16 (OSEP 2006) (Child's identified needs, not the child's disability category, determine the services that must be provided to her); *Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (IDEA not concerned with labels, but with whether a student is receiving a FAPE); *Lauren C. by & through Tracey K. v. Lewisville Indep. Sch. Dist.*, 904 F.3d 363, 377 (5th Cir. 2018) (IDEA promises--a FAPE--regardless of child's diagnosis.)

As far as the identification of the student's disability classification is concerned, "the particular disability diagnosis affixed to a child in an IEP, will, in many cases, be substantively immaterial because the IEP will be tailored to the child's specific needs." *Fort Osage R-1 School District v. Sims*, 641 F.3d 996, 1004 (8th Cir. 2011).

DCPS has determined that Student's disability classification is MD, including ED and OHI. Petitioners assert that Student's disability classification should not include ED but should include SLD.

IDEA defines "Emotional Disturbance" as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, that adversely affects a child's educational performance:

An inability to learn that cannot be explained by intellectual, sensory, or health factors.  
An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.  
Inappropriate types of behavior or feelings under normal circumstances. A general pervasive mood of unhappiness or depression.

A tendency to develop physical symptoms or fears associated with personal or school problems.  
The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

34 CFR § 300.8(c)(4).

There was testimony presented by Petitioners' witnesses that when Student first arrived at School B, Student's level of anxiety was such that Student would not get out of the car and enter school and only began to do so after repeated coaxing. There was testimony that during Student's second year at School B The second year at School B Student would still shut down and did not participate in instruction and testing. Although overtime Student's emotionality has improved, at the time of DCPS's reevaluation prior to Student's July 2022 eligibility meeting, the DCPS psychologist noted based upon her own lengthy classroom observations of Student and conversations with Student's School B ELA and math teacher and Student's School B therapist that Student can be very anxious and rigid in thought patterns and digs his/her "heels in" refusing to complete work.

Student's teacher noted that she could not get Student do much work, if any, and she could not address Student's learning difficulties without addressing emotional/behavioral challenges. As result of her own testing, observations and conversation with School B staff, the DCPS psychologist concluded that Student's qualified for the ED classification in addition to OHI and SLD.

Although Petitioners put forth witnesses who disagreed with the ED classification, principally because Student's behavior was generally not considered to be violent or disruptive or display behaviors that might be typically associated with an emotional disability, there was no denial that Student's emotionality was a key component of Student's academic struggles. As the DCPS psychologist noted in the eligibility meeting and in her testimony, Student's MD disability classification did not indicate that either disability classification was more significant than any other. The testimony presented by Petitioners' witnesses did not sufficiently counter the testimony and reasoning for the ED classification that the DCPS witnesses expressed. Consequently, the IHO did not conclude that Petitioner sustained burden of proof on this issue.

Although the PWN and IEP that DCPS ultimately issued did not list the SLD classification, there was no dispute that the IEP that was developed addressed both the Student's academic learning-based difficulties as well as the Student's attention and social-emotional challenges. As noted in the citations above, "the particular disability diagnosis affixed to a child in an IEP, will, in many cases, be substantively immaterial because the IEP will be tailored to the child's specific needs."

Upon consideration of the evaluation report and testimony of DCPS school psychologist, as well Petitioner's witnesses' testimony about Student's emotional challenges, the IHO concludes that the evidence establishes that Student is a child with an ED disability, based upon Student exhibiting what appear to be inappropriate types of behavior or feelings under normal circumstances and a tendency to develop physical symptoms or fears associated with personal or school problems. The evidence in this case establishes that Student is a child with an ED disability.

**ISSUE 3:** Did DCPS deny Student a FAPE by proposing an inappropriate program in the BES classroom at School C ?

**Conclusion:** Respondent did not sustain the burden of persuasion by a preponderance of the evidence that it proposed an appropriate program for Student in the BES classroom at School C.

As previously stated, In developing an IEP, the Supreme Court has explained that IDEA’s mandate to place a disabled student in their least restrictive environment must be balanced with the requirement that an IEP be “reasonably calculated to enable a child to make progress appropriate in light of [their] circumstances.” *Endrew F.*, 137 S. Ct. at 999, 1101.

The IDEA requires each LEA to ensure that the parents of each child with a disability participate in meetings with respect to the educational placement of their child. 20 U.S.C. Sect. 1414(e); 34 C.F.R. § 300.501. The placement decisions must be made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. §300.116(a).

As previously stated, In developing an IEP, the Supreme Court has explained that IDEA’s mandate to place a disabled student in their least restrictive environment must be balanced with the requirement that an IEP be “reasonably calculated to enable a child to make progress appropriate in light of [their] circumstances.” *Endrew F.*, 137 S. Ct. at 999, 1101.

The IDEA requires each LEA to ensure that the parents of each child with a disability participate in meetings with respect to the educational placement of their child. 20 U.S.C. Sect. 1414(e); 34 C.F.R. § 300.501. The placement decisions must be made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. §300.116(a).

As discussed in issue # 1 above, the evidence in this case supports the finding that the level of specialized instruction that DCPS proposed for Student in the August 3, 2023, IEP was appropriate and reasonably calculated to enable Student to make progress appropriate in light of Student’s circumstances.

The evidence demonstrates that DCPS proposed that Student’s IEP be implement in the BES program at School C. DCPS provided and Petitioners signed an observation confidentiality agreement they were required to sign before they observed the program at School C, and Petitioners were allowed to observe one class virtually. Petitioner went to DCPS central office to observe.

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

The DCPS representative described the observation as students reading a short story from a book and engaged in a discussion with the teacher, and then engaged in some partnering and individual work. However, another DCPS witness later testified that there were only two student in School C's BES classroom. That testimony caused the IHO to doubt that Petitioners had seen the actual program that Student would have been in at School C.

Based on the virtual observation related by Student's mother of the simplistic instruction and the lack of intellectual exchange, she justifiably had concerns with Student being unengaged and Student's needs not being met in the classroom she observed. Although the DCPS witness who testified about School C's BES classroom was familiar with and was responsible for DCPS's BES programs city-wide, she was not from School C, nor could she attest to the classroom that Petitioner observed virtually. Although the evidence that Petitioners presented from the DCPS websites described a program that might meet Student's needs, there was insufficient evidence that the BES classroom at School C, given Petitioner's testimony, actually provides the services the website describes and is otherwise appropriate for a student with Student's intellectual, academic and social, emotional profile.

The website notes that "before putting a student in the BES classroom, the IEP team should consider whether there are other ways to help them in their general classroom. The IEP team should also have information about what kind of behavior help, support, or intervention the student has gotten and whether the student has or needs an FBA and a current BIP. The IHO notes that DCPS asserts and the IHO has found that Student's LRE includes some time in general education. Yet, Petitioners were not allowed to observe the general education setting at School C, further fostering legitimate concerns that Student's needs would not be met at School C.

There was insufficient evidence presented by DCPS regarding the BES classroom at School C that supported a finding that the classroom that Petitioners observed and the classroom that DCPS proposed for Student was an appropriate location of services for Student. Consequently, the IHO concludes that DCPS did not sustain the burden of persuasion by a preponderance of the evidence that it proposed an appropriate program for Student in the BES classroom at School C and concludes that Student's placement in that classroom was denial of a FAPE.

**ISSUE 4:** Did DCPS deny Student a FAPE by failing to propose speech/language services on the August 3, 2023, IEP ?

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

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

Pursuant to 34 C.F.R. § 300.304 (c), a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability.

"In evaluating each child with a disability . . . , the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified." 34 C.F.R. § 300.304(c)(6) (emphasis added).

Pursuant to § 300.305 (a) As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must— (1) Review existing evaluation data on the child, including— (i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine— (i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; (iii)(A) Whether the child needs special education and related services.

The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5A

All areas "related to the suspected disability" should be assessed, including academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. D.C. Mun. Regs. Title. 5A

IDEA requires that the IEP team be provided sufficient information from the student's evaluation and other sources to determine the nature and extent of the special education and related services that the child needs." See 34 C.F.R. § 300.15.

The evidence demonstrates that on June 15, 2021, DCPS convened an AED meeting at which speech-language services were discussed. The IEP team proposed to proceed with a speech-language evaluation based on the parent's request made at the May 20, 2021, IEP meeting.

On July 1, 2021, DCPS completed its speech-language assessment of Student and found that Student presented with skills that were age-appropriate and within the average to above average range. The evaluation noted that the Student's expressive vocabulary and receptive vocabulary were within the average range, and Student's articulation, expressive, and receptive language skills were within the average range. Student demonstrated solid average to above average abilities in oral communication skills. DCPS convened a meeting on July 30, 2021, and determined Student did not require speech-language services.

There was no evidence that Petitioners requested that DCPS conduct another evaluation of Student's speech-language abilities following the July 1, 2021, assessment or the July 30, 2021, or that there were any changed circumstances that would have warranted DCPS to have done so.

Although Petitioner's assert that Student's August 3, 2023, IEP was deficient because it did not include speech-language services, there was no testimony by a speech-language pathologist to refute the evaluation data from which DCPS concluded that Student did not qualify of speech-language services. As a result, the IHO concluded that Petitioners did not sustain the burden of

persuasion by a preponderance of the evidence on this issue and that the IEP DCPS developed for Student on August 3, 2023, was reasonably calculated to enable a Student to make progress appropriate in light of Student's circumstances.

**ISSUE 5:** Did DCPS deny Student a FAPE by failing to allow Petitioner's educational consultant to observe the proposed program and placement in the BES program at School C ?

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

IDEA allows states to create additional procedural and substantive protections if they are consistent with IDEA. *Middleton v. District of Columbia*, 312 F.Supp.3d at 122. If a state creates a higher standard, "an individual may bring an action under the federal statute seeking to enforce the state standard." *Id.* (quoting *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1035).

In 2014, the District of Columbia passed the Student Rights Act. The Act "provides district parents with additional procedural safeguards to help make sure parents have the tools they need to stay informed, engaged, and empowered throughout the special education process." See D.C. Council Comm. Rep. on B 20-723 (D.C. 2014) at 1. Recognizing that "parents who do not have a specific background in the subject area ... often cannot adequately evaluate whether their child's instruction is sufficient [and that] parents are concerned that an LEA may limit such access to the point that the observation is unable to provide meaningful input into their child's educational progress," the Student Rights Act expanded on a parent's "right to observe" under the IDEA...<sup>7</sup>

The Act (D.C. Code § 38-2571.03) states in pertinent part the following:

5(A) Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child's current to proposed special education program:

(i) the parent of a child with a disability; or

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

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<sup>7</sup> *Woodson, et al., v. District of Columbia*, 119 LRP 28316

(C) A parent, or the parent's designee, shall be allowed to view the child's instruction in the setting where it ordinarily occurs or the setting where the child's instruction will occur if the child attends the proposed program.

(D) the LEA *shall not impose any conditions or restrictions on such observations except those necessary to:*

(i) Ensure the safety of the children in the program;

(ii) Protect other children in the program from disclosure by an observer of confidential and personally identifiable information in the event such information is obtained in the course of an observation by a parent or a designee, or

(iii) Avoid any potential disruption arising from multiple observations occurring in a classroom simultaneously.

(E) An observer shall not disclose nor use any information obtained during the course of an observation for the purpose of seeking or engaging clients in litigation against the District or the LEA.

(F) The LEA may require advance notice and may require the designation of a parent's observer to be in writing.

(G) Each LEA shall make its observation policy publicly available.

The protections of the Student Rights Act have been further clarified in the DCMR:

5A DCMR §3041.1 provides:

Upon request, the LEA shall provide timely classroom access, either together or separately, to the following persons for the purpose of observing a child's current or proposed special educational program:

(a) The parent of a child with a disability;

(b) A designee appointed by the parent of a child with a disability, that is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation, and:

(1) Who has professional expertise in the area of special education being observed so long as the LEA has written consent of the parent on file prior to the parent's designee's observation of a child; or

(2) Who is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent.

5A DCMR §3041.2 provides:

The LEA shall develop and issue a written policy regarding child observation as follows:

(a) The LEA shall not impose any conditions or restrictions on such observations except those necessary to ensure that:

(1) The safety of the children in a program is maintained;

- (2) The confidentiality of the other children in the program is protected by prohibiting observers from disclosing confidential and personally identifiable information in the event such information is obtained in the course of an observation by the parent or a designee; and
- (3) Any potential disruption to the learning environment arising from multiple observations occurring in a classroom simultaneously is avoided;
- (b) The LEA policy may require advance notice of parent observation;
- (c) The LEA policy may require the designation of a parent's observer to be in writing; and
- (d) The LEA shall make its written policy regarding child observation publicly available.

As noted above, the evidence demonstrates that DCPS provided and Petitioners signed an observation confidentiality agreement they were required to sign before they observed the program at School C, and Petitioners were allowed to observe one class virtually. Petitioners went to DCPS central office to observe. Petitioners' consultant also requested the opportunity to observe the School C program but was not allowed to do so. However, based upon Petitioners' observation the consultant was able to provide DCPS written feedback as to why he and Petitioners believed that Student's placement at School C was inappropriate.

Although Petitioners have in the past filed subsequent due process complaints against DCPS, and it might be reasonable for DCPS to anticipate such litigation at the time that the consultant requested the observation, there was no direct evidence that Petitioners' consultant was at the time of the request representing Petitioners in litigation or had a financial interest in the outcome of litigation that served as a basis for DCPS denying the consultant the observation.

Nonetheless, it does not appear based on this evidence that DCPS not allowing the consultant to observe the School C BES program significantly impeded Petitioners the opportunity to participate in the decision-making process regarding the provision of FAPE.

As previously stated, pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused Student a deprivation of educational benefits.

Consequently, the IHO concludes that Petitioners did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

**ISSUE 6:** Is School B a proper placement for Student?

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

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the Least Restrictive Environment provisions of the IDEA; and the public agency must ensure that the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home. See 34 C.F.R. § 300.116.

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

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

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

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

A student's IEP determines whether an educational placement is appropriate; the placement does not dictate the IEP. See *Roark v. District of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C. 2006); *Spielberg v. Henrico Cty. Public Sch.*, 853 F.2d 256, 258 (4th Cir. 1988) ("Educational placement is based on the IEP, which is revised annually."); 34 C.F.R. § 300.116(b)(2).

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 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)).

Albeit the evidence demonstrates that since Student has attended School B, Student has made progress and that Petitioner is pleased with and wants Student to remain at School B, based upon the evidence adduced, the IHO did not conclude that Student's appropriate LRE at the time the August 3, 2023, IEP was developed was a separate special education day school, like School B, where Student is removed from non-disabled peers.

As already discussed in issue #1 above, there was sufficient evidence that the IEP DCPS proposed for Student on August 3, 2023, was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. There was insufficient evidence presented that Student's LRE has changed from the time that IEP was developed.

The IHO, therefore, concludes that despite the progress Student has made at School B, School B is not a placement that DCPS is obligated to fund prospectively and, therefore, does not grant Petitioners' requested relief for Student's prospective placement at School B. However, there is sufficient evidence that School B meets the requirements for reimbursement for at least the period that the IHO prescribes in the order below.<sup>8</sup>

**ORDER:**

1. DCPS shall, within thirty (30) calendar days of its receipt from Petitioners of the documentation of Petitioners' actual out-of-pocket payment to School B, reimburse Petitioners the tuition for Student's attendance at School B for SY 2023-2024.
2. DCPS shall, within thirty (30) calendar days of the issuance of this order, convene an IEP meeting to update Student's IEP with any current data and to determine an appropriate placement and location of services for Student for SY 2024-2025.
3. All other relief requested by Petitioners is denied.

**APPEAL PROCESS:**

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

*/S/ Coles B. Ruff*

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**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: June 14, 2024**

Copies to: Counsel for Petitioner  
Counsel for LEA

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<sup>8</sup> *Branham v. District of Columbia*, 427 F.3d 7 (D.C. Cir. 2005) 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. *Id.* at 12.