

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, NE, 3rd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
June 27, 2024

PARENTS,
on behalf of STUDENT,¹

Date Issued: June 27, 2024

Petitioners,

Hearing Officer: Peter B. Vaden

v.

Case No: 2024-0034

PUBLIC CHARTER SCHOOL,

Online Video Conference Hearing

Respondent.

Hearing Dates: May 10 and June 20, 2024

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner parents under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In their due process complaint, the parents allege that Respondent PUBLIC CHARTER SCHOOL (PCS) denied their child (STUDENT) a free appropriate public education (FAPE) and violated the IDEA’s “child find” requirement by not locating, evaluating and identifying Student as a child with a disability and by not providing the parents written notices required by the IDEA and the DCMR.

¹ Personal identification information is provided in Appendix A.

Petitioners' Due Process Complaint, filed on February 26, 2024, named PCS as Respondent. The undersigned hearing officer was appointed on February 27, 2024. On March 15, 2024, the parties met for a resolution session and were unable to resolve the issues in dispute. On March 12, 2024, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters.

On April 8, 2024, Petitioners moved the Office of Dispute Resolution ("ODR") to appoint a different independent hearing officer on the grounds that this hearing officer is allegedly an employee of the D.C. Office of the State Superintendent of Education (OSSE) or of PCS. By order issued April 9, 2024, I overruled this motion.

On May 3, 2024, Petitioners, by counsel, file a motion *in limine*, to bar PCS from asserting certain defenses at the due process hearing. The motion was opposed by PCS. By order issued May 7, 2024, I denied the motion.

The due process hearing was convened as scheduled on May 10, 2024. Due to an illness in PCS' COUNSEL's family, the second day of the hearing had to be continued until June 20, 2024. To accommodate this continuance, I granted PCS' unopposed request to extend the final decision due date in this case from May 28, 2024 to July 12, 2024.

With the parents' consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on May 10 and June 20, 2024. MOTHER and FATHER appeared online

for the hearing and were represented by PETITIONERS' COUNSEL. Respondent PCS was represented by DIRECTOR OF STUDENT SERVICES and by PCS' Counsel.

Counsel for Petitioners made an opening statement. Petitioners called as witnesses MOTHER, CHILD PSYCHOLOGIST, PSYCHOTHERAPIST, LEARNING SPECIALIST, EDUCATIONAL ADVOCATE, and FATHER. PCS called as witnesses CLASSROOM TEACHER and Director of Student Services. Petitioners' Exhibits P-1 through P-18, P-21 through P-27, and P-36 through P-39 were admitted into evidence, including Exhibits P-16, P-26, P-27, P-36 and P-39 admitted over PCS' objections. I sustained PCS' objections to Exhibits P-28 through P-35 and P-40. Exhibits P-19 and P-20 were withdrawn. PCS' Exhibits R-1 through R-10 were admitted into evidence, except for Exhibit R-9 which was withdrawn. Exhibit R-7 was admitted over Petitioners' objection.

On June 20, 2024, after both parties had rested their cases, counsel made oral closing arguments. Neither party requested leave to file written closings but with leave of the hearing officer, counsel for both parties submitted citations to relevant authorities.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issues for determination in this case, as certified in the March 12, 2024

Prehearing Order, are:

- Did PCS deny Student a FAPE by violating the IDEA’s child find requirement to identify and evaluate Student as a child with a possible disability beginning November 2022?
- Did PCS deny Student a FAPE by failing to follow IDEA procedural requirements by (a) not notifying the parents of their procedural rights beginning in November 2022; (b) not conducting evaluations to determine whether Student was a student with a disability and entitled to special education services and accommodations beginning November 2022 or (c) not providing legally required notices to the parents when PCS declined to initiate steps to identify and evaluate Student as a possible child with a disability?
- Did PCS violate IDEA and deny Student a FAPE (a) by failing to find that Student is a child with a disability or (b) failing to find Student eligible for special education services and disability accommodations?
- Are the parents entitled to reimbursement from PCS for the cost of the privately obtained psychological evaluation of Student in February 2023?

For relief, Petitioners request that the hearing officer:

- Find that PCS violated its child find obligation and failed to respond as required to the available information indicating that a disability was present and that Student needed accommodations and other services;
- Determine that Student is a child with a disability who is entitled to special education, related services and appropriate accommodations;
- Order PCS to reimburse the parents for the cost of the private psychological evaluation of Student;
- Order PCS to reimburse the parents for the expense of sending Student to PRIVATE SCHOOL 1 for the 2023-2024 school year and
- Award such other and further relief as is warranted by the evidence and the

law.

FINDINGS OF FACT

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE child, is a resident of the District of Columbia.

Testimony of Mother. Student has never been determined eligible for special education as a “Child with a disability” as defined in the IDEA regulations, 34 C.F.R. § 300.8(a)(1).

Representation of Counsel.

2. For the 2021-2022 school year, Student was enrolled in GRADE A in CITY SCHOOL, a District of Columbia Public School. At City School, Student had a pretty good experience. The child was a good student and was learning how to write letters and numbers as appropriate for his/her age. During that school year, Student started to show some anxiety at home. Testimony of Mother.

3. In the spring of 2022, the parents sought out private play therapy for Student with Psychotherapist. At that time, Student showed some signs of emotional issues, anxiety, difficulties with transitions and multi-step processes. He/she exhibited tantrums and emotional dysregulation. Since September 2022, Student has been a patient of Psychotherapist. Psychotherapist diagnosed Student with adjustment disorder with anxiety and recommended therapy. Testimony of Psychotherapist, Exhibit P-2. The parents took Student to weekly play therapy. Up to the present time, Student is still receiving play therapy, currently bi-weekly. Testimony of Mother.

4. For the 2022-2023 school year, the parents enrolled Student in PCS, which was close to their home. PCS is a dual language, Spanish immersion, school. From the start of the school year, getting Student to go to PCS was very difficult. Student was resistant to going to school and had tantrums and dysregulation at home. Mother initially did not bring these concerns to PCS' attention. Testimony of Mother.

5. PCS serves as its own local education agency (LEA) in the District of Columbia. Hearing Officer Notice.

6. In Student's class at PCS, there were 24 children with 3 staff members. Instruction was in Spanish. Close to 70 percent of the children started the school year with no knowledge of Spanish. Testimony of Classroom Teacher. (Mother testified that there were approximately 30 children in the class. As to class size, I place more credence in the testimony of Classroom Teacher, who was the head teacher in the classroom.)

7. Student's teacher at PCS, Classroom Teacher, wrote Mother by email on November 2, 2022 about a "situation" with Student. Classroom Teacher wrote,

I'm writing to tell you some situations about [Student]; even though [he/she] doesn't speak Spanish, [he/she] already understands some instructions and has adapted to the routines, and [he/she] is making friends in the class, also when [he/she] is focused [he/she] manages to do a good job in the small group activities; more however, during the meeting of the whole group, [he/she] is almost always distracted and playing with [his/her] necklaces and bracelets, or playing with the friends [he/she] has next, this distracts [him/her] and the classmates next; I have asked [him/her] on several occasions to please put it in [his/her] backpack and use it at another time but [he/she] always refuses and does not attend to the instruction, the same happens when [he/she] is asked to be silent so

that [he/she] can listen to the reading, [he/she] just laughs and continues to play or talk; I would like you to reflect with [Student] on the importance of staying silent and listening while the whole group is gathered and attending to the instructions, at the same time request your support trying to minimize bringing toys to school to avoid distractions, [Student] is very smart and I know [he/she] can do a great job if [he/she] proposes.

Please let me know if you have any questions, or if there is any way you think we can support [Student] at school.

In Mother's November 3, 2022 email response, the parent wrote,

Just to clarify-[Student] was recently diagnosed with anxiety. We will eliminate all toys but I would like [him/her] to be allowed to have a stuffed animal for comfort at nap time. I will reinforce with [him/her] it is only for nap time or recess, not to be used during any other time. Would that be ok?

Classroom Teacher agreed to the stuffed animal request. In an email later on November 3, 2022, Mother wrote,

I think [Student] is having difficulty understanding in Spanish and is getting frustrated. Is there a counselor or someone I can talk to about this? Today when I picked [him/her] up at the playground [he/she] was very upset and crying a lot.

The same day, Classroom Teacher responded,

[Student] definitely had a better day today. I have noticed that [he/she] is already understanding more Spanish compared to the first few days of school.

Classroom Teacher referred Mother to PRE-K COACH if Mother wanted to talk with someone at PCS. Classroom Teacher also emailed Pre-K Coach that the parents wanted to talk to someone about how they thought that Student was frustrated at school because he/she did not understand Spanish and the teacher asked the coach to support

the parents. On November 6, 2022, Mother wrote the Pre-K Coach,

I'd like to set up a meeting with you as a first step, and maybe the principal or the teachers. [Student] is diagnosed with anxiety and really struggling at home. Lots of outbursts, temper tantrums, and reaction. I am wondering if it because [he/she] is getting frustrated at school with not understanding the language [Spanish]. I need help and I need to figure out how to better support him/her.

On November 7, 2022, Preschool Coach wrote Mother,

This day I was talking with [the director] about your concern, reading again your mail where you let us know that your [child] is diagnosed with anxiety. [The director] asked if you have a diagnostic document from a specialist, if so we would like to have access so that we can seek a better form of support.

Mother responded by email on November 8, 2022,

Attached is documentation around [Student's] diagnosis. Thursday at 1 pm is great [for a meeting with school staff]. I would like to figure out a 504 or a plan for [Student].

Exhibit P-1.

8. A virtual meeting with PCS staff was held on November 14, 2022. Mother, Principal, Classroom Teacher and the classroom aide attended. Mother shared Student's diagnosis and the paperwork. Mother did not ask for consideration of special education services or for an eligibility evaluation. Mother did ask for accommodations for Student including preferential seating, access to an English speaker to keep Student on task, and breaks and fidget toys for Student. PCS Staff told Mother they could not agree to the accommodations because there were other students with needs in the class. PCS did not provide the parents a procedural safeguards notice. Testimony of Mother.

9. Following the November 14, 2022 meeting, Student's behavior at home progressively worsened. Student would not dress him/herself, had problems with multi-step activities and took much longer to do things. He/she had increased tantrums and sensitivities and showed lack of resilience. On the recommendation of the child's pediatrician, the Parents scheduled a neuropsychological evaluation of Student. The parents paid the fee for the neuropsychological evaluation (\$4,500) in advance.

Testimony of Mother.

10. Mother notified Classroom Teacher and Preschool Coach in February 2023 that the parents were having Student evaluated by a psychologist, who would be contacting them for input. Testimony of Mother, Exhibit P-10.

11. Child Psychologist conducted a Neurodevelopmental Assessment of Student in February 2023. Child Psychologist conducted cognitive and educational achievement tests, interviewed the parents and Classroom Teacher, and obtained parent and teacher responses to behavior assessment rating scales. In her assessment report, Child Psychologist reported that Student began attending PCS in Fall 2022; that Student was in a Spanish language immersion program and his/her classroom teacher spoke only Spanish; that Student struggled with the transition to school and was worried [his/her] teachers did not speak English. Student's teacher said the child experienced high levels of anxiety for six weeks. Parents reported his/her difficulty with this transition lasted for three to four months. During this time, Student was tearful and struggled to separate from transition objects he/she brought to school. Student was

asked to stop bringing transition objects because it was distracting to other students. Upon interview, Student's teacher noted some concerns regarding impulsivity and sensory seeking behavior in the classroom; that Student appeared to have settled into the classroom and that he/she was speaking Spanish and engaging in typical peer interactions; that Student was demonstrating academic progress including emergent reading skills (letter-sound correlations) and recognition of sight words. Child Psychologist reported that cognitive testing revealed age-appropriate intellect for Student, with average verbal comprehension, visual spatial, fluid reasoning, and processing speed. Working memory was in the low average range. Additional measures showed age-appropriate fine motor skills and verbal memory while visual memory was an area of difficulty for Student. Student's pre-academic skills ranged from the low average to average range. He/she demonstrated low average phonemic and average letter and word recognition skills. Student's reading comprehension was low average with difficulty matching whole words to images. His/her mathematics and written language skills were age appropriate. Child Psychologist noted that while Student's scores provided baseline data regarding his/her skills in English, they likely underestimated his/her true academic potential given that Student was enrolled in a Spanish immersion program at PCS. Child Psychologist reported that results of clinical testing were consistent with the diagnosis of Anxiety, Unspecified. Student demonstrated daily worries that were difficult to control and impacted his/her overall mood. When anxious, Student experienced a behavioral response pattern characterized

by tearfulness, sadness, and verbal expression of worries. His/her anxiety manifested physically and he/she would enter a state of fight, flight, or freeze when he/she was worried or overwhelmed by a novel experience. Student also presented with perfectionist tendencies. Student's anxiety impacted his/her executive functioning as he/she struggled with cognitive and behavioral flexibility and required additional time to warm up and express him/herself in new settings. Student's parents endorsed difficulties with transitions, emotional control, cognitive flexibility, attention, and sensory seeking behavior and their report was consistent with behavioral observations and data gathered during the psychological assessment. Student struggled on tasks of sustained attention and required frequent redirection and prompting. He/she had difficulty initiating and persisting through challenging tasks. He/she required movement breaks and repetition of instructions on multiple occasions. Rating forms indicated some attention and executive function challenges at home, but these were not consistently reported at school. Child Psychologist concluded that Student's differences were considered a manifestation of the executive dysfunction associated with anxiety rather than ADHD. She recommended that Student should continue to be monitored for symptoms of inattention and hyperactivity and if academic concerns arose and executive function challenges became more apparent in the classroom, reevaluation for ADHD would be recommended. Child Psychologist diagnosed (1) Student with Anxiety Disorder, Unspecified and (2) Rule Out: Attention-Deficit/Hyperactive Disorder, Predominantly Inattentive Type. Exhibit P-14.

12. For school recommendations, Child Psychologist recommended that the parents share her report with PCS and request a Section 504 plan (Section 504 of the Rehabilitation Act of 1973). She recommended that based on Student's diagnosis of anxiety and documented executive function weaknesses in the assessment setting, the child would benefit from support during the school day. For classroom placement, Child Psychologist recommended that Student would do best in a small classroom setting with ample positive reinforcement and praise from teachers. As classroom accommodations, Child Psychologist recommended classroom strategies, including allowing Student access to a comfort item during school transitions; use of visual schedules, warnings, and a visual timer; advanced notice of changes in routine; seating close to the teacher who would provide frequent check-ins; pair Student with kind, model peers during group activities; developing a relationship with a trusted adult at school, like the school counselor, and allowing Student to meet with the counselor on a regular basis; prompting Student to attend before providing instructions; providing explicit directions that are presented in sequence with modeling and gestures; allowing access to fidgets in the classroom to support sensory seeking and on-task behavior; consideration of providing a chair that provides movement or a standing desk in the classroom which multiple children could utilize; and access to a calming space in the classroom with sensory supports with similar sensory supports at home and at school.

Exhibit P-14.

13. On February 26, 2023, Mother wrote Director of Student Services that her

child had been assessed by the psychologist and had a diagnosis of ADHD. Mother stated she “would like to begin the process of getting [Student] a 504 with accommodations” and asked how to proceed. Exhibit R-5. Director of Student Services responded by email of February 27, 2023 requesting a “copy of the diagnosis” after which, they would meet as a team and go through the Section 504 eligibility criteria. Mother responded by email on March 2, 2023 that she was still waiting on the final report from Child Psychologist and that she would get an answer on that and then schedule a meeting time. Exhibit R-6. Director of Student Services sent a follow-up email to Mother. Director of Student Services also telephoned Mother in March 2023 to schedule the Section 504 eligibility meeting, but did not get through to the parent. Director of Student Services never heard back from Mother about scheduling the Section 504 meeting. Testimony of Director of Student Services.

14. Mother testified that she received Child Psychologist’s evaluation report in April 2023 and that she provided the report to Director of Student Services. Director of Student Services testified that the psychological assessment was not provided to her or to Classroom Teacher. Mother was unable to locate an email or other documentation, showing that the psychological assessment was sent to PCS. Because the evidence on this point is in equipoise and the parents have the burden of persuasion, I find that the parents have not established that they provided Child Psychologist’s assessment to PCS.

15. On March 7, 2023, Mother wrote Classroom Teacher by email that Student was insecure at school, did not like school because no one understood him/her and that

“everyone was better than [him/her]” at Spanish. Exhibit P-9.

16. On March 17, 2023, after a conference with the parent, Classroom Teacher sent Mother an email with the “good news” that since the conference, Student had arrived at school very motivated and in every meeting would raise his/her hand and wait his/her turn to speak. Classroom Teacher wrote that Student was then speaking much more Spanish. She wrote that Mother’s words had made Student feel more comfortable to speak in Spanish. Exhibit P-11.

17. By the end of PCS’ third marking period of the 2022-2023 school year, Student was reported to meet or exceed expectations in all cognitive, academic, social-emotional, physical and Spanish language and literacy areas, except that for counting Student was reported to be progressing. Exhibit P-13.

18. In spring 2023, Mother wrote to City School and attempted to re-enroll the child there. Student was put on the City School wait list, but the parents were not able to get him/her in. The parents then started looking at private schools for Student. Student was offered admission by two private schools and in April 2023, the parents signed enrollment papers for Private School 1 to reserve a spot for Student for the 2023-2024 school year. Testimony of Mother.

19. In August 2023, the parents approached DCPS’ Early Stages Diagnostic Center (Early Stages) about evaluating Student for special education eligibility. In late 2023 or early 2024, Early Stages evaluated Student. The Early Stages team did not find Student eligible as a child with an IDEA disability and recommended that Student have

a Section 504 Plan. Testimony of Mother, Testimony of Educational Advocate.

20. On the i-Ready Beginning of Year (BOY) math assessment taken on September 20, 2023, Student's overall performance was at grade level. Student scored at grade level for all domains, except for Numbers and Operations which was "approaching grade level." Exhibit P-23.

21. At a meeting with the parents in fall 2023, Student's teachers at Private School 1 told the parents that Student was energetic and creative and had adapted very well to the classroom; that Student enjoyed being social and playing with his/her friends; that Student was able to stay on task independently and was working hard; that Student was able to follow multi-step directions; that the teachers did have to repeat directions for him/her occasionally, but once Student was in a routine, he/she was very independent; that Student was very talkative and processed information verbally; that Student could struggle with organization, but was very successful with support and that Student was on grade level for reading and for math. For the first quarter of the 2023-2024 school year, Student was meeting grade-level expectations in every area. Exhibit P-21.

22. Student's physician diagnosed him/her with ADHD on or about January 2024 and in January 2024, the parents put Student on medications for this condition. Testimony of Mother, Exhibit P-16.

CONCLUSIONS OF LAW

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

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioners in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by the local education agency, in this case PCS, the agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6). In this case, the parents must shoulder the burden of persuasion.

Analysis

- Did PCS deny Student a FAPE by violating the IDEA's child find requirement to identify and evaluate Student as a child with a possible disability beginning November 2022?
- Did PCS deny Student a FAPE by failing to follow IDEA procedural requirements by (a) not notifying the parents of their procedural rights beginning in November 2022; (b) not conducting evaluations to determine whether Student was a student with a disability and entitled to special education services and accommodations beginning November 2022 or (c) not providing legally required notices to the parents when PCS declined to initiate steps to identify and evaluate Student as a possible child with a disability?
- Did PCS violate IDEA and deny Student a FAPE (a) by failing to find that

Student is a child with a disability or (b) failing to find Student eligible for special education services and disability accommodations?

For relief in this case, the parents seek tuition reimbursement from PCS for their Private School 1 expenses for Student in the 2023-2024 school year and reimbursement for their cost to have Student evaluated in February 2023 by Child Psychologist.

The core of the parents' claim is that PCS violated the IDEA's child find mandate and denied their child a FAPE by not evaluating the child for special education eligibility in the 2022-2023 school year. What makes this child find claim unusual is that DCPS' Early Stages Diagnostics Center evaluated the child in winter 2024 and determined that he/she was not eligible for special education. Notwithstanding, the parents request, *inter alia*, that this hearing officer determine that Student was a child with a disability in the 2022-2023 school year and that PCS denied the child a FAPE by not evaluating and determining him/her eligible for special education. For the reasons explained below, I find that the parents did not meet their burden of persuasion that PCS denied Student a FAPE. Therefore, they are not entitled to tuition reimbursement from PCS.

Private School Tuition Reimbursement

In *E.W.-G. v. District of Columbia*, No. CV 20-2806 (CKK), 2023 WL 2598680 (D.D.C. Mar. 22, 2023), U.S. District Judge Colleen Kollar-Kotelly explained the private school tuition reimbursement remedy under the IDEA:

[P]arents who “unilaterally” place a child with a disability in a private school, without consent of the school system, “do so at their own financial risk.” *Florence Cty. Sch. Distr. Four v. Carter*, 510 U.S. 7, 15 (1993) (quoting *School Comm. of Town of Burlington, Mass. v. Dep't of Educ. of*

Mass., 471 U.S. 359, 373-74 (1996)). To qualify for tuition reimbursement under the IDEA, a plaintiff must demonstrate that: (1) the school district failed to provide a FAPE; (2) the plaintiff's private placement was suitable; and (3) the equities warrant reimbursement for some or all of the cost of the child's private education. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 247 (2009).

E.W.-G. at *2 (D.D.C. Mar. 22, 2023). *See, also, Leggett v. District of Columbia*, 793 F.3d 59, 63 (D.C. Cir. 2015) (IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a FAPE; (2) the private-school placement chosen by the parents was otherwise proper under the Act; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act unreasonably.)

1. Failure to find Student Eligible

When Student was enrolled at PCS for the 2022-2023 school year, he/she was never evaluated for special education eligibility. The Petitioners allege that PCS denied Student a FAPE by failing to evaluate him/her and failing to determine that he/she was eligible for special education and related services. PCS maintains that when Student attended the charter school, the school did not have cause to reasonably suspect the child of having a disability under the IDEA.

The IDEA regulations define “Child with a disability” to mean a child evaluated as have one or more of 13 enumerated disabilities and, by reason thereof, needs special education and related services. *See* 34 C.F.R. § 300.8(a)(1). DCPS' Early Stages Diagnostic Center evaluated Student in February 2024 and determined that he/she did

not meet special education eligibility criteria, presumably under any IDEA disability category definition. According to Educational Advocate, like Child Psychologist, the Early Stages assessors felt that Student would qualify for a Section 504 plan.²

In her hearing testimony, Petitioners' expert, Educational Advocate, opined that based on Child Psychologist's 2023 assessment of Student, if PCS had evaluated the child, he/she would have been found eligible for special education under the Emotional Disturbance (ED) disability category. PCS' Expert, Director of Special Education, opined to the contrary that Student would not have been determined eligible because Student's alleged disabilities did not have an academic impact. I found Educational Advocate's opinion speculative and not credible. Educational Advocate did not administer any assessments to Student and she only observed the child for one hour in April 2024 at Private School 1. While it is correct that Child Psychologist diagnosed Student with anxiety and executive function weaknesses in spring 2023, she did not diagnose the child with an emotional disturbance. Moreover, like the Early Stages team, Child Psychologist recommended consideration of a Section 504 plan for Student.

At the due process hearing, there was insufficient evidence to establish that Student ever needed special education and related services by reason of having an Emotional Disturbance or other IDEA disability. I conclude that the Petitioners have not met their burden of persuasion that PCS denied Student a FAPE by not finding that

² The Petitioners chose not to offer the Early Stages evaluation report, which apparently was not available to PCS, into the record.

Student was a child with a disability and eligible for special education in the 2022-2023 school year.

2. Child Find

In a related claim, the parents allege that PCS denied Student a FAPE because the charter school did not comply with the IDEA’s “child find” requirement, when it did not identify and evaluate Student as a child with a possible IDEA disability beginning in November 2022. Under the IDEA’s child find requirement, local education agencies are obligated to “identif[y], locat[e], and evaluat[e]” “[a]ll children with disabilities residing in the [district]” to ensure that they receive needed special-education services. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245, 129 S. Ct. 2484, 2495, 174 L. Ed. 2d 168 (2009) (*citing* 20 U.S.C. §§ 1412(a)(3)(A), (a)(10)(A)(ii). “[The] Child Find obligation extends to all children suspected of having a disability, not merely to those students who are ultimately determined to be disabled. 34 C.F.R. § 300.111(c)(1) (“Child find also must include children who are suspected of being a child with a disability . . .”). . . . [A]s soon as a student is identified as a potential candidate for special education services, [the agency] has a duty to locate that student and complete the evaluation process.” *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 25–26 (D.D.C. 2008). “School districts may not ignore disabled students’ needs, nor may they await parental demands before providing special instruction. Instead, school systems must ensure that ‘[a]ll children with disabilities residing in the State . . . regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located,

and evaluated.” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 518–19 (D.C. Cir. 2005) (*citing* 20 U.S.C. § 1412(a)(3)(A).) LEAs have a continuing obligation under the IDEA to identify and evaluate all students who are “*reasonably suspected*” of having a disability under the Act. *Uhlenkamp v. District of Columbia*, 691 F. Supp. 3d 224, 238 (D.D.C. 2023) (emphasis supplied) (*citing* *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012); *J.S. on behalf of B.S. v. Green Brook Twp. Pub. Sch. Dist.*, No. CV-1918691, 2020 WL 7028554, at *1 (D.N.J. Nov. 30, 2020); *Demarcus L. v. Bd. of Educ. of the City of Chicago*, No. 13-C-5331, 2014 WL 948883, at *5 (N.D. Ill. Mar. 11, 2014).

The principle consideration for the child find claim here is whether PCS should have “reasonably suspected” Student of having an IDEA disability when he/she attended the charter school during the 2022-2023 school year. During the child’s time at PCS, neither the parents nor the child’s educators ever identified Student as a potential candidate for special education services or requested that he/she be evaluated for a possible IDEA disability. But should PCS have suspected the child of having an IDEA disability anyway?

The facts in this case merit review. Student started school at City School, a DCPS public school, in the 2021-2022 school year. According to Mother, Student had a pretty good experience at the public school. He/she was learning how to write letters and numbers, as age appropriate. That school year, Student did start to display some anxiety at home. For the 2022-2023 school year, the parents elected to enroll Student

in PCS, a Spanish language immersion school, where all instruction was in Spanish. Clearly, Student, who was not a Spanish speaker, had difficulties in the Spanish immersion program. On November 3, 2022, Mother wrote Student's classroom teacher that the child had recently been diagnosed with anxiety and she thought her child was having difficulty understanding in Spanish and was getting frustrated. Also in November 2022, Mother wrote Pre-K Coach that she was wondering if Student's struggles at home were because the child was getting frustrated at school with not understanding Spanish. Pre-K Coach offered to schedule a meeting for the parent with school staff. Mother confirmed the meeting and wrote that she would like to figure out a Section 504 or a plan for her child. The meeting was held on November 10, 2022. For reasons not explained at the due process hearing, a Section 504 Plan was not developed for the child.

With more time in the Spanish immersion program at PCS, Student's anxiety condition subsided. Classroom Teacher told Child Psychologist that the child experienced high levels of anxiety for six weeks. The parents reported that the child's difficulty with this transition lasted for three to four months. On January 18, 2023, Mother wrote Pre-K teacher that Student seemed more adjusted and less anxious at home. The teacher responded that Student had improved at school and seemed more adapted to the student group and was following instructions better. In spring 2023, the parents told Psychotherapist that there was improvement at home. By the end of the third term of the school year, Student was meeting or exceeding expectations in nearly

all areas, including Spanish Language and Spanish Literacy. It became rare for Classroom Teacher to see Student anxious or distressed. Academically, Student met grade-level expectations for the 2022-2023 school year.

In February 2023, Child Psychologist conducted a neurodevelopmental assessment of Student. The psychologist diagnosed Student with Anxiety Disorder, Unspecified. In a February 26, 2023 email to Director of Student Services, Mother wrote that Student had been assessed by Child Psychologist and had a diagnosis of ADHD. (This was incorrect. Child Psychologist listed ADHD as a “Rule-Out” condition because the psychologist did not have the evidence at that time to make an ADHD diagnosis. A physician later diagnosed the child with ADHD in January 2024.) In the February 26, 2023 email, Mother wrote that she “would like to begin the process of getting [Student] a 504 with accommodations” and asked how to proceed. Director of Student Services responded by email of February 27, 2023 requesting a “copy of the diagnosis” after which, they would meet as a team go through the Section 504 eligibility criteria. The hearing evidence did not establish that the parents ever provided Child Psychologist’s report to PCS or that PCS ever held a Section 504 meeting for Student. PCS did not evaluate Student for either Section 504 or special education eligibility.

In February 2023, the parents started a common application process to apply for Student’s admission to area private schools. Student was admitted to two private schools. In April 2023, the parents decided to send Student to Private School 1 for the 2023-2024 school year and completed the paperwork to reserve Student’s place at the

school.

In her hearing testimony, the parents' expert, Educational Advocate, opined that PCS should have convened a special education child find meeting after Mother informed Classroom Teacher and Preschool Coach on November 3, 2022 that Student had been diagnosed with anxiety and that she wanted to consider a Section 504 Plan. PCS' Expert, Director of Student Services, opined that a special education evaluation was not warranted then, because Tier I and Tier II education interventions were working for Student and there was no academic impact attributable to the child's anxiety disorder.

I did not find persuasive Educational Advocate's opinion that receiving notice of Student's anxiety diagnosis in November 2022 was enough to cause PCS to reasonably suspect Student of having an IDEA disability. Student, who was X YEARS OLD at the time, had been placed in the PCS Spanish immersion program only two months before and the parents acknowledged that he/she had trouble with the Spanish language instruction. However, the year before, Student had done well at City School. At the time of the November 2022 email communications, Mother and Classroom Teacher both attributed Student's challenges to the child's frustration with not understanding Spanish. On these facts, I conclude that the parents did not establish that in the fall of 2022, PCS had cause to reasonably suspect Student of having an Emotional Disturbance (ED) or other IDEA disability.

This changed, however, when Mother wrote PCS on February 26, 2023 that Student had been assessed by Child Psychologist and the child had a diagnosis of

ADHD.³ At that point, even though Mother was mistaken about the ADHD diagnosis, PCS was put on notice not only of Student’s anxiety condition, but also of Mother’s understanding that her child had been diagnosed with ADHD. It is true that in her February 26, 2023 email, Mother requested Section 504 accommodations – not a special education evaluation, but this fact did not limit PCS’ child find obligations after receiving Mother’s request. *See, N.G., supra* (Under [Agency’s] interpretation, a school district could excuse itself from the obligation to evaluate students merely because parents or therapists had suggested additional, alternative ways to accommodate the child. This is clearly not what Congress intended by imposing an affirmative obligation upon school districts to identify, evaluate, and place potentially disabled students . . .” *Id.* at 29.) I find that, Mother’s February 26, 2023 email to PCS, along with the request for Section 504 accommodations, was enough to cause PCS to reasonably suspect Student of having an IDEA disability. I conclude that Mother’s February 26, 2023 email triggered PCS’ duty to initiate a special education eligibility evaluation of Student. *See, e.g., N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 27 (D.D.C. 2008) (“This Court has

³ ADHD is specifically recognized as a potential “Other Health Impairment” under the IDEA’s implementing regulations, which provide:

Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder . . . and (ii) Adversely affects a child’s educational performance.

See 34 C.F.R. § 300.8(c)(9).

repeatedly found that when a district is aware that a student may have a disability, including ADHD, it has an obligation to evaluate the student”)

As justification for the charter school’s failure to evaluate Student, Director of Special Education testified that after Mother emailed her on February 26, 2023, she promptly wrote back to request a “copy of the diagnosis” after which, they would meet as a team go through the Section 504 eligibility criteria, and that despite sending two emails and making a follow-up telephone call, she got no response from the parents. While this alleged parental conduct is concerning, it would not relieve PCS of its child find obligation to timely evaluate Student. *See, e.g., Nesbit v. District of Columbia*, Civil Action No. 01-2429 (GK), 107 LRP 38589 (D.D.C., March 31, 2003) (Even though a parent may help a school district satisfy the IDEA’s requirement that it identify children in need of services, the school district is not relieved of its requirement to further locate and evaluate those children.) Under 34 C.F.R. § 300.300(a)(1)(iii), a public agency must make reasonable efforts to obtain the informed consent from the parent for an initial eligibility evaluation. In this case, there was no evidence that PCS sought the parents’ consent to evaluate Student. I conclude that PCS’ failure to initiate a special education eligibility evaluation of Student after receiving Mother’s February 26, 2023 email, violated the school’s child find obligation under the IDEA.

Failing to evaluate a child suspected of having a disability, as required by the IDEA’s child find mandate, is a procedural violation of the statute. *See Simms v. District of Columbia*, No. 17-CV-970 (JDB/GMH), 2018 WL 4761625, at *12 (D.D.C.

July 26, 2018), *report and recommendation adopted*, No. CV 17-970 (JDB)(GMH), 2018 WL 5044245 (D.D.C. Sept. 28, 2018). “[P]rocedural violations of IDEA do not, in themselves, inexorably lead a court to find a child was denied FAPE.” *Schoenbach v. District of Columbia*, 309 F.Supp.2d 71, 78 (D.D.C. 2004). Rather, “an IDEA claim is viable only if those procedural violations affected the student’s substantive rights,” such as by causing a student to be deprived of educational benefits. *Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006). “When a student is ineligible for special education there can be no loss of educational opportunities.” *Simms, supra*, quoting *Burnett v. San Mateo Foster City Sch. Dist.*, 739 F. App’x 870, 872 (9th Cir. 2018), citing *R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 942 (9th Cir. 2007). In this case, the parents have failed to establish that Student had a qualifying IDEA disability at any time after he/she was enrolled at PCS. Therefore, I do not find that PCS’ procedural violation of failing to conduct an initial eligibility evaluation of Student denied the child a FAPE.

3. Safeguard Notices

The Petitioners allege the PCS denied Student a FAPE by not providing a written notice required by IDEA, when the charter school did not initiate a special education eligibility evaluation of Student in the 2022-2023 school year. Under IDEA, parents of a child with a disability must be given a “procedural safeguards” notice, among other times, upon referral for an evaluation to determine if the child is a child with a disability. The local education agency (LEA) must also give parents a written notice

whenever the LEA: (1) proposes to begin or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child; or (2) refuses to begin or change the identification, evaluation, or educational placement of, or the provision of FAPE to the child. *See* 34 C.F.R. §§ 300.503(a), 300.504.

In this case, Petitioners did not establish that they were “parents of a child with a disability” entitled to a procedural safeguards notice. Moreover, while Mother’s November 2022 and February 2023 emails may be deemed requests for evaluation under Section 504 of the Rehabilitation Act, there was no evidence that the parents ever requested a initial evaluation to determine if Student was a child with an IDEA disability or that PCS refused to begin such an evaluation. Because PCS never refused to initiate or begin a special education evaluation of Student, the written notice obligation under 34 C.F.R. § 300.503(b) did not apply.⁴

In sum, I conclude that Petitioners have not met their burden of persuasion that Student met IDEA eligibility criteria as a child with a disability or that PCS denied the child a FAPE. Therefore, Petitioners’ request that PCS be ordered to reimburse their private school tuition expenses for Student is denied. *See, e.g., N.G. v. E.L. Haynes Pub. Charter Sch.*, No. 20-cv-1807, 2021 WL 3507557, at *14 (D.D.C. July 30, 2021).

⁴ Special education hearing officers in the District of Columbia do not have jurisdiction over claims alleging violations of Section 504 of the Rehabilitation Act of 1974. Therefore, I do not consider whether PCS did, or did not, comply with its Section 504 obligations.

(Because education agency did not deprive child of a FAPE or otherwise violate the IDEA, parent not eligible for reimbursement for private school placement.)

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ORDERED that all relief requested by the Petitioners herein is denied.

Date: Date in Caption

 s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

cc: Counsel of Record
Office of Dispute Resolution