

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 15, 2025

PARENTS, on behalf of STUDENT, ¹)	Date Issued: June 15, 2025
)	
Petitioners,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2025-0054
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS and)	
)	
OFFICE OF THE STATE)	Hearing Dates:
SUPERINTENDENT OF EDUCATION,)	June 4, 5 and 6, 2025
)	
Respondents.)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner parents under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the parents seek private school tuition reimbursement from Respondents District of Columbia Public Schools (DCPS) and Office of the State Superintendent of Education (OSSE) on the grounds, *inter alia*, that DCPS allegedly denied Student a free appropriate public education (FAPE) by failing to timely offer him/her appropriate Individualized Education Programs (IEPs) and educational placements for the 2023-2024 and 2024-2025 school years; that OSSE allegedly denied Student a FAPE by

¹ Personal identification information is provided in Appendix A.

failing to provide him/her an appropriate nonpublic placement location for the 2024-2025 school year and both respondents allegedly denied Student a FAPE in the 2024-2025 school year by failing to consider the harmful effects of a mid-year school transition on him/her.

Petitioners' due process complaint, filed on March 17, 2025, named DCPS and OSSE as respondents. The undersigned hearing officer was appointed on March 18, 2025. The parents and DCPS met for a Resolution Session Meeting on March 26, 2025 and did not resolve the issues in dispute. On April 2, 2025, with leave of the hearing officer, Petitioners filed an amended due process complaint, which restarted the due process hearing timelines. On April 15, 2025, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing dates and other matters. On April 18, 2025, I granted OSSE's continuance motion to extend the final decision due date for OSSE to June 16, 2025 to conform to the final decision due date for DCPS. By order issued May 30, 2025, I denied the Respondents' joint motion for partial summary disposition.

With the parents' consent, the due process hearing was held online and recorded by the hearing officer using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on June 4, 5 and 6, 2025. MOTHER appeared online for the hearing and the parents were represented by PETITIONERS' COUNSEL 1. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL. Respondent OSSE

was represented by OSSE' COUNSEL 1, OSSE' COUNSEL 2 and PLACEMENT MANAGER. Counsel for the respective parties made opening statements.

Petitioners called as witnesses EDUCATIONAL ADVOCATE, PRIVATE SCHOOL 1 DIRECTOR and Mother. OSSE called as witnesses PRIVATE SCHOOL 2 DIRECTOR and Placement Manager. DCPS called as witnesses SPEECH LANGUAGE PATHOLOGIST, SCHOOL PSYCHOLOGIST and LEA Representative. Petitioners' Exhibits P-1 through P-35 were admitted into evidence, including Exhibit P-6 admitted over DCPS' objection. DCPS' Exhibits LEA-1 through LEA-55 were admitted into evidence, including Exhibits LEA-10 and LEA-36 admitted over Petitioners' objections. OSSE's Exhibits SEA-1 through SEA-35 were admitted into evidence without objection.

On June 6, 2015, after the close of all the evidence, counsel for the respective parties made oral closing arguments. There was no request to file written closings. The parties were granted leave to submit written citations to authorities by June 10, 2025 and Petitioners and DCPS emailed citations.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issues raised by Petitioners against DCPS and OSSE are as follows:

A. Did DCPS deny Student a FAPE by failing to provide him/her with an appropriate IEP and placement for the 2023-2024 school year, including that the IEP failed to provide sufficient special education services and its proposed placement/location of services was too large?

B. Did DCPS deny Student a FAPE by failing to provide him/her with an appropriate IEP and placement for the 2024-2025 school year including that it failed to provide sufficient special education services and its proposed placement/location of services was too large for the start of the school year?

C. Did OSSE deny Student a FAPE by failing to provide him/her with an appropriate placement location for the 2024-2025 school year?

D. Did DCPS and OSSE deny Student a FAPE when the public agencies failed to consider the harmful effects of a mid-year transition to a new program on the child?

For relief, Petitioners request that the hearing officer order as follows:

Order DCPS and OSSE to reimburse the parents and Student's grandmother for the tuition and related services paid to Private School 1 for the 2023-2024 and 2024-2025 school years.

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, resides with the parents in the District of Columbia. Testimony of Mother.
2. Student is eligible for special education as a student with Autism. Exhibit LEA-47.
3. Since the start of the 2023-2024 school year, Student has been unilaterally enrolled by the parents at Private School 1, where he/she is currently in GRADE. Previously, Student attended NURSERY SCHOOL, a private school. Student has never attended a DCPS public school. Testimony of Mother.
4. In July 2022, NEUROPSYCHOLOGIST conducted a neuropsychological

evaluation of Student on referral of Nursery School. Neuropsychologist reported, *inter alia*, that Student evidenced repetitive speech patterns and immediate echolalia, defined as immediate repetition of the last statement or series of statements made by examiner. Student demonstrated some positive social overtures towards the examiner, such as sharing a toy bunny and initiating a hug goodbye. Student also evidenced some shared enjoyment during a pretend play activity involving a baby doll's birthday party. It was noteworthy to Neuropsychologist that Student largely ignored the majority of the examiner's comments, questions, and social approaches. Further, Student's overtures were somewhat limited and generally related to his/her own interests or needs. Student's eye contact was inconsistent and though he/she directed some facial expressions to convey his/her emotions, they were limited in range. Student demonstrated some inflexibility by occasionally preventing the examiner from turning pages of stimulus books or attempting to turn ahead to a more preferred page. Student also was disengaged and hyperfocused on toy test materials during administration of an assessment, during which time he/she was unresponsive to the examiner's questions and prompts. He/she also evidenced unusual sensory interest in several test items. Student demonstrated several instances of stereotypic behaviors throughout the evaluation including shoulder shrugging, as well as bending and arching his/her back. Neuropsychologist reported that taken altogether, these results and observations confirmed that Student's pattern of challenges with social communication and interaction, in addition to restricted and repetitive behavior, were consistent with a

diagnosis of autism spectrum disorder, without accompanying intellectual impairment, with accompanying language impairment, level 1. The designation of “level 1” indicated that differences in Student’s social approach and ability to consistently engage in reciprocal (to-and-fro) conversation “required support.” Student’s inflexibility and difficulty tolerating change or ability to flexibly transition were also areas requiring support. Exhibit P-2.

5. In her July 29, 2022 report, Neuropsychologist recommended, *inter alia*, that Student would benefit from implementation of an IEP classified under the designation of Autism and that he/she would benefit from receiving both outpatient and school-based speech/language intervention services to address ongoing expressive speech difficulties. To address peer-related social goals, Neuropsychologist wrote that regular exposure to same-aged “neurotypical” children was recommended via placement in an inclusive classroom with regular access to proper support and specialized staff, because an inclusive classroom provides regular exposure to neurotypical children and assists in providing a model of age-appropriate social and language skills. Exhibit P-2. The July 29, 2022 report was provided to and reviewed by DCPS’ Early Stages Diagnostic Center personnel. Exhibit LEA-16.

6. On September 28, 2022, DCPS received an email from Neuropsychologist which stated,

To Whom It May Concern:

I am writing in regard to [Student] who I recently evaluated in July of 2022 (7/13 & 7/14/2022) . . . [Student] was diagnosed with 299.00

(F84.0) autism spectrum disorder (ASD), without accompanying intellectual impairment, with accompanying language impairment, level 1. Intensive early intervention was recommended (at least 25 to 40 hours per week, 5 days per week, throughout 12 months a year), specifically applied behavior analysis (ABA). ABA services are crucial in the development of [Student's] functional language, social communication, social interaction, responsiveness, play and engagement, self-help, and safety skills. Specific intervention for a child of [Students'] age should follow the guidelines established by Schreibman and colleagues (2015) for use of Naturalistic Developmental Behavioral Interventions (NDBI), which incorporates behavioral strategies such as modeling, shaping, chaining, prompting, and differential reinforcement within typical environments and familiar daily life routines. Student's parents will work with his/her ABA team to develop an intervention plan to assist in the development and generalizability of these functional skills.

Exhibit LEA-16.

7. On November 2, 2022, Student was assessed by a Board Certified Behavior Analyst (BCBA) affiliated with ABA GROUP. In a written report dated November 29, 2022, ABA Group recommended,

Given [Student's] significant delays in communication, social skills, and behaviors, it is recommended that [he/she] receive 20 hours of direct ABA therapy delivered by a behavior technician. However, due to [Student's] attendance in school and the family availability, 20 hours is not feasible. For that reason, the behavior analyst is recommending 14 hours per week to be carried out by 2 hours in the morning before school days (total of 10 hours), and 2 hours twice a week, when school is not in session (total of 4 hours).

Exhibit P-3. ABA Group's report and recommendation were not provided to DCPS until May 28, 2025, when included with the Petitioners' prehearing disclosures in this proceeding. Testimony of LEA Representative. I find that DCPS did not have access to the information about Student, provided in the ABA Group report, when the IEPs at issue in this proceeding were developed.

8. On the recommendation of Nursery School staff, the parents reached out to CITY SCHOOL 1, a DCPS public School, to request that Student be evaluated for special education eligibility. Testimony of Mother. The request was received in late September 2022. Exhibit LEA-15. DCPS' Early Stages Diagnostic Center conducted an initial eligibility evaluation of Student in November 2022. The evaluation process included, *inter alia*, review of Neuropsychologist's July 2022 evaluation of Student, interview of the parents, in-person observations/assessments of the child by a DCPS school psychologist and an occupational therapist, the Ages and Stages Questionnaire (ASQ), a speech-language assessment and review of physical therapy and occupational therapy assessments completed by the child's outside providers. Exhibit LEA-22.

9. In a December 1, 2022 DCPS Analysis of Existing Data (AED) compilation for Student, as concerns for Student, it was reported,

– Adaptive-Daily Living Skills: At this time, the adaptive-daily living area could possibly be an area of concern for Student. Although Student attended to the activities and the evaluators, he/she required small breaks (*e.g.*, movement breaks inside the testing room, check-in with his/her parents outside of the testing room).

– Cognitive: The following skills are reported to be an area of concern or developing atypically compared to typically developing same-age peers. Does not follow directions using the words “under,” “between”, and “middle.” Parents report that he/she is only able to demonstrate understanding of “under.” Does not count five objects one-by-one in order. Difficulties learning new skills or remembering information/skills.

Parents report he/she needed a tutor to pick up some concepts and did not learn on his/her own, but he/she has a good memory. Mother is worried that Student has cognitive differences. He/she is not able to answer questions about books that mom has been reading (over and over). Difficulty learning daily routines. Parent reports Student takes a long time and repetition to master. Nursery School teachers report concern about the child's ability to learn.

– Behavior: Parent has concern about their child's behavior: Student will whine and protest often from when he/she wakes up. Parents report he/she says "no" often. Typically, Student is in a good mood in the morning. The neuropsychological evaluation completed in July 2022 indicated Student presented with needs in the following: Student demonstrated some inflexibility by occasionally preventing the examiner from turning pages of stimulus books or attempting to turn ahead to a more preferred page. Student demonstrated several instances of stereotypic behaviors throughout the evaluation including shoulder shrugging, as well as bending and arching his/her back. These movements were almost always in direct response to the presentation of stimuli he/she found exciting.

– Motor Skills/Physical Development: Student has been diagnosed with Autism and presents with sensitivity to certain sounds (loud/sudden noise, crying, high-pitched sounds). As a result, he/she may become emotionally distressed, cry or express rejection of going to school because of the noises there. Exhibit LEA-22.

10. On or about December 8, 2022, the Early Stages eligibility team, including the parents met by video conference to review the information collected. In the area of adaptive/daily living skills, it was reported that Student's adaptive functioning was below age expectations; that Student's gross motor skills and fine motor skills were age-appropriate and supports were not recommended; that Student had some sensory and attentional needs, and these would be addressed in the classroom through the special education teacher; that Student's pragmatic language deficits may negatively impact his/her ability to create and maintain meaningful relationships with teachers and peers; that the psychological information indicated that Student presented with needs related to demonstrating inhibitory control and impulsivity, ability to move freely from one situation, activity, or aspect of a problem to another as circumstances demand, and the impact of executive function problems on emotional expression and his/her ability to modulate or regulate his/her emotions, for which Student would require more intensive (greater duration and specificity) intervention when compared to typically developing same-age peers. The Early Stages eligibility team determined that Student was eligible for special education and related services as a child with Autism. Exhibit LEA-24. The team determined that Student's deficits affected his/her ability to access the general education curriculum in the areas of Adaptive-Daily Living Skills, Cognitive and Communication/Speech and Language. Exhibit LEA-25.

11. On December 8, 2022, the Early Stages IEP team met by telephone to develop an initial IEP for Student. Adaptive/Daily Living Skills, Cognitive and

Communication/Speech and Language were identified as areas of concern for Student. For special education and related services, the team determined that Student needed 3 hours per week of Specialized Instruction, in the general education setting, and 2 hours per month of Speech-Language Pathology, including 1 hour outside general education. For Other Classroom Aids and Services, the team decided that Student would benefit from frequent and/or immediate feedback, repetition of directions, visual supports such as signs, visual schedules, picture communication symbols, adult gestures, peer and adult models, repeated and simplified directions as needed, cues and prompts, allowance for extended practice of newly learned skills, home/school communication, movement breaks and opportunities to change position as needed, consideration of a designated quiet time in the class, prior warning for fire drills and noise-cancelling headphones. Exhibit LEA-27.

12. On January 9, 2023, Mother signed a form providing parental consent to DCPS for the initial provision of special education and related services to Student. Exhibit LEA-29. However, Student continued to attend Nursery School through the 2022-2023 school year and the parents did not enroll him/her in a DCPS school. Exhibit P-13, Testimony of Mother.

13. In the winter of 2023, the parents engaged Educational Advocate regarding how Student's Autism diagnosis affected his/her performance in school. On February 28, 2023, Educational Advocate went to Nursery School to observe Student. He spoke with teachers and the school director about Student's needs. In the classroom,

work was self-guided with periodic support/check-ins for class. Educational Advocate observed that Student was requiring more prompting than peers to continue working, but was instructionally compliant when his/her attention was gained. He observed that Student did not interact with peers during the observation. Exhibit P-13. After the observation, Educational Advocate told Mother that the Nursery School 1 program was not the right school program for Student and that the child needed a school that was versed in the tenets of Applied Behavior Analysis that could look at verbal behavior as a methodology and intervention, and get Student out of his/her shell and really interacting with peers, being compliant, following directions and following classroom routines that were expected within a typical environment. Testimony of Educational Advocate. Educational Advocate did not provide a written report following his February 2023 Nursery School observation of Student and only wrote up his notes from that observation in May 2024. Exhibit P-13. His notes were not provided to DCPS until June 2024. Testimony of LEA Representative.

14. After Educational Advocate's meeting with Mother, the parents looked at a lot of schools for Student and decided on Private School 1 for the 2023-2024 school year. This was a unilateral placement by the parents. The parents chose Private School 1 because their specialists had recommended the school and there would be a possibility of integrated education for Student with OT and Speech services in the program. In the 2022-2023 school year, the parents had obtained outside physical therapy, OT, Speech and ABA services for Student. Testimony of Mother.

15. On June 9, 2023, Mother wrote DCPS by email to give DCPS notice that Student would attend Private School 1 for the 2023-2024 school year and to request that DCPS place and fund him/her at Private School 1. Mother wrote that the parents did not believe that DCPS has proposed an appropriate IEP and placement for Student as the IDEA requires. By email letter of July 14, 2023, the DCPS Resolution Team director acknowledged receipt of the parents' notice and informed the parents that DCPS did not agree to bear the cost of the private placement. He wrote that it was DCPS' position that the District had made a FAPE available to Student with an appropriate IEP and a placement in the least restrictive environment at the child's neighborhood school. By email letter dated July 19, 2023, an attorney from Petitioners' Counsel 1's law firm responded to the DCPS letter. Exhibit P-8.

16. On December 26, 2023, an employee of DCPS' Centralized IEP unit wrote the parents to schedule an IEP meeting for Student. The meeting was set for January 25, 2024. Mother, Petitioners' Counsel 1 and Private School 1 director attended. Based on a December 2023 Progress Report from Private School 1, in ELA, Student was demonstrating growth in the area of literary skills. Student was engaged in reading in small group and 1-1 scenarios. Student struggled to maintain attention during whole group read-aloud. Student struggled with remaining on task at times and with writing activities. Once engaged, Student could write his/her name, give responses when prompted, and draw detailed illustrations of people. In math, Student was demonstrating growth. Student struggled to maintain attention consistently in whole

group or large group activities. Student's teacher noted that he/she had shown growth in all areas of social emotional learning as he/she became acclimated to his/her teachers, classmates, and the class routines. Student benefitted from having tasks broken down and clear simple steps for what to do. Student was reported to try to avoid or resist tasks in whole- or small-group learning. During transition periods or if a task were not preferred, Student might protest or become upset or cry. Student benefitted from clear, concise directions on how to rejoin the group. Exhibit P-11.

17. In the January 25, 2024 IEP, Adaptive Daily Living Skills, Cognitive and Communication/Speech and Language were identified as IEP goal areas for Student. For special education and related services, the IEP team determined that Student needed 3 hours per week of Specialized Instruction, in the general education setting, and 2 hours per month of Speech-Language Pathology, outside general education. As consultation services, the IEP provided for 1 hour per month of Speech-Language and 1 hour per week for Specialized Instruction. For Other Classroom Aids and Services, the January 25, 2024 IEP team decided that Student would benefit from the following instructional supports: frequent and/or immediate feedback, repetition of directions, visual supports such as signs, visual schedules, picture communication symbols, adult gestures, peer and adult models, cues and prompts, extended practice of newly learned skills, home/school communication, movement breaks and opportunities to change position, as needed, consideration for designated quiet time in the class, advance warning for fire drills, noise-cancelling headphones and scripted language when

problems arise throughout the instructional day to be used across all school based settings and with all school staff. Mother and Petitioners' Counsel 1 agreed with the IEP present levels of performance and goals changes, as well as with the proposed hours and placement for Speech-Language Pathology. They disagreed with the IEP's specialized instruction hours and placement as they believed that Student would benefit from a full-time separate day school program. Exhibit P-11.

18. In February 2024, Neuropsychologist conducted a neuropsychological reevaluation of Student on the parents' referral. The parents had concerns regarding Student's attentional control and learning-based challenges and they were also interested in gaining updated information on Student's learning profile, specifically his/her strengths and challenges, as well as recommended assistive strategies. In her March 7, 2024 reevaluation report, Neuropsychologist reported that during the assessment, when engaged, Student was able to follow instructions effectively and showed a typically developed understanding of language. He/she exhibited speech disarticulation (*e.g.*, congested, nasally vocal tone) and his/her speech patterns evidenced several atypical features including immediate and delayed echolalia, in addition to abnormal intonation (*e.g.*, spoke in various accents). Student also tended to raise his/her voice when he/she became excited or overstimulated. Student's gait was occasionally atypical and clumsy, and his/her eye contact varied. He/she exhibited stereotyped behaviors, including repetitive words and phrases, and sensory-seeking behaviors, and also faced difficulties with proprioception (sense of self-movement,

force, and body position) and with recognizing and respecting personal boundaries. Neuropsychologist reported, *inter alia*, that for general intellectual functioning, Student fell within the below average range (FSIQ = 76, 5th percentile) with significant variability in his/her cognitive profile. Evaluation results and observations affirmed that Student's pattern of challenges with social communication and interaction, in addition to restricted and repetitive behavior, remained consistent with a diagnosis of autism spectrum disorder, without accompanying intellectual impairment, with accompanying language impairment, level 2 (requiring substantial support). Overall, Student's challenges significantly interfered with his/her functioning across a variety of contexts and continued to require comprehensive supports. Student demonstrated persistent difficulty with speech sound production that interfered with speech intelligibility, and at times, prevented effective verbal communication. These challenges limited Student's ability to socially engage with peers and access classroom instruction in the same way as same-aged, typically developing peers. A formal diagnosis of speech sound disorder was appropriate. Student exhibited significant challenges related to inattention, hyperactivity, and impulsivity, which were consistent with a diagnosis of attention-deficit/hyperactivity disorder (ADHD), combined presentation. Consistent with his/her diagnosis of ADHD, Student also exhibited weakness in aspects of working memory, in addition to associated executive functioning skills, including inhibitory control, emotional regulation and ability to effectively shift from one task to the next. These difficulties impacted Student's ability to learn at the same rate as his/her peers,

effectively engage in the learning process and adequately progress in school without implementation of appropriate supports and accommodations. Neuropsychologist's reevaluation results also indicated weakness in Student's visuoconstruction (ability to recreate visual designs with blocks), visuomotor precision (ability to neatly trace the interior of figural designs under timed conditions), and proprioceptive awareness (sense of body in space, understanding of other peoples' personal space). Neuropsychologist reported that overall, these motor-based difficulties impacted Student's daily functioning, most noticeably in his/her adaptive skills and ability to appropriately engage in activities of daily living appropriate to his/her chronological age.

Neuropsychologist wrote that a diagnosis of developmental coordination disorder was also appropriate. Assessing academic functioning in Student was complex due to the social communication and behavioral challenges associated with autism spectrum disorder. Throughout the evaluation, Student had difficulty staying engaged and quickly gave up when he/she found a task too demanding or overwhelming. He/she exhibited low stamina, necessitating frequent breaks, redirection, and encouragement from the examiner. Neuropsychologist deferred any learning-based diagnoses for Student.

Neuropsychologist diagnosed Student with Autism Spectrum Disorder, without accompanying intellectual impairment, with accompanying language impairment, level 2 (requiring substantial support), Speech sound disorder, ADHD, combined presentation and Developmental coordination disorder. For educational recommendations, Neuropsychologist recommended, *inter alia*, that Student's

challenges would be best mitigated by a reduced capacity classroom (with fewer students and lower student-to-teacher ratio). To address Student's social goals related to peer interaction, she wrote that Student required regular exposure to social learning opportunities within the classroom environment; student needed teaching methods that utilized visual schedules and social stories to improve his/her classroom engagement and functional communication; student should be given as much warning and preparation as possible for transitions and changes; student should be provided the options to take short "motor breaks" as needed, in effort to reduce cognitive fatigue and improve classroom engagement; student should be given the option to wear noise reduction headphones for noise sensitivity and/or sit out of large, noisy gatherings, and be provided with an alternative option; student would be most successful in classroom settings that were well-organized and provide substantial structure; student should be eligible to complete tests/examinations in a separate, quiet, distraction-free room; student should receive preferential seating in a seat away from distractions and close to the center of instructional activity; student would benefit from frequent check-ins with teachers to assist in redirecting his/her focus or to clarify test/assignment instructions; frequent cueing would mitigate distractibility and redirect attention to the task at hand; student would benefit from school-based occupational therapy (OT) to address his/her proprioceptive, interoceptive, and sensory-based challenges and from school-based speech/language therapy to address his/her language-based challenges in communication. Exhibit P-12.

19. The parents shared Neuropsychologist's March 2024 reevaluation report with DCPS on April 8, 2024. Exhibit P-14. DCPS convened a meeting on May 24, 2024 and proposed to proceed with reevaluating Student. At the meeting, DCPS staff stated that DCPS would formally review Neuropsychologist's report to gather more information in the areas of academics and Behavioral Support Services to determine if Student continued to qualify for special education and if so, in what areas. The parents agreed with the proposed plan and signed consent for Student's reevaluation. Exhibits P-14, LEA-40, LEA-35.

20. Educational Advocate conducted an observation of Student at Private School 1 on April 10, 2024. In a May 5, 2024 observation report, Educational Advocate reported that Student's Autism Spectrum Disorder (ASD) affected him/her in every domain of his/her life. He recommended that Student would continue to benefit from a structured educational setting that provided comprehensive services to students on the autism spectrum. Class size would need to be small and staff would need to be versed in the tenets of Verbal Behavior. Educational Advocate wrote that Student required extensive adult support to access the curriculum and he/she would require wrap-around services including academic, psychological and support services to ensure that he/she would have the skills to become independent and to thrive as an adult. Exhibit 141, Testimony of Educational Advocate. Educational Advocate's May 5, 2024 report was provided to DCPS in June 2024, after the May 24, 2024 multidisciplinary team meeting. Testimony of LEA Representative.

21. On July 30, 2024, DCPS convened an eligibility committee meeting for Student. Mother and Petitioners' Counsel 1 attended. The eligibility team confirmed that Student met criteria for the Autism (ASD) disability and for Behavioral Support and Speech-Language related services. Exhibit LEA-43.

22. By email letter of August 2, 2025, Petitioners' Counsel 1 gave notice to DCPS that Student would attend Private School 1 for the 2024-2025 school year and that the parents' decision was made in order to provide Student the free appropriate public education ("FAPE") to which he/she was entitled under the IDEA. Counsel requested that DCPS place and fund Student at Private School 1 and that should DCPS refuse the funding request, the parents reserved the right to seek funding for that placement. Counsel wrote that they understand the IEP process for Student was then currently underway and the parents intended to fully consider any proposed IEP or placement made by DCPS. Exhibit LEA-45.

23. On August 6, 2025, DCPS provided a Prior Written Notice to the parents notifying them, *inter alia*, that as of July 30, 2024, the DCPS team was proposing to find Student to be eligible for continued services for special education under the classification of Autism (ASD); that the team made the determination based off the results of the DCPS review of Neuropsychologist's March 2024 reevaluation of Student and behavior data collections conducted by a DCPS clinician; that DCPS did not reevaluate Student in the area of speech and language as his/her eligibility was current; that Student was eligible for services for all academics (mathematics, reading, and

written expression) as well as for Behavior Support Services and Speech Language Services; that DCPS did not reevaluate Student in the area of Occupational Therapy (OT) because he/she was found ineligible for OT by Early Stages in 2022 and the team agreed to table the decision to evaluate for OT until more occupational therapy data has been provided; that the team would be updating Student's IEP accordingly and that DCPS also requested observations of Student once he/she returned to Private School 1 for the 2024-2025 school year. Exhibit LEA-48.

24. On September 20, 2024, DCPS convened an annual IEP review meeting for Student. Both parents, Petitioners' Counsel 1 and Private School 1 Director attended. Reading, Mathematics, Written Expression, Communication/Speech & Language, and Emotional-Social-Behavioral Development were identified as areas of concern for Student. For special education and related services, the team determined that Student needed 30 hours per week of Specialized Instruction, outside general education, 2 hours per month of Speech-Language Pathology and 4 hours per month of Behavioral Support Services. In addition, the September 20, 2024 IEP provided for consultation services in Specialized Instruction, Speech-Language and Behavior Support. The IEP team recommended that Student be placed in a full-time nonpublic day school setting for the entirety of the school day. Exhibit P-22. The decision to increase Student's special education hours and change his/her placement to a nonpublic day school resulted from observations by LEA Representative and other DCPS IEP team members conducted at Private School 1. At a September 22, 2024 observation at Private School 1, LEA

Representative observed that Student pretty much had an adult with him/her the entire time. Student could not attend to almost any of his/her academic lessons. He/she was in and outside the classroom. It was hard to get a gauge on how Student's academics were, because his/her behavior was impeding her. Student was struggling to get out of the car and struggling to go to different rooms. Testimony of LEA Representative.

25. On or about October 2, 2024, DCPS submitted a Change in Placement (CIP) request to OSSE. OSSE convened a CIP meeting for Student on October 29, 2024. After which, on or about October 30 or 31, 2024, OSSE sent application packets for Student to five private schools on OSSE's approved nonpublic school list. On November 12, 2025, Placement Manager wrote Mother and Petitioners' Counsel 1 by email to advise that two of the private schools, Private School 2 and PRIVATE SCHOOL 3 had reached out to her to request the family to visit. Placement Manager requested to be informed when the visits had been scheduled. On November 12 and 20, 2024, Placement Manager sent follow-up emails to Mother. Mother responded on November 20, 2024 that she had not seen the previous emails. Mother arranged interviews and visits at Private School 2 and Private School 3. Both schools accepted Student. Mother decided that Private School 3 was not appropriate for Student. The parents were interested in Private School 2, but they had Petitioners' Counsel 1 write Placement Manager on December 12, 2024 that they had "significant concerns" about moving Student to Private School 2 mid-year and that they intended to maintain his/her placement at Private School 1 for the remainder of the 2024-2025 school year and to

continue to seek public funding for their unilateral placement. Testimony of Mother, Exhibit P-28.

26. By email of December 12, 2024, Placement Manager wrote Petitioners' Counsel 1 to advise that OSSE would not be funding a general education location (that is, Private School 1) for Student, and OSSE would be moving forward with Private School 2 as Student's service location. Exhibit SEA- 27.

27. Private School 2 is a nonpublic day school for students with IEPs located in suburban Virginia. For Student's grade, the class size is not more than 9 children with a teacher and an instructional assistant. Private School 2 would be able to implement the September 20, 2024 DCPS IEP proposed for Student. Testimony of Private School 2 Director.

28. Private School 1 is a small private school in suburban Maryland focused on providing programming and educational services to children in grades Pre-Kindergarten through Second Grade. There are 40 students enrolled in the school. Although not classified as a special education school, some 90 percent of the children are diagnosed on the Autism spectrum. In Student's class, there are 11 children, co-taught by a teacher and an associate teacher. The school has a speech pathologist and an occupational therapist, who work with the children in Student's class for about four hours a week. The tuition at Private School 1 is about \$41,000 per year. Testimony of Private School 1 Director.

29. At Private School 1, Student has made progress and benefitted from the school's program. Testimony of Private School 1 Director. Behaviorally, Mother believes that Student has made huge progress. Student has also made some friends at the school. Testimony of Mother. During a May 2025 observation, Educational Advocate saw some pretty significant improvement for Student at Private School 1. His/her language had expanded. Educational Advocate was impressed with the amount of progress that Student had made. Testimony of Educational Advocate.

30. Mother's mother helped pay for Student's education at Private School 1. The parents have agreed to pay the grandmother back if they are reimbursed by DCPS for tuition expenses. Testimony of Mother.

CONCLUSIONS OF LAW

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

Burden of Proof

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

shall establish a *prima facie* case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

ANALYSIS

In this proceeding, the parents seek reimbursement from DCPS for Student's Private School 1 expenses incurred for Student for the 2023-2024 school year, and from both DCPS and OSSE for the 2024-2025 school year, on the grounds (1) that DCPS allegedly denied Student a FAPE by failing to provide appropriate IEPs and placements for the two school years and (2) that OSSE allegedly failed to timely provide an appropriate nonpublic school location for the 2024-2025 school year. For the reasons explained below, I conclude that the parents are entitled to tuition reimbursement from DCPS for Student's private school expenses from the start of 2024-2025 school year through winter break. I deny the Parents' claim against OSSE.

Reimbursement for Private School Expenses

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

[P]arents who "unilaterally" place a child with a disability in a private school, without consent of the school system, "do so at their own financial risk." *Florence Cty. Sch. Distr. Four v. Carter*, 510 U.S. 7, 15 (1993) (quoting *School Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 373-74 (1996)). To qualify for tuition reimbursement under the IDEA, a plaintiff must demonstrate that: (1) the school district

failed to provide a FAPE; (2) the plaintiff's private placement was suitable; and (3) the equities warrant reimbursement for some or all of the cost of the child's private education. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 247 (2009).

E.W.-G. at *2 (D.D.C. Mar. 22, 2023). “[I]f there is an ‘appropriate’ public school program available . . . the District need not consider private placement, even though a private school might be more appropriate or better able to serve the child.” *Jenkins v. Squillacote*, 935 F.2d 303, 305 (D.C. Cir. 1991). *See, also, Leggett v. District of Columbia*, 793 F.3d 59, 63 (D.C. Cir. 2015) (IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education; (2) the private-school placement chosen by the parents was otherwise proper under the Act; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act unreasonably.) The first, indispensable, requirement for private school reimbursement is that the public agency failed to offer the child a FAPE.

2023-2024 School Year

– Did DCPS deny Student a FAPE by failing to provide him/her with an appropriate IEP and placement for the 2023-2024 school year, including that the IEP failed to provide sufficient special education services and its proposed placement/location of services was too large?

In the 2021-2022 school year, Student, who has never attended a DCPS public school, was enrolled in a private nursery school in the District of Columbia. In July 2022 the parents had Student evaluated by Neuropsychologist, who recommended that Student would benefit from implementation of an IEP classified under the designation

of Autism. Student was first determined eligible for special education services by the DCPS Early Stages Diagnostic Center on December 8, 2022. The Early Stages team developed an initial IEP for Student the same day (the December 8, 2022 IEP). For special education and related services, this initial IEP provided for Student to receive 3 hours per week of Specialized Instruction in the general education setting and 2 hours per month of Speech-Language Pathology, including 1 hour outside general education. The parents understood that the IEP would be implemented at Student's neighborhood school, City School 1.

The parents provided consent to DCPS for the initial provision of special education services to Student, but they kept Student at the private nursery school for the remainder of the 2022-2023 school year and did not enroll him/her at City School 1.

For the 2023-2024 school year, the parents unilaterally placed Student at Private School 1. On June 9, 2023, Mother gave notice to DCPS by email that Student would attend Private School 1 for the 2023-2024 school year and requested funding from DCPS for the child's private school placement. In her notice to DCPS, Mother wrote that the parents did not believe that DCPS has proposed an appropriate IEP and placement for Student. DCPS responded to the parents' unilateral placement notice that the District had made a FAPE available to Student with an appropriate IEP and a placement in the least restrictive environment at the child's neighborhood school.

In their first claim, the parents allege that for school year 2022-2023, the December 8, 2022 IEP and the proposed service location at City School 1 were not

appropriate for Student. I find that through the testimony of the parents' expert, Educational Advocate, the Petitioners made a *prima facie* showing that the December 8, 2022 IEP was not appropriate for Student. Therefore the burden of persuasion as to the appropriateness of the December 8, 2022 IEP for Student's 2023-2024 school year falls on DCPS.

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

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

Middleton at 128. In this case, the parents do not allege that DCPS failed to comply with IDEA procedures when Early Stages developed the December 8, 2022 IEP.

Therefore, I turn to the second prong of the *Rowley* inquiry. Was the December 8, 2022 IEP "reasonably calculated to enable [Student] to make progress appropriate in light of the child's circumstances"? See *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017).

In *A.D. v. Dist. of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570, (D.D.C. Mar. 8, 2022), U.S. District Judge Beryl Howell explained the IDEA's IEP requirement:

A "free and appropriate public education," or "FAPE," is delivered by local education authorities through a uniquely tailored "individualized

education program,’ “ or “IEP.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 993-994 (2017); *see also* 20 U.S.C. §§ 1401(9)(D), 1412(a)(1). To be IDEA-compliant, an IEP must reflect “careful consideration of the child’s individual circumstances” and be “reasonably calculated to enable the child to receive educational benefits,” *Endrew F.*, 137 S. Ct. at 994, 996 (cleaned up), “even as it stops short of requiring public schools to provide the best possible education for the individual child,” *Z.B. v. District of Columbia*, 888 F.3d 515, 519 (D.C. Cir. 2018). . . . An IEP failing to satisfy these statutory directives may be remedied through an IDEA claim to the extent the IEP “denies the child an appropriate education.” *Z.B.*, 888 F.3d at 519.

A.D., 2022 WL 683570 at *1. “[A]n IEP’s adequacy thus ‘turns on the unique circumstances of the child for whom it was created,’ and a reviewing court should defer to school authorities when they ‘offer a cogent and responsive explanation’ showing that an IEP ‘is reasonably calculated to enable the child to make progress appropriate in light of [her] circumstances.’” *A.D.* at *7, *quoting Endrew F.*, *supra*, 137 S. Ct. at 1001-02.

At the due process hearing, Petitioners’ expert, Educational Advocate, opined, that Student needed intensive programming “all day long,” and therefore the December 8, 2022 IEP proposed by DCPS, with three hours per week of Specialized Instruction Services in the general education setting was not adequate. Educational Advocate also opined that placement inside a general education setting would be an overstimulating environment for Student and he/she would not have enough adult support in order to access the curriculum. DCPS’ expert, School Psychologist, downplayed the severity of Student’s ASD disability as characterized in December 2022. She opined that concerns described in DCPS’ December 1, 2022 Analysis of Existing Data report on Student were “pretty typical” for the child’s age and there was nothing severe raising a red flag.

As the D.C. Circuit has made clear, the “substantive adequacy” of an IEP must be assessed based on information available “as of the time each IEP was created rather than with the benefit of hindsight.” *Philpot v. District of Columbia*, No. 23-CV-671-AHA-MJS, 2025 WL 1311025, at *4 (D.D.C. May 6, 2025) (citations omitted), *report and recommendation adopted*, No. CV 23-671 (AHA-MJS), 2025 WL 1517245 (D.D.C. May 28, 2025). The information available for Early Stages’ December 2022 initial eligibility evaluation of Student included, *inter alia*, review of Neuropsychologist’s July 2022 neuropsychological evaluation, interview of the parents, in-person observations/assessments of the child by a DCPS school psychologist and an occupational therapist, a speech-language assessment, review of an Ages and Stages Questionnaire (ASQ), and review of physical therapy and occupational therapy assessments completed by the child’s outside providers.

The most important information available to Early Stages for Student’s initial IEP was Neuropsychologist’s July 29, 2022 evaluation report. In that report Neuropsychologist diagnosed Student with Autism Spectrum Disorder (ASD), without accompanying intellectual impairment, with accompanying language impairment, Level 1.² The designation of ‘level 1’ indicated that differences in Student’s social approach and ability to consistently engage in reciprocal (to-and-fro) conversation “required support.” In her report, Neuropsychologist recommended expressly that Student be

² The DSM-5 categorizes Autism Spectrum Disorder (ASD) into three levels of severity: Level 1 (“Requiring support”), Level 2 (“Requiring substantial support”), and Level 3 (“Requiring very substantial support”). American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision*.

placed in an “inclusive classroom” with regular exposure to “neurotypical children” to provide a model of age-appropriate social and language skills.³

At the time Student’s initial IEP was developed on December 8, 2022, Educational Advocate had not assessed Student, or even met the child. Based upon Neuropsychologist’s July 2022 evaluation report recommending an inclusive classroom for Student, and deferring to Early Stages’ evaluation expertise, I did not find credible Educational Advocate’s hindsight opinion that for the initial IEP, Student needed intensive programming “all day long.” Moreover, School Psychologist’s testimony – that the concerns for Student recorded in Early Stages’ Analysis of Existing Data, were not atypical for a child as young as Student – was not credibly rebutted.

On this evidence, I find that DCPS has met its burden of persuasion that, based on information available to the Early Stages IEP team as of the time the December 8, 2022 IEP was created, the proposed initial IEP and educational placement were reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances. The December 8, 2022 IEP was available to Student for the start of the 2023-2024 school year. I conclude that DCPS did not deny Student a FAPE by failing to provide him/her with an appropriate IEP and placement for the 2023-2024 school year.

³ In an unexplained twist, on September 28, 2022, DCPS received an email from Neuropsychologist recommending “Intensive early intervention . . . (at least 25 to 40 hours per week, 5 days per week, throughout 12 months a year), specifically applied behavior analysis (ABA).” Neuropsychologist did not testify at the due process hearing and her reason for sending this email was not explained. Because the September 28, 2022 email was wholly inconsistent with Neuropsychologist’s July 29, 2022 comprehensive neuropsychological evaluation report recommending an inclusive classroom with neurotypical peers, I discount it.

2024-2025 School Year

- Did DCPS deny Student a FAPE by failing to provide him/her with an appropriate IEP and placement for the 2024-2025 school year including that it failed to provide sufficient special education services and its proposed placement/location of services was too large for the start of the school year?

DCPS' Centralized IEP team conducted an annual review of Student's IEP on January 25, 2024. The January 25, 2024 IEP team determined that for special education and related services, Student continued to need 3 hours per week of Specialized Instruction, in the general education setting, as well as 2 hours per month of Speech-Language Pathology, outside general education. In February 2024, Neuropsychologist conducted a neuropsychological reevaluation of Student. In her March 7, 2024 report, Neuropsychologist updated Student's diagnoses to Autism Spectrum Disorder, without accompanying intellectual impairment, with accompanying language impairment, *level 2* (requiring substantial support); Speech-Sound Disorder, ADHD and Developmental Coordination Disorder. Neuropsychologist reported that overall, Student's challenges significantly interfered with his/her functioning across a variety of contexts and continued to require comprehensive supports. In her reevaluation report, Neuropsychologist recommended, *inter alia*, that Student's challenges would be best mitigated by a reduced capacity classroom with fewer students and lower student-to-teacher ratio.

The parents shared Neuropsychologist's March 2024 revaluation report with DCPS on April 8, 2024. DCPS scheduled an Analysis of Existing Data (AED) meeting

for May 24, 2024. At the AED meeting DCPS indicated it would formally review Neuropsychologist's March 2024 report and the District proposed to conduct a reevaluation of Student. At a July 30, 2024 eligibility meeting, the DCPS eligibility team confirmed that Student remained eligible for special education services under the classification of Autism (ASD) and DCPS committed to review Student's IEP to update his/her present levels of performance, goals and services.

DCPS did not update Student's IEP until September 20, 2024. At the September 20, 2024 IEP team meeting, the IEP team recommended that Student be placed in a full-time nonpublic day school setting for the entirety of the school day. DCPS then followed OSSE's procedures for a change in location for Student to a nonpublic school. On January 2, 2025, OSSE issued a Notice of Service Location for Student to attend Private School 2.

The appropriateness of the September 20, 2024 IEP, which Petitioners' expert, Educational Advocate, opined was appropriate for Student, is not at issue in this case. However, in closing argument, Petitioners' Counsel contended that the revised IEP should have been completed in time for the start of the 2024-2025 school year. I agree. In *Leggett, supra*, the D.C. Circuit observed "the IEP is the vehicle through which school districts typically fulfill their statutory obligation to provide a free appropriate public education and that officials must have an IEP in place for each student with a disability '[a]t the beginning of each school year.'" *Id.*, 793 F.3d at 67 (*citing* 20 U.S.C. § 1414(d)(2)(A)). "[W]hen a child requires special-education services, a school district's

failure to propose an IEP of any kind is at least as serious a violation of its responsibilities under IDEA as a failure to provide an adequate IEP.” *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 238–39, 129 S. Ct. 2484, 2491, 174 L. Ed. 2d 168 (2009).

DCPS did not ensure that an appropriate IEP, informed by Neuropsychologist’s March 2024 reevaluation, was in place for Student for the start of the 2024-2025 school year. An LEA’s failure to have an IEP in place at the beginning of the school year for a student with a disability is a procedural violation of the IDEA. *See Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015). A procedural violation of the IDEA requires a showing of substantive harm in order to be deemed a denial of FAPE. *Id. See, also*, 34 C.F.R. § 300.513(a)(2).⁴

In the present case, the parents provided to DCPS Neuropsychologist’s March 7, 2024 reevaluation report on April 8, 2024. Ultimately, on September 20, 2024, the DCPS IEP team reviewed the report and updated Student’s IEP to provide for a full-time nonpublic placement. However, this 5-month delay in revising Student’s IEP led to

⁴ Procedural violations of the IDEA may only be deemed a denial of FAPE if the procedural inadequacies—

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

34 C.F.R. § 300.513(a)(2).

child's not receiving a nonpublic school service location from OSSE until January 2, 2025.

In *Leggett*, the D.C. Circuit found the two-week to one-month period in which a student was left without an IEP to be a substantive violation of the student's rights under the IDEA. Following the precedent in *Leggett*, I find that DCPS' failure to timely provide Student an updated IEP for the start of the 2024-2025 school year was a substantive violation of the child's IDEA rights. I also find that the procedural violation impeded Student's right to a FAPE and significantly impeded the parents' opportunity to participate in the decision-making process. I conclude that the parents have established that DCPS' failure to develop an appropriate revised IEP for Student for the beginning of the 2024-2025 school year was a denial of FAPE.

– Did OSSE deny Student a FAPE by failing to provide him/her with an appropriate placement location for the 2024-2025 school year?

Following the September 20, 2024 IEP meeting, on or about October 2, 2024, pursuant to OSSE requirements, DCPS submitted a change in placement request to OSSE to place Student at a nonpublic day school. OSSE held a change in placement meeting for Student on October 29, 2024. On October 30 or 31, 2024, OSSE sent application packets for Student to five private schools on OSSE's approved nonpublic school list. Two of the schools reached out to OSSE to request that the family make an admissions visit. Following a delay on the parents' part, Mother arranged interviews and visits at Private School 2 and Private School 3 in December 2024. Student was accepted by both private schools, with a start date of January 15, 2025 at Private School

2. On January 2, 2025, OSSE issued a notice of service location to the parents, placing Student at Private School 2. The parents' expert, Educational Advocate, testified that Private School 2 is a great program, but expressed some concern about the amount of support at the school specific to autism and within the tenants of verbal behavior. However, Private School 2 Director credibly confirmed in her testimony that the school could have meet the requirements of Student's September 20, 2024 IEP and I find that OSSE established that Private School 2 was a suitable placement location for Student in accordance with the September 20, 2024 IEP.

In closing argument, Petitioners' Counsel 1 agreed that OSSE acted quickly to place Student, once it received the change-in-placement referral from DCPS, and that OSSE did exactly what it was supposed to do. Assuming that the Petitioners made even a *prima facie* showing that OSSE's proposed placement for Student at Private School 2 was not suitable, I find that OSSE met its burden of persuasion that Private School 2 was an appropriate placement location for Student.

– Did DCPS and OSSE deny Student a FAPE when the agencies failed to consider the harmful effects of a mid-year transition to a new program on him/her?

Lastly, Petitioners contend that DCPS and OSSE denied Student a FAPE by proposing that the child start at Private School 2 following the 2025 winter break. The parents' argument is that the timing was improper because Student is known to have transition problems returning to school after breaks. As Private School 1 Director testified, Student would exhibit emotional dysregulation and school refusal when he/she

would return to school after vacation breaks and even after three-day weekends and snow days. According to Private School 1 Director, her school was able to address these challenges with a kind of behavioral system, clear expectations and reinforcement put in place for Student.

In her testimony, Private School 2 Director testified that the school staff could address Student's transition challenges by meeting student at the car and sitting with him/her to build up familiarity and trying "to meet them where they are at." Considering Student's undisputed difficulties with transitions, it is not unlikely the child would be challenged transferring from Private School 1 to Private School 2. However, DCPS had an obligation to implement Student's September 20, 2024 IEP as soon as possible. *See* 34 C.F.R. § 300.323(c)(2). I find that Petitioners have not established DCPS or OSSE denied Student a FAPE by proposing to move him/her from Private School 1 to Private School 2 after the 2025 winter break, rather than waiting until the start of the 2025-2026 school year.

In summary, I have concluded in this decision that DCPS established the appropriateness of its December 8, 2022 IEP and proposed educational placement for Student. However, DCPS denied Student a FAPE by not having an appropriate revised IEP in place for Student for the start of the 2024-2025 school year. This denial of FAPE continued through the 2024-2025 winter break, until OSSE offered Student a nonpublic school placement location beginning January 2025. The Petitioners failed to establish that DCPS or OSSE denied Student a FAPE by proposing that Student transition to

Private School 2 following the school year 2024-2025 winter break or that OSSE otherwise denied the child a FAPE.

Tuition Reimbursement

Having found that DCPS denied Student a FAPE by not offering him/her an appropriate revised IEP in time for the start of the 2024-2025 school year, I consider the other two requirements for private school tuition reimbursement pronounced by the U.S. Supreme Court – (1) that the parents’ private school placement was proper under the IDEA and (2) that the equities weigh in favor of reimbursement—that is, the parents did not otherwise act unreasonably. *See Forest Grove*, 557 U.S. at 247; *Leggett*, 793 F.3d at 67. In *Florence Cnty. Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993), the Supreme Court upheld the Fourth Circuit Court of Appeals’ holding that “when a public school system has defaulted on its obligations under the [IDEA], a private school placement [made by the parents] is ‘proper under the Act’ if the education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” 510 U.S. at 11, *quoting Carter By & Through Carter v. Florence Cnty. Sch. Dist. Four*, 950 F.2d 156, 163 (4th Cir. 1991), *quoting Board of Ed. of Hendrick Hudson Central School Dist. Westchester Cty. v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 3051, 73 L.Ed.2d 690 (1982). Following the Supreme Court’s more recent decision in *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 137 S.Ct. 988, 197 L.Ed.2d 335 (2017), to be “proper,” the education provided by the private school must be “reasonably calculated to

enable [the] child to make progress appropriate in light of the child's circumstances."

See id., 580 U.S. at 399.

Private School 1 is a small, non-special education school, primarily serving young children on the Autism spectrum. By the accounts of Educational Advocate, Mother and Private School 1 Director, Student has definitely made progress at Private School 1. DCPS' Counsel argued that Private School 1 was not proper for Student because most of its teachers are not certified in special education. However, this argument would impose a higher standard for what is a proper private school than that articulated in the D.C. Circuit's *Leggett* decision. *Cf. M.G., supra*, 246 F. Supp. 3d at 12. I find that because for the first part of the 2024-2025 school year, Nonpublic School was necessary to Student's education and because the parents' choice of the private school was reasonably calculated to provide educational benefit, Nonpublic School was proper for Student under the IDEA. *See Leggett, supra*, 793 F.3d at 72.

Lastly, the *Leggett* decision requires that the "equities weigh in favor of reimbursement — that is, the parents did not otherwise act 'unreasonabl[y].'" *Leggett*, 793 F.3d at 67. Reimbursement may be "reduced or denied" if the parents failed to notify school officials of their intent to withdraw the child or otherwise acted unreasonably. *Leggett, supra*, at 63; 34 C.F.R. § 300.148(d). Here the parents did not act unreasonably. The parents provided Neuropsychologist's reevaluation report to DCPS in April 8, 2024. Yet DCPS did not offer Student a revised IEP, with full-time

placement in a nonpublic school, until September 20, 2024 and Student was not provided an appropriate nonpublic school placement until January 2025.

By email letter of August 2, 2024, Petitioners' Counsel 1 gave notice to DCPS that Student would attend Private School 1 for the 2024-2025 school year and that the parents' decision was made in order to provide Student a FAPE. Unfortunately, DCPS did not react by ensuring that its team fulfilled the District's obligations under IDEA—to provide a FAPE and to do so in a timely manner. *See Leggett, supra*, 793 F.3d at 75. Under those circumstances, I find that there has been no showing that the parents acted unreasonably in continuing Student's unilateral placement at Private School 1 for the 2024-2025 school year until January 2025 when OSSE offered Student an appropriate nonpublic school location.

I find that whether the parents paid for Student's tuition to Private School 1 directly, or received a loan from the Student's grandmother, has no legal significance. The parents incurred the financial obligation upon enrolling Student in the private school and the fact that the grandmother may have fronted the tuition fees does not affect their right to reimbursement. *See, e.g., E.M. v. New York City Dep't of Educ.*, 758 F.3d 442, 461 (2d Cir. 2014) (The reality that the private school ultimately bears the risk of plaintiff's non-recovery from the public agency is merely a consequence of the contractual arrangement between the private school and the parent and does not dislodge the parent as the real party in interest.)

In this proceeding, the parents have met the three requirements for reimbursement of private school expenses pronounced by the D.C. Circuit in its *Leggett* decision. I conclude that the parents are entitled to funding from DCPS for tuition and related expenses for Student's enrollment at Private School 1 from the start of the private school's 2024-2025 school year through the 2024-2025 winter break.

ORDER

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

1. Upon receipt of reasonably required documentation of payment, DCPS shall reimburse the parents for covered tuition and related expenses for Student to attend Private School 1 from the start of the 2024-2025 school year through the school's 2024-2025 winter break.

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

Date: June 15, 2025

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

NOTICE OF RIGHT TO APPEAL

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

cc: Counsel of Record
Office of Dispute Resolution