

District of Columbia
Office of the State Superintendent of Education

Office of Dispute Resolution
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Parents, on behalf of Student,¹)
Petitioners,)
v.) **) Hearing Dates: 11/4/25; 11/5/25; 11/6/25**
) **) Hearing Officer: Michael Lazan**
District of Columbia Public Schools,) **) Case No. 2025-0123**
Respondent.)

HEARING OFFICER DETERMINATION

I. Introduction

This case involves an X-year-old student (the “Student”) who is eligible for services as a student with Multiple Disabilities. A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on July 15, 2025. The Complaint was filed by the Student’s parents (“Petitioners”). On October 20, 2025, Respondent filed a response. The resolution period expired on August 14, 2025.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 USC 1400 et seq., its implementing regulations, 34 CFR 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-A, Chapter 30.

¹ Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

III. Procedural History

A prehearing conference was held on October 20, 2025. Attorney A, Esq., and Attorney B, Esq., counsel for Petitioners, appeared. Attorney C, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on October 22, 2025, summarizing the rules to be applied in the hearing and identifying the issues in the case. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioners were again represented by Attorney A, Esq., and Attorney B, Esq. Respondent was again represented by Attorney C, Esq. This was a closed proceeding.

Hearings were held on November 4, 2025, November 5, 2025, and November 6, 2025. On September 26, 2025, Petitioners moved on consent to extend the Hearing Officer Determination (“HOD”) timelines from September 28, 2025, to November 28, 2025. On September 26, 2025, an order was filed granting the motion and extending the timelines to November 28, 2025.

During the proceeding, Petitioners moved into evidence exhibits P-1 through P-86. Objections were filed with respect to exhibits P-1 through P-17. All objections were overruled except with respect to P-2, P-4, and P-6 through P-8. Exhibits P-1, P-3, P-5, and P-9 through P-86 were admitted. Respondent moved into evidence exhibits R-1 through R-19 without objection. Petitioners presented as witnesses, in the following order: Witness A, head of school at School B (expert in special education programming and placement); the Student’s mother (“Mother”); the Student; Witness B, director of an executive coaching service (expert in behavioral and cognitive issues); and Witness C, a behavioral consultant (expert in special education placement and Individualized

Education Program (“IEP”) development). Respondent presented as witnesses: Witness D, director of special education at School B; Witness E, a social worker (expert in school-based social work); and Witness F, a member of the school district’s Central IEP team (expert in special education programming). At the end of testimony, the parties presented oral closing arguments.

IV. Issues

As identified in the revised Prehearing Order and in the Complaint, the issues to be determined in this case are as follows:

1. Did DCPS fail to offer the Student a Free and Appropriate Public Education (“FAPE”) in advance of the 2023-2024 school year because the Student’s IEP in effect at the time (August 4, 2023) was inappropriate as follows:

- a. DCPS failed to properly update the present levels of performance, goals, and baselines with the most recent data available to it, rendering the IEP inappropriate since its content was outdated, and Petitioners were deprived of the right to participate in the annual IEP update;**
- b. The IEP did not offer sufficient hours of specialized instruction to meet the Student’s known academic, adaptive/daily living skills, and social/emotional needs based on the data available at the time, nor did the IEP offer an appropriate corresponding educational placement;**
- c. The IEP did not contain a Post-Secondary Transition Plan as required by law;**
- d. DCPS failed to make some of the changes agreed to at the IEP meeting, including to IEP goals and accommodations;**
- e. To the extent changes were made to the IEP, DCPS made changes unilaterally after/outside of the IEP meeting context, depriving Petitioners of participation in the annual update;**
- f. DCPS’s proposal failed to adequately account for the Student’s known anxiety and the harm that would have reasonably been expected by a reduction of the in-school supports that the Student had been receiving at School B (including a transition to a much less restrictive setting).**

2. Did DCPS fail to offer the Student a FAPE in advance of the 2024-2025 school year because the Student's IEP in effect at the time (June 17, 2024) was inappropriate as follows:

- a. The IEP did not offer sufficient hours of specialized instruction to meet the Student's known academic, adaptive/daily living skills, and social/emotional needs based on the data available at the time it was created, nor did the IEP offer an appropriate corresponding educational placement;**
- b. DCPS's proposal failed to adequately account for the Student's known anxiety and the harm that would have reasonably been expected by a reduction of the in-school supports that the Student had been receiving at School B (including a transition to a much less restrictive setting);**
- c. DCPS failed to properly account for the decision issued by Impartial Hearing Officer ("IHO") Vaden six months before the IEP meeting to the extent that IHO Vaden made relevant findings of fact, including:**
 - i. The Student was unable to access the curriculum at School A with ten hours of inclusion support and five hours of pull-out for reading, almost exactly what DCPS offered in the IEP of June 17, 2024, despite data showing increased needs since that time; and**
 - ii. This IEP only provided the Student with two more hours of inclusion support compared to the 2022 IEP that IHO Vaden found inadequate, despite containing the same language IHO Vaden relied on in finding the 2022 IEP insufficient (the Student's "anxiety, attention, executive functioning and slow reading speed impacted [him/her] throughout the school day");**
- d. Petitioners were denied an appropriate observation of the proposed program, impacting parental decision-making about the proposed FAPE offer, as DCPS imposed unreasonable restrictions on the observation in violation of the Special Education Rights Act of 2014, specifically:**
 - i. Petitioners' expert was not given access to all the proposed settings for the Student based on the IEP, limiting the expert's ability to assess the full scope of the proposed program;**
 - ii. The expert was not allowed to stay in the classrooms long enough to gather sufficient information to assess the instructional quality or classroom environment;**
 - iii. The expert was not allowed to take notes during the observation; and**

iv. The expert was not permitted to ask questions about the observed classes or inquire more broadly about the school and its programming.

V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a student with Multiple Disabilities (Speech and Language Impaired and Other Health Impaired). The Student has been diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”) and Generalized Anxiety Disorder. P-5. The Student has issues with anxiety, executive functioning, forgetfulness, inattentiveness, and class participation. The Student’s anxiety, attention, and executive functioning impact him/her throughout the school day. P-22-2; Testimony of Mother. When given an assignment, the Student tends to fall behind and then give up on instruction, which then does not become completed or get turned in. Testimony of Witness A. The Student also has issues with large gatherings and social settings, which leads to physical symptoms such as headaches and stomach aches. The Student functions better when grouped with children who have similar issues. Testimony of Student.

2. During the 2019-2020 school year, the Student attended School A, a DCPS public school. For the 2020-2021 school year, the Student changed schools and attended School B, a non-public school. The Student again attended School B for the 2021-2022 school year. The students at School B are bright and college-bound, have issues with attention and anxiety, should be no more than two levels behind grade level, and should not have major emotional problems. The school provides small class sizes, with a maximum of ten children in each class. Instruction is conducted by a lead teacher with a master’s degree in the content area. School goes from 8:30 a.m. to 3:00 p.m. on

weekdays, for a total of thirty-five hours per week. Students are provided with technology supports such as a “chrome book” and a digital planner. Each student is assigned an advisor who they check in with daily. The school has a counselor for social and emotional issues. Every eighth period is a “catch-all” with tutorials and the like. The school requires teachers to create a plan if a student fails a class. Teachers are trained in Orton-Gillingham instruction and structured literacy. Testimony of Witness A.

3. The Student received mainly “C” grades when attending School B for the 2021-2022 school year. In English, the Student got a final grade of “C” because s/he did not meet many class requirements. P-9. An IEP meeting was held for the Student on July 15, 2022. The IEP team felt that the Student needed support in all areas throughout the school day to function and progress academically, and DCPS recommended five hours of specialized instruction per week outside general education for reading, five hours of specialized instruction per week inside general education for writing, and two additional hours other specialized instruction per week inside general education. DCPS also recommended 120 minutes per month of behavior support services outside general education and more than thirty accommodations in the “Other Classroom Aids and Services” section of the IEP. P-10; P-12.

4. Petitioners rejected this proposed IEP and kept the Student at School B. During the 2022-2023 school year at School B, assignments had to be modified for the Student to complete the work, including reducing assignment length and using “chunking.” The Student often needed a plan in place because s/he fell into his/her familiar pattern of falling behind, feeling discouraged, and giving up on the work. School B provided that plan and 1:1 adult support to assist with the Student’s needs.

Generally, the Student was able to get back on track and complete the work. Testimony of Witness A. The Student ended the school year with improved grades compared to the previous year, particularly in Spanish. In reading, the Student improved his/her executive functioning skills and used tools and strategies to brainstorm, edit, and revise his/her work. Still, the Student missed assignments and needed reminders to write down work.

P-20; P-21.

5. An IEP meeting was held for the Student on August 4, 2023, when it was reported that the Student was caring more about his/her schoolwork but continued to require constantly changing strategies to address weaknesses in executive functioning and anxiety. Inconsistent growth in writing was also reported. The Student's father reported that the Student would do well but then be bedridden with stomach pains due to anxiety. It was reported that the school was in consistent contact with the Student's family, and that the Student sometimes engaged in school refusal. During the IEP meeting, DCPS proposed a draft IEP to Petitioners. When Petitioners objected, DCPS agreed to remove previous progress notes from the present levels section, add report card information, and add to the goals. DCPS also agreed to update the emotional, social and behavioral development section on the IEP, which had not been updated. Petitioners also asked for math to be included in the IEP as an area of concern. DCPS said that Petitioners could submit data for math, and that it would consider holding a meeting thereafter to determine if the Student was impacted in math. Witness C requested a goal or objective to address the Student's weakness in completing assignments, and indicated that an executive functioning coach had been retained for the Student to address this issue. DCPS agreed to add language relating to anxiety and executive functioning. DCPS also

agreed to update the section discussing the Student's present levels for reading. The IEP recommended twelve hours of specialized instruction per week inside general education to address the IEP's reading and writing goals, plus another five hours of specialized instruction per week outside general education. DCPS staff did not say how the hours would be provided, except that the five hours per week outside general education would be in a classroom with a special education teacher. The IEP team recommended an increase in the Student's behavior support services mandate from 120 minutes per month to 180 minutes per month (forty-five minutes each week) and also added sixty minutes of consult services per month. Petitioners were not satisfied, expressing that the Student needed a small-group setting throughout the entire school day and that the proposed hours did not meet his/her needs. Witness C noted that the IEP had no transition section. DCPS said that it would send a questionnaire to the Student's father, to be completed by the Student, which would then be included in the IEP. DCPS also agreed to update a comment in the IEP about positive behavior. Testimony of Witness C; P-27.

6. The IEP included the same list of Other Classroom Aids and Services as the prior IEP, which mentioned, among other things, the use of a daily agenda to write homework and tasks down, advance notice of tests, and daily teacher check-ins for task completion, organization, recording of tasks, and emotional regulation. The IEP also mentioned access to a laptop, enlarged print when possible, movement breaks, repeated and clarified directions, checklists or notes for multistep directions, breaking new information or complex sequential tasks into smaller chunks, providing the Student with opportunities to verbalize thoughts or plans prior to writing, a modified work load, extended time, frequent breaks, math interventions such as a calculator, reading

interventions such as a highlighter, reduced length for written tasks, and a checklist to assist with the studying process. P-30.

7. DCPS assigned the Student to School C, where self-contained classes would have a maximum of fifteen students, with two adults in the room. School C is a large public school with about 1,800 students. The general education classes at the school can include up to twenty-five students. Each class lasts eighty minutes, and students attend four classes per day. Classes are on an “A/B” schedule, with three classes in a given subject one week and two classes in that subject the following week.

Testimony of Witness D.

8. The Student continued at School B for the 2023-2024 school year. Petitioners received emails several times a week to update them on the Student’s progress. The Student’s academic grades were mostly in the “A” and “B” range, with a high grade of “A+” in geometry (in the first reporting period) and a low grade of “D” in government (in the second reporting period). The Student’s final grades did not reflect all the assignments that the Student failed to complete. The Student showed growth in terms of work habits in reading in the fourth reporting period, consistently turning in assignments on time and staying on pace with reading. Testimony of Mother; P-41; P-46.

9. On January 19, 2024, IHO Peter Vaden issued an HOD which found that DCPS denied the Student a FAPE for the 2021-2022 and 2022-2023 school years. The HOD ordered that Petitioners be reimbursed for the Student’s expenses at School B. IHO Vaden found that the Student’s IEPs of February 18, 2021, and July 15, 2022, were inappropriate, since they provided only seven hours of special education per week inside general education, “when the IEP team acknowledged that [the] Student’s anxiety,

attention, executive functioning and slow reading speed impacted him/her throughout the school day.” P-39.

10. An observation of the Student was conducted on May 15, 2024. The Student exhibited on-task behaviors seventy-two percent of the time, while exhibiting fidgeting, playing with his/her hands, staring, or not engaging in discussion twenty-eight percent of the time. P-47-22. Witness F conducted another observation of the Student on May 16, 2024, in an English class with one teacher and eight other students. The Student came to class on time, sat down, and was told to begin working on his/her journal. During the lesson, the Student was typing and appeared to be annotating. At other times, s/he may have been off-task, but s/he appeared to be listening and was able to make observations throughout the discussion. P-47-4; Testimony of Witness F.

11. An IEP meeting was held for the Student on June 17, 2024. Petitioners felt that much of the data that they had sent to DCPS was not discussed. DCPS said that the team would consider some of the data after the meeting was held. DCPS felt that Petitioners were not considering DCPS’s proposals. DCPS changed the language on a reading comprehension goal, and the writing goal was changed to make it slightly more difficult. Goals were not “literally” repeated from the prior IEP, but the concepts for the goals were the same. Testimony of Witness F; Testimony of Witness C; Testimony of Mother. The IEP of June 17, 2024, recommended one additional hour of specialized instruction consultation services per week and one hour of behavior support services per month. Otherwise, the services on the IEP remained the same. The IEP said that the Student struggled with independently deciphering directions for an assignment and following class routines. The IEP also indicated that the Student’s issues with anxiety,

attention, and executive functioning impacted him/her throughout the school day, including with task completion. The IEP referenced a Strengths and Difficulties Questionnaire (“SDQ”) that was given to two of the Student’s teachers. One teacher indicated that the Student’s overall stress and emotional distress were “slightly raised” and that the impact of difficulties on the Student’s life was “very high.” The second teacher indicated that the Student’s overall stress and emotional distress levels were “very high,” but that the impact of difficulties on the Student’s life were “slightly raised.” Both teachers said that the Student engaged in little “kind and helpful behavior.” P-47-22.

12. This June 2024 IEP included a new list of Other Classroom Aids and Services, such as extended time for assignments, exam answers marked directly on tests, assistive technology (text-to-speech software or reader during testing situations), audio books as needed, a computer with spell check for written work, small-group testing with breaks, a limited number of assessments (no more than two per day), scrap paper for tests, fidgets, being allowed to stand as needed, a calculator for math as needed, a reading rod or ruler, manipulatives as needed, highlighters, graph paper, a large font for printed materials, reduced length for written assignments, checklists for editing, proofreading, and grammar, reduced copying of assignments, multistep directions that are broken down, chunked long assignments, a planner to record short-term and long-term assignments, advance notice for tests, daily check-ins with trusted adults, and movement breaks as needed. P-47-28-29. The IEP said that the Student benefitted from specialized instruction outside the general education classroom to support his/her reading and writing. P-44-30.

13. Petitioners enrolled the Student at School B again for the 2024-2025 school year. The Student had school attendance issues during this school year, claiming to be ill. Testimony of Mother. The Student also had issues turning in assignments. As a result, on October 8, 2024, the Student was told to spend eighth period in the office of one of the school counselors to have access to a quiet and distraction-free work space. P-58-5. The Student had multiple thoughts in his/her head “all the time,” was anxious, and would not go to school if s/he was behind. The Student would develop stomach pains. The Student’s advisor helped him/her create plans to address these issues, and the Student would check in with the counselor three times a day to plan and learn how to self-advocate. Testimony of Student; P-45.

14. On November 1, 2024, the Student failed to complete an end-of-quarter English essay. The counselor had already spoken to the Student about this assignment. During that conversation, the Student said that when facing a challenging assignment, s/he tended to avoid it, because s/he compared his/herself to others, doubted his/her ability, lost motivation, and felt “dread” about having to tackle the work. P-58-6.

15. An independent neuropsychological evaluation of the Student was conducted on November 6, 2024, November 11, 2024, and December 4, 2024. The ensuing report contained testing results from the Wechsler Adult Intelligence Scales-Fourth Edition (“WAIS-IV”), Woodcock Johnson-Fourth Edition (“WJ-IV”) Tests of Oral Language, Delis-Kaplan Executive Functioning System (“D-KEFS”), Wide Range Assessment of Memory and Learning-Third Edition (“WRAML-3”), Comprehensive Test of Phonological Processing-Second Edition (“CTOPP-2”), Test of Variables of Attention (“TOVA”), Wechsler Individual Achievement Test-Fourth Edition (“WIAT-

4”), and Reynolds Adolescent Depression Scale-Second Edition (“RADS-2”). The evaluation included an interview with a teacher who indicated that the Student could get stressed in class and struggled to keep track of his/her assignments and obligations. The Student also sought to conceal these struggles from teachers. This teacher indicated that the Student was “clinically elevated” for anxious/depressed behavior and “moderately elevated” for somatic complaints. The teacher also reported elevated difficulty with working memory and task monitoring, and “moderately elevated” issues with behavioral inhibition, emotional control, and planning. The Student’s math teacher said the Student was extremely engaged in subjects that interested him/her but could fall behind on assignments and struggle to catch up. P-58-39. The evaluator concluded that the Student had difficulty with maintaining focus and controlling impulsive responses. It was noted that the Student often worked extremely slowly on measures (both timed and untimed) that required him/her to solve complex problems, and that the Student had difficulty with a number of executive functioning skills. The evaluation indicated that the Student met the criteria for a diagnosis of ADHD—Predominantly Inattentive Presentation, with distractibility, variable processing speed, difficulty dividing focus, and executive dysfunction. The evaluator concluded that the Student would likely have trouble appropriately allocating his/her attention and working efficiently (that is, both quickly and accurately) on tests and assignments, and would continue to require relevant classroom supports and accommodations for assignments and tests. The evaluator also indicated that the Student had challenges with understanding spoken language and formulating verbal responses. The Student’s scores were far below average on a measure of his/her ability to interpret complex language. The Student also demonstrated a mild

receptive language disorder due to a below-average performance on the listening comprehension subtests of the Oral and Written Language Scales-Second Edition (“OWLS-II”), which measures the ability to understand challenging vocabulary, complex grammar, and figurative speech and to draw inferences from spoken language. The Student also performed unevenly on word retrieval tests. The Student was diagnosed with a mild language disorder affecting comprehension, word retrieval, and formulation, meaning that s/he would require relevant supports and accommodations in the classroom for assignments and tests. The evaluator also found that the Student’s ADHD, executive dysfunction, and language disorder impacted his/her performance on tests of working and verbal memory. Academic achievement testing in math reflected the Student’s strong conceptual and procedural understanding, but his/her scores in reading were inconsistent. The evaluator found that the Student had a gradually improving ability to find ways to compensate for his/her ADHD and learning differences, but still had significant feelings of anxiety, and the evaluator diagnosed the Student with Generalized Anxiety Disorder.

P-58-47-49.

16. By December 3, 2024, the Student was still missing assignments, despite the counselor’s oversight. P-58-7. The Student did not make good choices concerning independent study hall time, engaged in distractions with other students, and was involved in occasional horseplay in the hallway. The Student lost the privilege of working in the hallway since s/he was so easily distracted. The Student was also loud and distracting during lunch, to the point of disrupting classes. The Student also teased other students, encouraged other students to make poor choices, was disrespectful to adults, and did not follow directions. P-58; Testimony of Witness A.

17. On or about December 11, 2024, Witness C attempted to observe the classrooms at School C. She was initially allowed to take notes without a computer but was then told that she had to observe and remember what she had seen, and she was not allowed to ask any specific questions about the classes. Witness C was led to a class with two students and one teacher, and then to a co-taught English class with sixteen students and two teachers. She also went to a social studies class. Testimony of Witness C; Testimony of Witness F; P-76.

18. The Student continued to have issues with falling behind, then feeling badly about falling behind, and then falling further behind out of fear. Testimony of Witness A. For the first reporting period of the 2024-2025 school year, the Student received “C” range grades all academic classes except math. On January 14, 2025, the Student created a scene when s/he panicked, compared herself to others, felt embarrassed, and threw away a test instead of turning it in. On February 19, 2025, the Student was informed that s/he was failing history and English and was going to have to spend his/her seventh period study hall in the counselor’s office for the foreseeable future, so that s/he would be able to complete homework and make up assignments. P-58-12-15.

19. For the second reporting period of the 2024-2025 school year, the Student received only one grade higher than a “C,” in math, with consistently poor grades in English. For the third reporting period, the Student improved in Spanish. P-58-27-31; Testimony of Witness A. The Student engaged in inappropriate conduct in history at this time, requiring the teacher to move his/her seat. P-69-19; Testimony of Witness A. For the fourth reporting period, the Student received “A” and “B” range grades in every academic subject. P-73; Testimony of Witness A.

20. A speech and language evaluation of the Student was conducted on April 10, 2025. The evaluator's report, dated May 1, 2025, included an interview with one of the Student's teachers, who reported that the Student had difficulty attending during lengthy instruction, sometimes avoided speaking in class, sometimes mispronounced words, sometimes had difficulty attending in groups, sometimes had difficulty following one-step/multistep directions and classroom routines, sometimes had difficulty understanding curriculum vocabulary and concepts, and sometimes demonstrated inappropriate interactions with peers. The teacher also said that the Student struggled with procrastination on larger tasks, had executive functioning and organizational issues, and that s/he required extra help, tutoring, small-group instruction, 1:1 instruction, graphic organizers, underlining/highlighting, preferential seating, visual schedules, assignment notebook checks, choice strategies, breaks, repetition, word banks, color-coded systems, teacher check-ins, sentence starters, and timers as classroom modifications and accommodations. Another teacher said the Student avoided speaking in class because s/he was not always prepared, and that s/he has difficulty attending to lengthy instruction. This teacher also indicated that the Student had difficulty expressing ideas in an organized, coherent manner, and had difficulty asking questions to gain information. A third teacher said that the Student had difficulty following multistep directions and understanding curriculum vocabulary and concepts. The report found that the Student did not demonstrate a disabling oral communication disorder that would prevent him/her from accessing or gaining benefit from the general education curriculum.

P-72; Testimony of Witness C.

VI. Conclusions of Law

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

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed as the following: "Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement" provided that "the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency." D.C. Code Sect. 38-2571.03(6)(A)(i).

Accordingly, on both Issue #1 and #2, which relate to the appropriateness of the Student's IEP and placement, the burden of persuasion is on Respondent if Petitioners present a *prima facie* case.

1. Did DCPS fail to offer the Student a FAPE in advance of the 2023-2024 school year because the Student's IEP in effect at the time (August 4, 2023) was inappropriate as follows:

a. DCPS failed to properly update the present levels of performance, goals, and baselines with the most recent data available to it, rendering the IEP inappropriate since its content was outdated, and Petitioners were deprived of the right to participate in the annual IEP update;

b. The IEP did not offer sufficient hours of specialized instruction to meet the Student's known academic, adaptive/daily living skills, and social/emotional needs based on the data available at the time, nor did the IEP offer an appropriate corresponding educational placement;

- c. The IEP did not contain a Post-Secondary Transition Plan as required by law;**
- d. DCPS failed to make some of the changes agreed to at the IEP meeting, including to IEP goals and accommodations;**
- e. To the extent changes were made to the IEP, DCPS made changes unilaterally after/outside of the IEP meeting context, depriving Petitioners of participation in the annual update;**
- f. DCPS's proposal failed to adequately account for the Student's known anxiety and the harm that would have reasonably been expected by a reduction of the in-school supports that the Student had been receiving at School B (including a transition to a much less restrictive setting).**

The IDEA was enacted to “ensure that children with disabilities have available to them 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.” M.G. v. Dist. of Columbia, 246 F. Supp. 3d 1, 7 (D.D.C. 2017) (citing 20 USC Sect. 1400(d)(1)(A); 34 CFR 300.300). In Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the Court explained that an IEP must be reasonably calculated to enable the child to receive benefit. Id. at 204. The Court’s decision in Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1, 580 U.S. 386 (2017), elaborated on the doctrine established in Rowley, reasoning that “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.” Id. at 1001. The Court stated that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities.” Id. But the court also said that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and

that a student's program should be "appropriately ambitious," a standard "markedly more demanding than the 'merely more than *de minimis*' test applied by the Tenth Circuit." Id. at 1000-1002. Finding that "instruction that aims so low" would be tantamount to "sitting idly...awaiting the time when they were old enough to drop out," the Court held that IDEA "demands" a higher standard. Id. (citing to Rowley). The District of Columbia Circuit Court of Appeals has accordingly found that Endrew F. raised the bar on what counts as adequate education under the IDEA. Z. B. v. District of Columbia., 888 F.3d 515, 517 (D.C. Cir. 2018).

Petitioners argued that the August 2023 IEP was defective because it did not comply with requirements to have a transition plan. The transition services requirement for IEPs was added to the IDEA in 2004, as part of the Individuals with Disabilities Education Improvement Act ("IDEIA"), P.L. 108-446, 118 Stat. 2647 (Dec. 3, 2004). In passing the IDEIA, Congress found that "[a]s the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities." Id. at 682 (codified at 20 USC 1400(c)(14)). Congress placed added emphasis on transition services so that special education students "leave the system ready to be full productive citizens, whether they choose to go on to college or a job." 150 Cong. Rec. S11653-01, S11656 (Nov. 19, 2004) (Conf. Rep. accompanying H.R. 1350) (Statement of Sen. Dodd).

A transition plan must be included in the IEPs of students aged sixteen and older. The IDEA defines this plan as “a coordinated set of activities for a child with a disability” that is a “results oriented process” and “based on the individual child’s needs … taking into account the child’s strengths, preferences and interests” and including instruction, related services, community experiences, employment, other post-school adult living objectives, and, “if appropriate,” the acquisition of daily living skills and the provision of a functional vocational evaluation. 34 CFR 300.43. The plan must include appropriate, measurable, post-secondary goals based upon appropriate transition assessments relating to training, education, employment, and, where appropriate, independent living skills. 34 CFR Sect. 300.320(b); 20 USC 1414(d)(1)(A)(i)(VII).

A school district’s failure to plan for a student’s future in this manner may constitute a denial of FAPE. Jefferson Cnty. Bd. of Educ. v. Lolita S., 977 F. Supp. 2d 1091, 1120 (N.D. Ala. 2013), affd, 581 F. App’x 760 (11th Cir. 2014). Here, there is no transition services plan at all in the Student’s 2023 IEP, even though Petitioners alerted DCPS and gave them a chance to fix the IEP. DCPS provided no authority supporting the proposition that the failure to write a transition plan for an eligible student is a procedural violation under the IDEA.

Petitioners also contended that the goals in this IEP were defective. An IEP must contain a “statement of measurable annual goals, including academic and functional goals” designed to “meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum,” and to meet “each of the child’s other educational needs that result from the child’s disability.” 34 CFR 300.320(a)(2)(i). There is no statutory requirement that an IEP must

change from school year to school year. J.B. by & through Belt v. District of Columbia, 325 F. Supp. 3d 1, 16 (D.D.C. 2018). However, IEP goals should ordinarily reflect a student's year-to-year progress, or lack thereof. Damarcus S. v. District of Columbia, 190 F. Supp. 3d 35, 52-53 (D.D.C. 2016) ("the wholesale repetition" of goals and objectives "indicates an ongoing failure to respond to [a student's] difficulties"). Additionally, the IEP team must review goals yearly to determine whether the goals are still meaningful. Belt, 325 F. Supp. 3d at 8 (rejecting a goals claim because the goals were modified once the student had made documented progress in certain areas). This IEP adopted the goals from the Student's previous IEP without changing the language. The reading goals, written expression goals, adaptive/daily living skills goals, and emotional, social and behavioral development goals were the same as in the IEP of July 15, 2022. Moreover, though DCPS has the burden of persuasion on this issue, it did not call a witness to clearly explain why the Student's IEP goals should have been repeated.

Petitioners also argued that DCPS did not offer a "cogent and responsive" explanation of the rationale behind the selection of twelve hours of specialized instruction per week inside general education for this Student. Petitioners said that no clear explanation was offered to them as to how those twelve hours of services would be implemented at the proposed placement, which ended up being School C. Petitioners argued that DCPS's offer was similar to its proposal that was rejected by IHO Vaden (whose HOD mentioned that the Student had been receiving ten hours of specialized instruction per week inside general education at his/her last public school placement at School A). The record is consistent with these contentions. There is nothing in the record to suggest that Petitioners were ever clearly told why twelve hours of specialized

instruction per week inside general education were selected for this Student, together with five hours of specialized instruction outside general education. Nor did DCPS ever clearly explain to Petitioners how those hours would be allocated at the designated school setting.

DCPS contended that it had discretion to select a school placement for the Student after the IEP process, which is true. But an IEP must give parents enough information to enable them to make a choice as to whether to place their child in the proposed setting or not. As one court put it, “for this system to function properly, parents must have sufficient information about the IEP to make an informed decision as to its adequacy prior to making a placement decision. At the time the parents must choose whether to accept the school district recommendation or to place the child elsewhere, they have only the IEP to rely on, and therefore the adequacy of the IEP itself creates considerable reliance interests for the parents.” R.E. v. New York City Dep’t of Educ., 694 F.3d 167, 186 (2d Cir. 2012).

Petitioners also contended that DCPS’s proposal failed to adequately account for the Student’s anxiety, attentional, and executive functioning issues, which occur regularly throughout the school day. DCPS pointed to the Student’s mandate of behavior support services as evidence that his/her needs would be met in this regard, but the IEP did not say that these services would be delivered to the Student as needed throughout the school day. Moreover, there is nothing in the record to suggest that members of the IEP team explained to Petitioners that these services would not be provided as counseling but would instead be provided on an as-needed basis throughout the day. As a result, when Petitioners were deciding whether or not to accept this IEP and place the Student at

School C for the 2023-2024 school year, they could not know how the Student would get services whenever s/he resisted work or had difficulty in large general education classes.

Norristown Area Sch. Dist. v. F.C., 636 F. App'x 857, 859 (3d Cir. 2016) (finding that services must be indicated in the IEP and rejecting school district's argument that it could have extended a third-grader's one-to-one paraprofessional support).

Parenthetically, this Hearing Officer does not find that the present levels of performance sections of the IEP denied the Student a FAPE. While the record indicates that DCPS said it would make changes to these sections after it reviewed more data, Petitioners did not explain how the Student would practically be impacted by any failure to update the present levels of performance in this IEP or by DCPS's failure to make changes to the IEP as promised at the IEP meeting. Belt, 325 F. Supp. 3d 1, 6. But this Hearing Officer does agree with the testimony of Petitioners' expert, Witness C, that the IEP needed to provide more services and be more specific to pass muster under the IDEA. DCPS denied the Student a FAPE through its August 2023 IEP.

2. Did DCPS fail to offer the Student a FAPE in advance of the 2024-2025 school year because the Student's IEP in effect at the time (June 17, 2024) was inappropriate as follows:

a. The IEP did not offer sufficient hours of specialized instruction to meet the Student's known academic, adaptive/daily living skills, and social/emotional needs based on the data available at the time it was created, nor did the IEP offer an appropriate corresponding educational placement;

b. DCPS's proposal failed to adequately account for the Student's known anxiety and the harm that would have reasonably been expected by a reduction of the in-school supports that the Student had been receiving at School B (including a transition to a much less restrictive setting);

c. DCPS failed to properly account for the decision issued by IHO Vaden six months before the IEP meeting to the extent that IHO Vaden made relevant findings of fact, including:

i. The Student was unable to access the curriculum at School A with ten hours of inclusion support and five hours of pull-out for reading, almost exactly what DCPS offered in the IEP of June 17, 2024, despite data showing increased needs since that time; and

ii. This IEP only provided the Student with two more hours of inclusion support compared to the 2022 IEP that IHO Vaden found inadequate, despite containing the same language IHO Vaden relied on in finding the 2022 IEP insufficient (the Student’s “anxiety, attention, executive functioning and slow reading speed impacted [him/her] throughout the school day”);

d. Petitioners were denied an appropriate observation of the proposed program, impacting parental decision-making about the proposed FAPE offer, as DCPS imposed unreasonable restrictions on the observation in violation of the Special Education Rights Act of 2014, specifically:

i. Petitioners’ expert was not given access to all the proposed settings for the Student based on the IEP, limiting the expert’s ability to assess the full scope of the proposed program;

ii. The expert was not allowed to stay in the classrooms long enough to gather sufficient information to assess the instructional quality or classroom environment;

iii. The expert was not allowed to take notes during the observation; and

iv. The expert was not permitted to ask questions about the observed classes or inquire more broadly about the school and its programming.

Petitioners again claimed that the specialized instruction mandate in this IEP (which was the same as in the 2023 IEP) did not meet the Student’s need to be in a small classroom to address his/her anxiety, inattentiveness, and executive functioning issues throughout the school day. These contentions were consistent with the observation in May 2024, where the observer noted that the Student exhibited off-task behaviors twenty-eight percent of the time, including fidgeting, playing with his/her hands, staring, not engaging in discussion, and needing prompting to engage.

DCPS presented the testimony of Witness F, who said that DCPS explained at the IEP meeting why it recommended twelve hours of specialized instruction per week inside general education. But the meeting minutes did not explain why twelve hours were selected, and the IEP itself did not say that the hours would be used to address the Student's issues with anxiety, executive functioning, and attention. To the contrary, the IEP said that the hours would be used to support the Student's reading and writing, as indicated on the page entitled "Least Restrictive Environment." As with the Student's earlier IEPs, including the IEP before IHO Vaden, Petitioners could not be assured that the Student's issues with anxiety, executive functioning, and work completion would be managed during the entirety of the school day, including the hours that the Student would spend in general education.²

DCPS argued that the Student's anxiety, executive functioning, and attention issues would be addressed through behavior support services. But as with the 2023 IEP, there is nothing in this IEP to assure Petitioners that the Student's issues in the classroom would be addressed throughout the day, as needed, by behavior support services. The IEP merely stated that the Student would receive 180 minutes per month of behavior support services, without explaining more. The "Other Classroom Aids and Services" section of the IEP does mention a check-in, but this reference is but one of over thirty possible accommodations listed in that section of the IEP. There is no testimony to the effect that any of these accommodations were required, or that the Student would get

² Nor does the IEP provide that the Student should be placed in a small classroom throughout the day to address this issue, though class size is an appropriate matter for consideration during the IEP meeting and placement process to the extent that these issues impact FAPE. Letter to Buell, 29 IDELR 902 (OSEP 1997); Bd. of Educ. of Montgomery Cnty. v. S.M. by D.M., No. 20-CV-2301-LKG, 2022 WL 951770, at *1 (D. Md. Mar. 30, 2022) (school district denied an elementary student with apraxia and ADHD a FAPE when it placed him in a classroom that could not guarantee small class sizes.).

check-ins throughout the day (even though School B provided the Student with regular check-ins three times a day to ensure that the Student was on task). The only material difference between this IEP and the previous IEP with respect to behavior support services was the addition of one hour of consultation services per month. However, those services were for communications between DCPS staff about the Student, not for services to be provided directly to the Student. There is little in the record to clearly explain how these consultation services would have benefitted the Student.

Petitioners also contended that the May 2024 observation of School C by Witness C violated the Special Education Student Rights Act of 2014. This statute provides that a Local Educational Agency (“LEA”) shall provide timely access to a designee appointed by the parent of a child with a disability who has professional expertise in the area of special education being observed. D.C. Code Sect. 38-2571.03(5)(A)³. This legislation does not allow DCPS to impose restrictions on the observation, except those necessary to:

(i) ensure the safety of the children in a program; (ii) protect other children in the program from disclosure by an observer of confidential and personally identifiable information in the event such information is obtained in the course of an observation by a parent or a designee; or (iii) avoid any potential disruption arising from multiple observations occurring in a classroom simultaneously.

DCPS did impose restrictions on this visit since Witness C was not allowed to take notes or ask specific questions, and DCPS’s witnesses did not explain how the

³ The legislative history for this provision emphasizes the importance of observations. In their Committee Report, the Committee on Education of the Council of the District of Columbia called observation “a critical tool available to parents with respect to the development and monitoring of their child’s special education program.” Council of the District of Columbia Committee on Education, Committee Report (July 10, 2014) (<http://lims.dccouncil.us/Download/31379/B20-0723-CommitteeReport1.pdf>).

restrictions on taking notes or asking questions ensured the safety or protected the children in the program. Given the legitimate questions that Petitioners had about the June 2024 IEP, Witness C should have been allowed to ask questions at the observation so as to determine how the Student's needs would be managed throughout the school day. Without any answers to these questions, Petitioners had no way of knowing how their child would be managed at School C throughout the school day.

It is noted that the Student has been having some difficulties even in the relatively restrictive setting at School B, which has provided him/her with small classes and behavioral support throughout the school day. DCPS's proposal to provide the Student with general education classes would likely have increased his/her issues with inattention, executive functioning, and anxiety. It is also noted that Petitioners' witnesses came across more persuasively than DCPS's witnesses because of their familiarity with the Student. This Hearing Officer finds that the June 2024 IEP denied the Student a FAPE.

RELIEF

As relief, Petitioner seeks tuition reimbursement for the 2023-2024 and 2024-2025 school years at School B. A school district may be required to pay for educational services obtained for a student by the student's parent, if the services offered by the school district are inadequate or inappropriate, the services selected by the parent are appropriate, and equitable considerations support the parents' claim, even if the private school in which the parents have placed the child is unapproved. Florence County School District Four et al. v. Carter by Carter, 510 U.S. 7 (1993). Courts must consider "all relevant factors" including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services

offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment. Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005).

This Hearing Officer was persuaded by the testimony of Witness A, who said that the Student is a “great fit” for the small classes and individualized attention that have been provided to him/her at School B. This is shown through the Student’s report cards, which indicate that s/he has slowly improved his/her grades from year to year. Whereas the Student received mainly “C” grades at School B for the 2021-2022 school year, for the 2023-2024 school year, the Student’s grades were mostly in the “A” and “B” range. For the fourth reporting period of the 2024-2025 school year, the Student received “A” and “B” range grades in every academic subject. The Student him/herself convincingly testified that the school was appropriate because of the small class sizes, because of the individualized attention paid to him/her when s/he was falling behind, and because the other students in the class had similar issues, which made the Student feel accepted and more comfortable.

DCPS argued that the school does not employ certified special education teachers and does not provide instruction with general education peers, but a unilateral private placement does not need to meet state standards for public education programs to be deemed “appropriate” for reimbursement purposes. 34 CFR 300.148(c). Rather, the issue turns on whether a placement is “reasonably calculated to enable the child to receive educational benefits.” Leggett v. District of Columbia, 793 F.3d 59, 71 (D.C. Cir. 2015); Frank G. v. Board of Education of Hyde Park, 459 F.3d 356, 364 (2d Cir. 2006). Here, the Student’s past successes at School B effectively established that Petitioners’

choice to keep the Student in the same setting was in fact reasonably calculated. As one court explained: “parents whose children are denied a FAPE may be and often are forced to turn to specialized private schools that educate only disabled children. Such private schools are necessarily restrictive as they do not educate disabled and nondisabled children together, and may be more restrictive than the public school from which the child was removed. Inflexibly requiring that the parents secure a private school that is nonrestrictive, or at least as nonrestrictive as the FAPE-denying public school, would undermine the right of unilateral withdrawal the Supreme Court recognized in Burlington.” C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 837 (2d Cir. 2014).

The IDEA allows for tuition reimbursement to be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents. 20 U.S.C. Sect. 1412(a)(10)(C)(iii). Under 20 USC 1412(a)(10)(C)(iii), a denial or reduction in reimbursement is discretionary. The Supreme Court has suggested that the statutory factors are a non-exhaustive list. Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 241 (2009) (“(t)he clauses of Sect. 1412(a)(10)(C) are...best read as elucidative rather than exhaustive”). In addition, courts have broad discretion to consider the range of all relevant facts in determining whether and to what extent awarding relief is equitable. Carter, 510 U.S. at 16.

DCPS contended that Petitioners were never interested in public school. Caselaw bars recovery on tuition reimbursement claims on equitable grounds in instances where parents have “made clear” their intent to keep their child enrolled in private school. Letter to Wayne, 73 IDELR 263 (OSEP January 29, 2019). However, this is not a case

where the Student has never attended public school or where Petitioners have clearly expressed disinterest in an appropriate public school. Here, Petitioners did express interest in a public placement to the point of having an expert visit the placement to determine if it would be appropriate for the Student. DCPS cannot point to any statement in the record where Petitioners refused to consider a public school placement. See, e.g., Shipley v. Maxwell, No. JFM 08-2057, 2009 WL 2230026, 52 IDELR 279 (D. Md. 2009) (statement by parents that they were exploring private schools was not enough to bar reimbursement). This Hearing Officer therefore finds DCPS to be financially responsible for the Student's tuition at School B for the 2023-2024 and 2024-2025 school years, together with transportation expenses at the then-applicable Internal Revenue Service ("IRS") rate.

VII. Order

As a result of the foregoing, DCPS is financially responsible for the Student's tuition and related expenses at School B for the 2023-2024 and 2024-2025 school years, including transportation to and from the school at the then-applicable IRS rate.

Dated: November 28, 2025

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
Attorney C, Esq.

VIII. Notice of Appeal Rights

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 days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. Sect 1415(i).

Dated: November 28, 2025

Michael Lazan
Impartial Hearing Officer