

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution
1050 First Street, N.E., Third Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
June 27, 2025

<i>Student</i> , ¹)	Case No.: 2025-0062
through <i>Parents</i> ,)	
<i>Petitioners</i> ,)	Date Issued: 6/27/25
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates (using Microsoft Teams):
(“DCPS”),)	6/4/25, 6/5/25, 6/9/25, 6/13/25 &
Respondent.)	6/18/25
)	

HEARING OFFICER DETERMINATION

Background

Petitioners, Student’s Parents, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) due to DCPS’s failure to provide appropriate Individualized Education Programs (“IEPs”) during 2023/24² and 2024/25. DCPS responded that unilateral placement by Parents was not appropriate.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

Procedural History

Following the filing of the due process complaint on 3/27/25, the case was assigned to the undersigned on 3/28/25. Respondent filed a response on 4/8/25 and did not challenge jurisdiction. Respondent filed a detailed Motion to Dismiss on 5/29/25, to which Petitioners

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student’s gender are omitted.

² All dates in the format “2023/24” refer to school years.

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filed a detailed Opposition on 6/2/25, and which the undersigned denied orally on the record on 6/9/25.³ A resolution meeting took place on 4/8/25, but the parties neither settled the case nor shortened the 30-day resolution period, which ended on 4/26/25. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by an agreed-upon 20-day continuance, which requires a Hearing Officer Determination (“HOD”) by 6/30/25.

A prehearing conference was held on 5/19/25 and a Prehearing Order was issued that same day. An Amended Prehearing Order was issued on 5/22/25, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 6/4/25, 6/5/25, 6/9/25, 6/13/25 and 6/18/25. The hearing was closed to the public. Petitioners were represented by *Petitioners’ counsel*. DCPS was represented by *Respondent’s counsel*. At least 1 of Student’s Parents participated throughout the entire hearing.

Documents and Witnesses

Petitioners’ Disclosure, submitted on 5/28/25, contained documents P1 through P125, all of which were admitted into evidence over blanket objections.⁴ Respondent’s Disclosure, also submitted on 5/28/25, contained documents R1 through R20, all of which were admitted without objection except for R19 which was admitted after Petitioners’ objection to the completeness of the document was remedied.

Petitioners’ counsel presented 3 witnesses in Petitioners’ case-in-chief (*see* Appendix A):

³ Among other arguments the undersigned found helpful in the opposition to the Motion to Dismiss was the fundamental assertion that this is a unilateral placement case with a different legal analysis than would apply in a prospective placement case. Here, Petitioners are not seeking to have Student placed at Nonpublic School, but simply to be reimbursed for the 2 years they paid due to denials of FAPE. As a unilateral placement case, Parents did not allege and need not prove that Student required special education services “all day.” Nor did Parents need to prove that no DCPS school or program could meet Student’s needs to prevail.

The undersigned is also persuaded that the statute of limitations began running on the 1/2/23 IEP on 6/9/23, some months after the end of stay-put funding and notice to Parents that they were being charged for April to June 2023. Before that, Parents had no standing to sue and there was no ripe cause of action. Accordingly, Respondent’s Motion to Dismiss was denied.

⁴ Citations herein to the parties’ documents are identical except that Petitioners’ documents begin with a “P,” while Respondent’s documents begin with an “R,” followed by the exhibit number and then a “p” (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

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1. Parent
2. *Nonpublic School Director* (qualified without objection as an expert in Special Education Programming and Placement)
3. *Special Education Consultant* (qualified without objection as an expert in Special Education Placement and Programming)

Respondent's counsel presented 6 witnesses in Respondent's case (*see* Appendix A):

1. *Social Worker* (qualified without objection as an expert in Social Work and IEP Programming and Placement)
2. *Monitoring Specialist* (qualified without objection as an expert in Special Education Programming and Placement)
3. *Assistant Principal* (qualified without objection as an expert in Special Education Programming and Placement)
4. *Occupational Therapist* (qualified without objection as an expert in Occupational Therapy, Programming and Placement)
5. *Nonpublic Monitor* (qualified without objection as an expert in Special Education Programming and Placement & Reading Specialist)
6. *LEA Representative* (qualified without objection as an expert in Special Education Programming and Placement)

Petitioners' counsel offered no rebuttal evidence.

At the end of Petitioners' case-in-chief, Respondent's counsel made an oral motion on the record for a directed verdict, which Petitioners' counsel opposed and the undersigned took under advisement at that time and hereby **DENIES**, for the reasons discussed below.

Issues and Relief Requested

The issues to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to provide appropriate IEPs prior to 2023/24 when:

- (a) the 1/2/23 IEP which became ripe for filing on 6/9/23 when Parents were notified of their financial liability (i) removed math and reading as areas of concern, failing to include goals and specialized instruction in these areas, and/or (ii) failed to incorporate the most recent data about Student's academic needs; and/or
- (b) the 11/27/23 IEP that would have been operative for most of the school year (i) included specialized instruction hours that were not adequate, (ii) math and reading were not areas of

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concern, failing to include goals and specialized instruction, (iii) did not contemplate the harm from transitioning Student from a full-time separate day school to a less restrictive environment (“LRE”), and/or (iv) failed to take steps to determine Student eligible for math until the end of the school year.

(Respondent has the burden of persuasion on this issue, if Petitioners establish a prima facie case.)

Issue 2: Whether DCPS denied Student a FAPE by failing to offer an appropriate, or any, placement and/or location of services (“LOS”) prior to 2024/25, when:

(a) an LOS letter assigning program and/or location was not issued until mid-September 2024 when Student had already begun Nonpublic School and would have been harmed by a mid-year transfer, and/or

(b) the 8/9/24 IEP (i) hours were not related to needs, but to place Student in an inappropriate self-contained program with an inappropriate cohort, (ii) specialized instruction hours were insufficient for Student’s needs and would have required many hours in a large, noisy general education setting, (iii) data on Student’s needs due to working memory and cognitive processing affect all classes, so Student needs a setting with a quiet environment, limited visual distractions, and small class sizes throughout the day, (iv) failed to account for social emotional harm from transition to an LRE based on difficulty with peers and teachers, and lack of any plan to address expected harm, and/or (v) Parents were denied participation in the placement process and not provided an appropriate observation of the self-contained program, as they had no opportunity to ask questions.

(Respondent has the burden of persuasion on this issue, if Petitioners establish a prima facie case.⁵)

Relief Requested by Petitioners

1. A finding that Student has been denied a FAPE.
2. DCPS shall reimburse Parents for all costs associated with placement of Student at Nonpublic School, including tuition, transportation, related services, deposits, and any other associated costs from the beginning of 2023/24 through 2024/25.
3. Any other relief that is equitable, just, and appropriate.

Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact⁶ are as follows:

⁵ Respondent disagrees with the burden of persuasion or that the 9/11/24 letter relates to Student’s program.

⁶ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to

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1. Background. Student is a resident of the District of Columbia; Petitioners are Student's Parents.⁷ Student is *Age, Gender, in Grade* at Nonpublic School.⁸ Student has a wonderful sense of humor, a huge heart and is liked by peers, as well as being withdrawn, distracted and having difficulty with consistent assignment completion.⁹

2. 11/15/22 IEP. With a disability classification of Specific Learning Disability ("SLD"), Student's 11/15/22 IEP (finalized 1/2/23) provided 5 hours/week of specialized instruction inside general education and 5 hours/week of specialized instruction outside general education, along with 120 minutes/month of Behavioral Support Services ("BSS") outside general education and consultation services in Occupational Therapy ("OT") for 30 minutes/month and specialized instruction for 60 minutes/month.¹⁰ Parents updated Student's PLOPs and wanted Student's IEP to be updated with the most current data in the future.¹¹ The service hours on the 11/15/22 IEP were insufficient for Student at the time; the services outside general education only addressed weaknesses in writing.¹² A few sub-areas in reading and math fell within the low average range and were vulnerabilities to be closely monitored, but DCPS found Student eligible only for goals in written expression; emotional disturbance was considered and ruled out as a disability classification.¹³ Petitioners' counsel sent a unilateral placement notice based on DCPS having removed all areas of concern other than written expression and reducing the IEP without justification from what DCPS testified under oath that Student needed.¹⁴ Petitioners objected to not having additional areas of concern in the IEP for both reading and math, along with goals and baselines in the 11/15/22 IEP.¹⁵ On 11/15/22, Student was impacted in all academic classes involving reading and writing, as well as electives; the severity of the problem was "significant."¹⁶ Nonpublic School considered that Student needed goals in all 3 areas and received them at Nonpublic School.¹⁷ Nonpublic School's 12/1/22 IEP purported to provide 35 hours/week of specialized instruction outside general education, which would include

base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁷ Parent.

⁸ Parent; P59p855.

⁹ P47p651.

¹⁰ P47p664,685; P48p720.

¹¹ P47p692; P48p695 (seeking to incorporate most recent data).

¹² Special Education Consultant; P125p1867.

¹³ P12p242-43; P13p250.

¹⁴ P25p473.

¹⁵ Parent; P48p722.

¹⁶ Special Education Consultant; P47p667.

¹⁷ P18p365.

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lunch, recess and specials/electives.¹⁸ DCPS's 1/2/23 Prior Written Notice ("PWN") listed the wrong child.¹⁹

3. Behavior. As of 11/15/22, Student's social emotional needs were "minimally" impacting academic progress so Student would benefit from BSS and coping strategies; at times, Student refused to speak to teacher or peers and put head down for the entire class.²⁰ Student did not prefer less-structured classes or larger classes and would often retreat to the side of the room when overwhelmed, which could appear obstinate.²¹ Student was more likely than peers to demonstrate ineffective or maladaptive interpersonal behavior.²²

4. Unilateral Notice (2023/24). Petitioners gave unilateral notice to DCPS on 8/10/23 for various reasons: Parents did not have the opportunity to meaningfully participate in the IEP meeting; a new draft IEP was provided a few hours before the meeting; Parents shared during and after the meeting their objections to the IEP itself; the November 2022 IEP was not updated, did not address all areas of needs, did not provide sufficient hours of specialized instruction or require appropriate interventions/supports based on data available to the team at the time, including failing to address math and reading; following the meeting, Petitioners sought but did not receive more information about the hours of services outside general education and what they were intended for; nor did DCPS share, despite inquiry, what DCPS intended with the inclusion hours on the IEP, and why they were sufficient given the level of deficits shown by the data.²³

5. DCPS responded to Petitioners' unilateral placement letter on 8/11/23, asserting that it had made FAPE available to Student with an appropriate IEP and placement in the LRE at Public School.²⁴ A response to the response was conveyed on 8/16/23 describing the need for a deposit to be made at Nonpublic School and providing other details.²⁵ On 11/19/23, Petitioners' counsel asked that the DCPS decision to remove math and reading sections from the IEP be reconsidered; Petitioners were in "full support."²⁶ On 11/2/23, Petitioners' counsel repeated objections to removing math and reading in the first place.²⁷

6. 11/27/23 IEP. Student's 11/2/23 DCPS IEP (finalized 11/27/23) provided 10 hours/week of specialized instruction outside general education, along with 120 minutes/month of BSS outside general education and consultation services in OT for 30

¹⁸ P48p709; Nonpublic Monitor.

¹⁹ P48p718.

²⁰ P47p665,673; Social Worker; Nonpublic Monitor.

²¹ P47p679; Social Worker.

²² P47p681.

²³ P52p754; Parent.

²⁴ P53p757.

²⁵ P54p758; Parent.

²⁶ P58Bp809-11.

²⁷ P58Cp813; Parent.

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minutes/month and specialized instruction for 60 minutes/month.²⁸ On 11/2/23, Petitioners disagreed with DCPS's decision to remove math and reading from Student's IEP; it was a denial of FAPE to remove them in the first place, as DCPS had the data regarding math and reading to justify those areas of concern on the IEP for years; DCPS should not have removed those areas from the IEP over objections of Parents and Nonpublic School.²⁹ On 11/2/23, DCPS knew that the 10-hour IEP it offered was inadequate and that Student needed a significantly more intensive program than what DCPS offered.³⁰

7. DCPS considered the services sufficient, with no change needed; Petitioners took the opposing view.³¹ The 11/27/23 IEP did not provide Student with a FAPE for various reasons: it did not provide necessary specialized instruction in math and reading; it did not provide adequate specialized instruction hours generally; it did not offer sufficient BSS; it did not contemplate the harm that could result from Student transitioning to such a less restrictive environment after years at Nonpublic School; DCPS had data to support that Student needed specialized instruction in all areas of academics.³²

8. The Positive Behavior Interventions and Supports ("PBIS") section of Student's 11/2/23 IEP noted that counseling should be integral to Student's social-emotional development and progress as evidenced by Student becoming overwhelmed, displaying withdrawal behaviors, inattention, and requiring prompting in the academic environment.³³

9. On 2/27/24, Petitioners' counsel was disappointed that the Analysis of Existing Data ("AED") meeting did not result in discussion and determination of eligibility, as Petitioners had expected.³⁴

10. Evaluations. A 4/18/24 comprehensive OT reevaluation found moderate difficulties in both vision and hearing; Student took work very seriously, often seeking a quieter environment; Student was frustrated with other students talking off topic during lessons; Student preferred working independently in a quiet space.³⁵ Student did better when class size was reduced and there was a calmer class environment.³⁶

11. A 4/18/24 comprehensive psychological triennial reevaluation provided cognitive Wechsler Intelligence Scale for Children – Fifth Edition ("WISC-V") scores with working memory "very low," fluid reasoning "low average," and Full Scale IQ ("FSIQ") at the 27th

²⁸ P59p855.

²⁹ P58Cp813.

³⁰ *Id.*

³¹ Social Worker; Parent; Special Education Consultant; Occupational Therapist; P59p855.

³² P60p861.

³³ P59p827.

³⁴ P69p926; P68p924.

³⁵ P81p1026,1028,1032.

³⁶ P81p1047; Parent.

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percentile.³⁷ Student's Woodcock-Johnson IV Tests of Achievement ("WJ-IV ACH") had low scores, with many single digit percentages.³⁸

12. 5/23/24 Eligibility Meeting. Student was found eligible in math and reading, as well as written language, social/emotional, and motor skills/OT.³⁹

13. 8/9/24 IEP. Petitioners gave notice of unilateral placement to DCPS on 8/9/24, explaining that the 20 hours DCPS offered was to place Student in a self-contained program within DCPS, not because that was the actual number of hours of specialized instruction required; Student had issues with working memory/cognitive processing that affected Student in all classes; DCPS explained that Student was sensitive to noise and needed a quieter space to work and classrooms with limited visual distractions; Student's social-emotional profile would result in a very difficult time transitioning to Public School with the supports on Student's IEP; Student had difficulty with peers and did not like to be social during class.⁴⁰ Transitions are hard on Student.⁴¹

14. Student takes a long time to warm up to new people and would suffer significantly if Student had to transfer from the small supportive environment at Nonpublic School to a self-contained program and then attend general education classes for the rest of the day in a large public school that was loud and chaotic.⁴² Petitioners disagreed with Specific Learning Support ("SLS") placement for Student, which did not have the appropriate cohort for Student or the right supports to provide a FAPE.⁴³ Parents did not have a chance to timely observe any proposed program.⁴⁴

15. DCPS responded to Parents' unilateral placement letter on 8/15/24 stating that it had made a FAPE available.⁴⁵ LEA Representative explained that Student's case would be referred to the LOS team, which would make the determination; once the LOS letter was issued, Parents could then complete the process.⁴⁶ Parents were dissatisfied with the DCPS offer because Student was receiving more than 20 hours/week already; Student had received full-time placement for many years.⁴⁷

³⁷ P31p1038,1050,1051.

³⁸ P31p1052.

³⁹ P81p1104-05,1109 (PWN).

⁴⁰ P94p1349-50.

⁴¹ Parent.

⁴² P94p1349-50.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ P95p1352.

⁴⁶ P93p1345.

⁴⁷ Parents; P93p1345.

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16. LOS/Observation. The LOS letter for Student was dated 9/11/24, but not emailed to Parents until 9/20/24, well after school began.⁴⁸ Petitioners' counsel asserted it was not appropriate to issue an LOS letter assigning a student to a new self-contained program at a public school and not send it right away; Student could not attend before Parents observed school; Student had been in school for more than a month prior to observation; any proposed change would have been very harmful and disruptive to Student in 2024/25.⁴⁹ Parents requested observation of the proposed program on 9/20/24; Parents were not permitted to ask questions during the school visit; Parents sent a list of questions to DCPS following the visit; DCPS responded by only sending a link; Parent did not find answers at the DCPS link.⁵⁰

17. Nonpublic School. Student was progressing over time at Nonpublic School, as shown by MAP and other testing.⁵¹ Student made progress at Nonpublic School.⁵² Nonpublic School has an OSSE certificate of approval ("COA").⁵³ The largest class Social Worker had ever seen at Nonpublic School was PE with 17-20 children.⁵⁴ Public School is one of the largest schools of its level in the city; Public School elective classes had 38-40 children.⁵⁵

18. Nonpublic School informed Petitioners on 6/9/23 that Student's stay-put status had ended on 3/31/23, so Parents would be required to pay Nonpublic School from April 2023.⁵⁶ Invoices from Nonpublic School for Student's tuition and transportation cover the period from 9/1/23 to 6/1/25.⁵⁷ Student's 2023/24 Nonpublic School tuition was \$58,850.⁵⁸

19. Equities. Parents promised through counsel to "cooperate and collaborate" in any meetings and facilitate DCPS getting all needed data.⁵⁹ Parents cooperated with DCPS, despite not getting FAPE for child.⁶⁰

⁴⁸ P96p1377; P96p1353; Parent.

⁴⁹ P97p1425; P102p1512.

⁵⁰ Parent; P98p1449; P100p1507; P101p1509; P102p1512; Nonpublic Monitor.

⁵¹ Nonpublic School Director; Nonpublic Monitor; P108p1760; P43p610.

⁵² Monitoring Specialist; Nonpublic Monitor.

⁵³ Monitoring Specialist.

⁵⁴ Social Worker.

⁵⁵ Occupational Therapist; Parent.

⁵⁶ P51p752; Parent.

⁵⁷ P110p1779-81.

⁵⁸ P51p753.

⁵⁹ P58Cp813.

⁶⁰ Parent.

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Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994, quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(14); *Andrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. at 1001. The Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), citing *Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that "[w]hen all is said and done, a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all." *Andrew F.*, 137 S. Ct. at 1001.

In addition, the local education agency ("LEA") must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of

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the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at *3 (D.D.C. 2018).

A Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), quoting *N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioners carry the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioners establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

Issue 1: *Whether DCPS denied Student a FAPE by failing to provide appropriate IEPs prior to 2023/24 when:*

(a) *the 1/2/23 IEP which became ripe for filing on 6/9/23 when Parents were notified of their financial liability (i) removed math and reading as areas of concern, failing to include goals and specialized instruction in these areas, and/or (ii) failed to incorporate the most recent data about Student's academic needs; and/or*

(b) *the 11/27/23 IEP that would have been operative for most of the school year (i) included specialized instruction hours that were not adequate, (ii) math and reading were not areas of concern, failing to include goals and specialized instruction, (iii) did not contemplate the harm from transitioning Student from a full-time separate day school to an LRE, and/or (iv) failed to take steps to determine Student eligible for math until the end of the school year. (Respondent has the burden of persuasion on this issue, if Petitioners establish a prima facie case.)*

Petitioners established a *prima facie* case concerning Student's 1/2/23 IEP (after it became ripe on 6/9/23) and the 11/7/23 IEP through testimony and documents, shifting the burden to DCPS, which failed to meet its burden of persuasion.

The applicable legal standard for analyzing the appropriateness of the IEPs at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether they were "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. As the U.S. Court of

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Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Andrew F.* “raised the bar on what counts as an adequate education under the IDEA,” requiring more than “merely some” educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be “reasonably calculated to produce meaningful educational benefit”). The measure and adequacy of an IEP are determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at *12 (D.D.C. 2021); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student’s IEPs is analyzed by focusing on the specific concerns raised by Petitioners, which are considered in turn.⁶¹ *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

2023/24. The heart of this case is whether DCPS offered a FAPE through timely and appropriate IEPs for 2023/24 in Issue 1 and for 2024/25 in Issue 2. Student’s IEPs must provide sufficient personalized instruction so that the child can benefit educationally, which in the case at hand required additional specialized instruction. *See Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203; *cf. Andrew F.*, 137 S. Ct. at 1000.

(Issue 1.a.i) Removal of Math and Reading; Lack of Goals and Specialized Instruction. A significant part of the dispute in this case is whether or not math and reading should have been included as academic areas of concern on Student’s IEPs, along with written expression. In considering the 11/15/22 IEP (which continuing into 1/2/23 and 2023/24 at issue here), the service hours were insufficient for Student at the time, as the services outside general education only addressed weaknesses in written expression – and not reading and math as Petitioners showed they should have.

Petitioners’ unilateral placement notice was based on DCPS removing all areas of concern other than written expression and reducing the IEP without justification from what DCPS testified under oath that Student needed. A few sub-areas in reading and math fell within the low average range and revealed vulnerabilities that were to be closely monitored, but DCPS did not provide any goals beyond written expression. Petitioners objected to not having additional areas of concern in the IEP for both reading and math, along with goals and baselines.

(1.a.ii) Failure to Include Recent Academic Data. The IDEA requires statements of present levels of academic achievement and functional performance (“PLOPs”) in IEPs in 34 C.F.R. § 300.320(a)(1). Here, Parents updated Student’s PLOPs early on and

⁶¹ A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), *quoting Rowley*, 458 U.S. at 206-07. Procedural concerns are discussed herein.

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understandably wanted Student's IEPs to be updated with the most current data in the future.

(1.b.i) Inadequate Specialized Instruction. A student's IEPs must provide sufficient personalized instruction so that the child can benefit educationally, which in the case at hand required additional specialized instruction. *See Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203; *cf. Endrew F.*, 137 S. Ct. at 1000. Here, DCPS knew that the 10-hour IEP it offered was inadequate and that Student needed a significantly more intensive program than what DCPS offered.

(1.b.ii) Math and Reading Not Areas of Concern; Failure to Include Goals and Specialized Instruction. On 11/2/23, Petitioners disagreed with DCPS's decision to remove math and reading from Student's IEP; it was a denial of FAPE to remove them in the first place, as DCPS had the data regarding math and reading to justify those areas of concern on the IEP for years; DCPS should not have removed those areas from the IEP over objections of Parents and Nonpublic School. On 11/19/23, Petitioners urged that the DCPS decision to remove math and reading sections from the IEP be reconsidered. Petitioners' counsel reiterated objections to having removed math and reading in the first place. DCPS had data to support that Student needed specialized instruction in all areas of academics.

IEPs are required to contain measurable annual goals pursuant to 34 C.F.R. § 300.320(a)(2). Here, however, in the absence of math and reading being areas of concern, it is understandable that there were not yet goals or specialized instruction in these areas.

(1.b.iii) Failure to Include Transitioning Harm. Student would suffer significantly if transferred from a small supportive environment, such as Nonpublic School, to a self-contained program and then general education classes for the rest of the day in a large, loud and chaotic public school. Of course, even apart from whether a less restrictive placement is helpful for a student, it is the law that disabled students be educated with their disabled peers to the maximum extent appropriate. *See* 34 C.F.R. 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible).

(1.b.iv) Failure to Determine Eligibility for Math Until End of Year. DCPS's delay in eligibility for math simply carries on the failure to provide math (and reading) as areas of concern needed by Student, as discussed in detail above.

FAPE. In sum, DCPS did not provide Student with a FAPE in 2023/24 for various reasons: it did not provide necessary specialized instruction in math and reading; it did not provide adequate specialized instruction hours generally; it did not offer sufficient behavior support services; it did not contemplate the harm that could result from Student transitioning to a less restrictive environment after years at Nonpublic School; and DCPS had data to support Student's need for specialized instruction in all areas of academics.

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In carefully considering the concerns raised above individually and collectively, the undersigned is cognizant of the fact that the analysis is not about achieving perfection. Instead, IEPs simply need to be reasonably calculated to enable a student to make appropriate progress in the circumstances. *See Andrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA “stops short of requiring public schools to provide the best possible education”). *See also Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015); *S.M. v. Dist. of Columbia*, CV 19-2096 (RC), 2020 WL 7230266, at *5 (D.D.C. 2020). However, on balance, this Hearing Officer concludes that DCPS failed to meet its burden of persuasion by a preponderance of the evidence on Issue 1.

Issue 2: Whether DCPS denied Student a FAPE by failing to offer an appropriate, or any, placement and/or LOS prior to 2024/25, when:

(a) an LOS letter assigning program and/or location was not issued until mid-September 2024 when Student had already begun Nonpublic School and would have been harmed by a mid-year transfer, and/or

(b) the 8/9/24 IEP (i) hours were not related to needs, but to place Student in an inappropriate self-contained program with an inappropriate cohort, (ii) specialized instruction hours were insufficient for Student’s needs and would have required many hours in a large, noisy general education setting, (iii) data on Student’s needs due to working memory and cognitive processing affect all classes, so Student needs a setting with a quiet environment, limited visual distractions, and small class sizes throughout the day, (iv) failed to account for social emotional harm from transition to an LRE based on difficulty with peers and teachers, and lack of any plan to address expected harm, and/or (v) Parents were denied participation in the placement process and not provided an appropriate observation of the self-contained program, as they had no opportunity to ask questions.

(Respondent has the burden of persuasion on this issue, if Petitioners establish a prima facie case.)

Based on the legal principles set forth in Issue 1, above, Petitioners also established a *prima facie* case concerning the 8/9/24 IEP through testimony and documents, shifting the burden to DCPS, which failed to meet its burden of persuasion in Issue 2.

(Issue 2.a) Placement/LOS Prior to 2024/25. The IDEA requires “school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student’s IEP.” *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 143 (D.D.C. 2018), *citing O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008). *See also Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013) (DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP”).

Here, DCPS’s LOS letter for Student was dated 9/11/24, but not emailed to Parents until 9/20/24, well after Student began the year at Nonpublic School. As Petitioners’ counsel asserted, it was not appropriate for DCPS to issue such a late LOS letter, particularly when assigning a new student to a new self-contained program, and especially when DCPS did not send it right away. A change in this manner to a new program at Public School would have been very harmful and disruptive to Student.

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(2.b.i) 8/9/24 IEP Hours Not Related to Needs. Petitioners were clear and persuasive that the 20 specialized instruction hours DCPS offered in the 8/9/24 IEP were simply for the purpose of placing Student in a self-contained program within DCPS, not because that was the actual number of hours of specialized instruction Student needed. Petitioners disagreed with an SLS placement for Student, which did not include an appropriate cohort for Student or the right supports to provide a FAPE. Parents were dissatisfied with the DCPS offer because Student was receiving more than 20 hours/week already. Indeed, Student had received full-time placement at Nonpublic School for many years.

(2.b.ii) Specialized Instruction Hours Insufficient, Required General Education. Student took a long time to warm up to new people and would have suffered significantly if Student had to transfer from the small supportive environment at Nonpublic School to a self-contained program and then general education classes for the rest of the day in a large public school that was loud and chaotic.

(2.b.iii) Working Memory/Cognitive Processing Affect All Classes. Student had issues with working memory/cognitive processing that affected Student in all classes. Student was sensitive to noise and light, so needed a quieter space to work, and classrooms with limited visual distractions.

(2.b.iv) Social Emotional Harm from Transition. Student's social-emotional profile would result in a very difficult time transitioning to Public School with the limited supports on Student's IEP. Student often had difficulty with peers and did not prefer to be social when in class. Parent was quite clear – and persuasive – that transitions were hard on Student.

(2.b.v) Parents Denied Participation in Placement. Petitioners prevail on this significant sub-issue, for the IDEA does require parental involvement regarding any decisions “on the educational placement of their child.” *See Aikens v. Dist. of Columbia*, 950 F. Supp. 2d 186, 190 (D.D.C. 2013), *citing* 20 U.S.C. § 1414(e); 34 C.F.R. 300.116(a)(1), 300.327. *See also Z.B. by & through Sanchez v. Dist. of Columbia*, 382 F. Supp. 3d 32, 47 (D.D.C. 2019), and cases collected therein, *aff'd sub nom. Sanchez v. Dist. of Columbia*, 815 Fed. Appx. 559 (D.C. Cir. 2020), *cert. denied sub nom. Z.B. by & through Sanchez v. Dist. of Columbia*, 141 S. Ct. 375, 208 L. Ed. 2d 97 (2020) (the IDEA requires that a student's parents be part of the team that creates the student's IEP and determines the student's educational placement).

To that end, the law is clear in the District of Columbia that parents (and their designees) have the right to observe proposed educational programs and settings pursuant to the Special Education Student Rights Act of 2014, D.C. Code §38-2571.03, which provides in relevant part that, “Upon request, an LEA shall provide timely access. . . for observing a child's current or proposed special educational program. . . .” The court's decision in *Middleton*, 312 F. Supp. 3d at 147-48, emphasized the importance of observation, as the court found a denial of FAPE due to DCPS not permitting an observation. *See also N.W. v. Dist. of Columbia*, 253 F. Supp. 3d 5, 20 (D.D.C. 2017).

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Here, DCPS proposed Public School in an LOS letter that it inexplicably failed to send until 9/20/24. Student had been in school for well over a month before observation of Public School was possible. Parents were not permitted to ask questions during the school visit. When Parents sent a list of questions following the visit, DCPS responded with a website link which Parent did not find sufficient. DCPS's failure to permit timely observation of Public School is a procedural violation that had a clear substantive effect on Student, amounting to a denial of FAPE, for it significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. See 34 C.F.R. § 300.513(a).

FAPE. DCPS did not provide Student with a FAPE in 2024/25 for various reasons: Petitioners gave notice of unilateral placement, explaining that the 20 hours DCPS offered was to place Student in a self-contained program within DCPS, not because that was the actual number of hours of specialized instruction required; Student had issues with working memory/cognitive processing that affected Student in all classes; Student was sensitive to noise and needed a quieter space to work and classrooms with limited visual distractions; Student's social-emotional profile would result in a very difficult time transitioning to Public School with the supports on Student's IEP; and Student had difficulty with peers and did not like to be social during class. In carefully considering the concerns raised in Issue 2 individually and as a group, on balance this Hearing Officer concludes that DCPS failed to meet its burden of persuasion by a preponderance of the evidence.

In sum, Student's 2023/24 and 2024/25 IEPs were not reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances, and to access the curriculum to advance toward meeting Student's annual goals pursuant to 34 C.F.R. § 300.320(a)(4), resulting in a denial of FAPE and reimbursement for Student's unilateral placements for 2023/24 and 2024/25, discussed next.

Remedy

As the remedy for the denials of FAPE concerning Student's IEPs, Petitioners seek reimbursement for their payments for Nonpublic School in 2023/24 and 2024/25, since a suitable public school was not available. Judge Colleen Kollar-Kotelly confirmed in *A.T.*, 2021 WL 1978792, at *3 (D.D.C. 5/18/21), that "[i]f no suitable public school is available, the school system must pay the costs of sending the child to an appropriate private school," quoting *Dist. of Columbia v. Vinyard*, 901 F. Supp. 2d 77, 80-81 (D.D.C. 2012) (Kollar-Kotelly, J.). See also *Montuori*, 2018 WL 4623572, at *3; *Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991) (if a public school program were available to enable student to receive educational benefits, DCPS would not need to consider nonpublic placement).

Under the IDEA, however, parents who unilaterally place their disabled child in a private school, without obtaining the consent of local school officials, "do so at their own financial risk." *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993), quoting *Burlington*, 471 U.S. at 374. The Court of Appeals explained in *Leggett v. Dist. of Columbia*, 793 F.3d 59, 66-67 (D.C. Cir. 2015), that,

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As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise “proper under the Act”; and (3) the equities weigh in favor of reimbursement – that is, the parents did not otherwise act “unreasonabl[y].”

Here, the first prong of *Leggett* is met due to the denials of FAPE by DCPS failing to provide Student appropriate and timely IEPs and placement, as discussed at length above.

The second prong of *Leggett* focuses on whether Nonpublic School is proper for Student, which Petitioners demonstrated by showing both the fit and that Student progressed at Nonpublic School during 2023/24 and 2024/25. Considering whether placement is proper, under *Andrew F.*, 137 S. Ct. at 1001, the question is whether Parents’ unilateral private placement was reasonably calculated to enable Student to make appropriate progress given Student’s circumstances. *Cf. Leggett*, 793 F.3d at 71, *quoting Rowley*, 458 U.S. at 207, 102 S. Ct. 3034. *See also Wirta v. Dist. of Columbia*, 859 F. Supp. 1, 5 (D.D.C. 1994); *N.G. v. Dist. of Columbia*, 556 F. Supp. 2d 11, 37 (D.D.C. 2008).

With careful selection by Parents, Nonpublic School was a good fit for Student. Thus, Student has done well in 2023/24 and 2024/25, and made good progress to catch up academically with peers, making progress appropriate in Student’s circumstances. For these reasons, this Hearing Officer concludes that Nonpublic School was proper and appropriate for Student, so the second prong of *Leggett* is satisfied. *See* 34 C.F.R. § 300.148.

The final prong of *Leggett* is to consider whether the equities weigh in favor of reimbursement or whether Petitioners acted unreasonably. Here, Parents diligently sought to cooperate and interact reasonably with DCPS at each step, despite challenges. Parents tried to do what DCPS requested and upon careful consideration by the undersigned, did not act unreasonably. The third prong is satisfied.

Accordingly, this Hearing Officer concludes that Parents should be reimbursed for the tuition and transportation costs they paid out of pocket for Nonpublic School in 2023/24 and 2024/25.

ORDER

Petitioners have prevailed on the issues in this case, as set forth above. Accordingly, **it is hereby ordered that:**

Within 30 days, upon receipt of documentation of payment by Petitioners, DCPS shall reimburse Petitioners for the costs they paid out of pocket for Nonpublic School for tuition and transportation during the 2023/24 and 2024/25 school years.

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Any and all other claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ *Keith Seat*

Keith L. Seat, Esq.
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).

Copies to:

Counsel of Record (Appendix A, by email)

ODR (hearing.office@dc.gov)