

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
1050 First Street, N.E., 3<sup>rd</sup> Floor  
Washington, DC 20002

OSSE  
Office of Dispute Resolution  
October 27, 2022

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PARENTS, on behalf of STUDENT, <sup>1</sup>	)	
	)	
Petitioners,	)	Case No: 2022-0018
	)	
v.	)	Hearing Officer: Peter Vaden
	)	
	)	Online Videoconference Hearing
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS and	)	Hearing Dates: August 8, 9, 10, 29;
	)	September 27 and October 6, 2022
D.C. OFFICE OF THE STATE	)	
SUPERINTENDENT OF EDUCATION,	)	
	)	
Respondents.	)	

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the parents (the Parents or Petitioners) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations<sup>2</sup> (“D.C. Regs.”). The Parents allege that respondents District of Columbia Public Schools (DCPS) and the D.C. Office of the State Superintendent of Education (OSSE) denied their child (Student) a free appropriate public education (FAPE) by not meeting IDEA “child find” obligations beginning in the 2019-2020 school year and by failing to offer Student an appropriate Individualized Education Program (IEP) and educational placement. They seek reimbursement for private school tuition expenses incurred for Student and other relief.

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<sup>1</sup> Personal identification information is provided in Appendix A.

<sup>2</sup> Effective July 1, 2022, DCMR Chapter 5E-30 was repealed and replaced by the new Chapter 5A-30.

The undersigned hearing officer was appointed on February 1, 2022. On February 11, 2022, the Parents and DCPS met for a resolution session and were unable to resolve the issues in dispute. On March 3, 2022, I convened a telephone prehearing conference with counsel to set the hearing date and discuss the issues to be determined and relief requested and other matters. The due process hearing was initially set for April 20, 21, 22, 28 and 29, 2022. Because of schedule conflicts, I granted several continuance requests made by the respective respondents or the Parents. Most recently, by order issued October 13, 2022, I granted the Petitioners' unopposed request to extend the final decision due date to October 31, 2022.

With the consent of the Parents, the due process hearing was held online and recorded, using the Microsoft Teams video conference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on August 8, 9, 10 and 29, 2022; September 27, 2022 and October 6, 2022. MOTHER appeared online for the hearing and was represented by PETITIONERS' COUNSEL and PETITIONERS' CO-COUNSEL. Respondent DCPS was represented by CIEP SPECIALIST and by DCPS' COUNSEL. Respondent OSSE was represented by OSSE'S COUNSEL.

Petitioners' Counsel made an opening statement. Parents called as witnesses Mother, NONPUBLIC SCHOOL A PRINCIPAL, PRIVATE SCHOOL 1 DEAN, LPC,

NONPUBLIC SCHOOL B DIRECTOR, PRIVATE SCHOOL 2 HEAD, EDUCATIONAL CONSULTANT and NONPUBLIC SCHOOL 3 SUPERVISOR. DCPS called as witnesses CIEP Specialist, SCHOOL SOCIAL WORKER and SCHOOL PSYCHOLOGIST. OSSE called PLACEMENT COORDINATOR as its only witness.

Parents' Exhibits P-1 through P-3, P-5, P-6, P-8 through P-10, P-12 (exclusive of PDF page 158), P-13 through P-16, P-21 through P-26, P-28, P-29, P-32 through P-47, P-49 through P-52, P-54 through P-56, P-58 through P-63, P-65 through P-71, P-75 through P-91, P-93 through P-96, P-98, P-100 through P-103, P-105 through P-108, P-111, P-112, P-120 through P-132, P-134 through P-148, P-150, P-151 and P-153 through P-159 were admitted into evidence, including Exhibits P-3, P-6, P-12, P-14, P-15, P-21, P-29, P-32 through P-41, P-43, P-49, P-52, P-55, P-56, P-58, P-63, P-65 through P-68, P-71, P-76, P-77, P-87, P-89, P-91, P-93, P-150, P-153, and P-157 through P-159 admitted over DCPS' or OSSE's objections. DCPS' Exhibits DCPS-1, DCPS-3 through DCPS-7, DCPS-8 through DCPS-19, DCPS-22. DCPS-23, DCPS-25, DCPS-26, DCPS-27 (PDF pages 344 and 360 through 372 only), DCPS-28 and DCPS-32 through DCPS-34 were admitted into evidence, including Exhibit DCPS-27 (in part) admitted over Petitioners' objections. OSSE Exhibits OSSE-1 through OSSE-30 were admitted into evidence without objection, except Exhibit OSSE 6 which was not offered.

On the last day of the hearing, counsel for the respective parties made oral closing

arguments. The parties were granted leave until October 14, 2022 to submit, by email, citations to persuasive or controlling authority. Petitioners' Counsel timely submitted citations to authority.

### **JURISDICTION**

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-A, § 3049.

### **ISSUES AND RELIEF SOUGHT**

The issues for determination, as certified in the March 10, 2022 Corrected Prehearing Order, are:

- (1) Whether DCPS denied Student a FAPE by failing to abide by its child find obligations because it should have proceeded with finding Student eligible for special education services by February 2020;
- (2) Whether DCPS denied Student a FAPE by failing to provide him/her with an appropriate IEP and corresponding educational placement capable of addressing his/her needs and providing him/her with an environment in which he/she can access the learning environment from February 2020 through the present (and at all times in between);
- (3) Whether DCPS denied Student a FAPE through the development of the June 2, 2021 IEP because: a.) The IEP contains goals that are vague, unmeasurable, and not all are appropriate or tailored to Student's individual needs; and/or b.) The baselines are not goal specific and do not allow for comparison of Student's progress on his/her IEP goals as needed; and/or c.) the IEP fails to adequately describe Student's educational and programming needs and/or the type of placement that would be appropriate to meet his/her needs; and/or d.) the IEP requires an inappropriate level of behavioral support services (too much) based on the unique needs of the student at the time;

(4) Whether DCPS and/or OSSE denied Student a FAPE by failing to provide the student with an educational placement or location of services prior to the beginning of the 2021-2022 school year, justifying the Parents' unilateral placements at PRIVATE SCHOOL 1 (September 2021-December 2021) and at PRIVATE SCHOOL 2 (January 2022-June 2022);

(5) Whether DCPS and/or OSSE denied Student a FAPE through the assignment of the student to NONPUBLIC SCHOOL B on September 15, 2021 because:  
a.) The program and placement were not offered prior to the beginning of the school year; and/or b.) A prior written notice placing the student at any placement or location of services was never issued; c.) Even if the program and placement had been offered timely and appropriately, the placement was not appropriate for Student's unique individual needs and could not offer him/her a FAPE when it was offered; d.) The parents were not afforded appropriate participation in the placement decision; and/or; e.) The process by which Student was assigned to Nonpublic School B was in violation of OSSE's own policies regarding parent and student involvement in the admissions process.

By email of August 10, 2022, Petitioners' Counsel updated the relief which the Parents request in this proceeding, namely:

- (1) Make a finding that DCPS denied Student a FAPE in the ways alleged in the due process complaint;
- (2) Issue an order requiring that DCPS reimburse the Parents for the costs of the following private services that they paid for out of pocket due to DCPS' allegedly failing to offer Student an appropriate IEP and placement:
  - The cost of the transition therapist (LPC) parents hired to provide allegedly necessary social/emotional support and therapy during the step-down from RESIDENTIAL TREATMENT CENTER (RTC) to home;
  - All costs related to the unilateral placement at Private School 1 (including application fees, deposits, tuition, transportation and related services) from January 2020 to the end of the 2019-2020 school year;

(3) Issue an Order requiring that DCPS reimburse the Parents for any costs paid out-of-pocket related to application fees, deposits, tuition, related services, and/or transportation for Private School 1 and Private School 2 during the 2021-2022 school year;

(4) Issue an Order requiring that DCPS fund Parents' compensatory education plan or fund a compensatory education plan ordered by the Hearing Officer after a fact-specific inquiry;

(5) Any other relief that the Hearing Officer finds just and equitable.

Petitioners' Counsel clarified in closing argument that the Parents were not seeking an order in this proceeding for Student's nonpublic placement for the 2022-2023 school year.

### **FINDINGS OF FACT**

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

1. Student, an AGE youth, resides with the Parents in the District of Columbia. Student is eligible for special education and related services as a student with an Emotional Disturbance (ED) disability. Exhibit DCPS-14.

2. Between fall 2016 and May 2020, Student had an extensive history of inpatient and outpatient medical and mental health procedures and hospitalizations, including, *inter alia*,

2016-2017 school year	Back Pain (8 months of testing)
February 2017	Diagnosed with depression and generalized anxiety; Start Cognitive Behavioral Therapy
September 2018	2 <sup>nd</sup> Surgery for benign bone tumor in shin
October 2018	Post op bone infection, 3 <sup>rd</sup> Surgery, Suicidal ideation, Depressive episode - hospitalized for 4 weeks followed by partial hospitalization program (PHP)
December 2018	Initiate outside Dialectical Behavioral Therapy
February 2019	Outpatient treatment for suicide attempt, Inpatient for couple of weeks followed by PHP
July 2019	Surgery and hospitalization for infection on site of bone tumor surgeries
January 2020	Visit to ER for suicidal ideation
February 2020	Visit to ER for suicidal ideation
March 2020	Drank bleach - Hospitalized
April 2020	Hospitalization after cutting episode; In psychiatric inpatient unit for 4 weeks

Exhibit P-137.

3. Beginning at least in the 2018-2019 school year, Mother communicated repeatedly with DCPS school staff regarding Student’s educational challenges following a lengthy hospitalization in fall 2018 for a depressive episode. These communications include, among others, a March 25, 2019 email that Student was back in the hospital. Mother wrote that Student experienced extreme anxiety about return to DCPS School and took an overdose of Motrin (Exhibit P-6); April 3, 2019 email that Student was out

of the hospital and that the stressors that lead to the overdose were “school stress” and “friend issues” (Exhibit P-6); April 25, 2019 email from Mother forwarding letter from Student’s outside social worker advising that Student would be returning to school and recommending accommodations for when Student in distress, overwhelmed or experiencing intense emotion (Exhibit P-8); May 6, 2019 email from outside social worker addressing Student’s “recent influx of school-related anxiety” (Exhibit P-8); May 29, 2019 email from Mother noting that Student had been diagnosed with “extreme school-based anxiety” (Exhibit P-8); September 10, 2019 email from Mother noting that prior school year was very tough due to multiple hospitalizations for a benign bone tumor condition as well as significant level of depression. Mother wrote, “With the stress of the makeup work from the hospitalizations, Student developed school anxiety and [his/her] self-confidence plummeted.” (Exhibit P-10).

4. In February 2019, when Student was enrolled at DCPS SCHOOL, Mother requested a 504 Plan for Student (Section 504 of the Rehabilitation Act of 1973). Mother forwarded to school counselor a letter from Student’s treating psychologist (CLINICAL PSYCHOLOGIST) in support of the 504 Plan. Clinical Psychologist wrote that Student had been in her care since January 2019 for issues related to generalized anxiety and depression, which, on occasion, included panic attacks. The treating psychologist wrote that Student was likely to have difficulty both accessing the



curriculum consistently and demonstrating higher mastery of course content in evaluation conditions without some accommodations. She requested that the academic team consider providing accommodations and supports to mitigate the “short term impact” of his/her mood disorder, which Student had begun to address in therapy. She suggested specific potential supports including the use of a flash pass for Student to be able to go to the school counselor if feeling overwhelmed with anxiety or on the verge of a panic attack; extended time on assignments and tests; and considering de-emphasizing performance demand requirements by allowing Student to demonstrate mastery in alternate formats, which did not have a heavy emphasis on the anxiety-inducing performance aspect of making presentations in front of the peer group and frequent check-ins by staff to check for understanding of material and offer assistance as needed. Exhibit P-3.

5. On February 15, 2019, DCPS School developed a Section 504 Plan for Student. The plan identified Student’s Section 504 disabilities as Anxiety Disorder and Depressive Disorder. For Section 504 accommodations, the 504 Plan provided for reduction in the amount of homework, allowing student the ability to listen to music using Air Pods, movement breaks, flash pass which allowed Student to speak to a trusted adult, permanent GRIT pass, preferential seating and extended time on tests. Exhibit P-5. DCPS School offered Student the 504 Plan because of his/her trauma and

medical needs. Testimony of CIEP Specialist.

6. In fall 2019, the Parents referred Student to NEUROPSYCHOLOGIST for a neuropsychological assessment. The Parents indicated to Neuropsychologist that Student had experienced substantial anxiety, school refusal, and a need for therapeutic support. The Parents sought the neuropsychological assessment to gain further information and to better understand Student's immediate academic and emotional needs. After completing two days of testing, Neuropsychologist reported in November 2019 that while generally a strong student, Student had a history of medical and emotional issues that had negatively impacted his/her personal and academic functioning. Although an above average athlete, Student had setbacks due to medical issues. Student had a period of emotional outbursts at home during a stressful time. Student had been diagnosed in 2017 with a benign bone tumor (predominately painful at night). He/she underwent surgery to remove the bone tumor and several subsequent surgeries due to cellulitis infections. Student had reported experiencing depression for about four years, as well as anxiety including obsessive-compulsive traits. Following one of his/her surgeries, Student experienced an acute episode of anxiety, panic, anger, and sadness resulting in psychiatric hospitalization. Dialectical Behavior Therapy and medication were beneficial. Mother observed Student to have eating and body image issues. Student reported that he/she experienced "insomnia" predominately related to

pain that woke him/her up throughout the night. Adding to the stress affecting the family, Student's sibling was diagnosed with trigeminal neuralgia which involved brain surgery. Student had been a strong student, academically, throughout school. On the other hand, anxiety had negatively affected his/her education. Student also reportedly had experienced bullying during later elementary school prompting him/her to cry and have "low motivation." During sixth grade, when Student's mother and sibling lived away from the family for the sibling's medical treatments, although on the Honor Roll, Student had trouble with work production. In seventh grade, Student experienced school anxiety and refusal. Student also had extended absences from school due to surgeries and hospitalizations for depression. Subsequently, in February 2019, DCPS School provided Student a Section 504 Plan. At the time of the neuropsychological assessment in fall 2019, Student was enrolled in DCPS School and had seemed engaged with no school refusal. On cognitive testing, Student obtained a Full-Scale IQ within the superior range. Student achieved high average to superior estimates in nearly all cognitive domains. Student earned a significantly weaker score, modestly within the average range, on the Working Memory Index, an estimate of short-term auditory verbatim and working memory. Supplemental information processing assessments revealed solidly average to superior verbal associational reasoning, word knowledge, and visual processing. A supplemental executive functioning assessment revealed

solidly average ability to process simple visual information, simple verbal retrieval speed, planning, mental flexibility, and selective visual attention. Formal testing of attention revealed that Student had somewhat below average attention for inherently uninteresting information and may need time to engage him/her attention with such a task. When a task had inherent interest, Student could easily sustain his/her attention. Routine discrete memory and working memory were not particular strengths for Student (marginally to modestly average), whereas contextually presented information was relatively easier (average). Student may not encode the information in an organized manner. In line with his/her intellect, educational achievement assessments revealed Student's average to superior skills in mathematics, written expression, and reading comprehension. His/her decoding skill was relatively lower than would be expected (low average to modestly average). A rating scale completed by the Parents revealed no significant social/emotional concerns at the time of the assessment. Social/emotional assessment of Student, employing interview, rating scales, and formal personality measures suggested he/she was experiencing substantial emotional distress. Student put forth a determined effort to keep distress at bay although when faced with routine stress, Student could become overwhelmed emotionally. Neuropsychologist reported that overall, Student was a bright young person with solid cognitive and academic abilities; that Student demonstrated mild struggle with aspects of attention and memory

and that primary areas of concern were in the social/emotional arena. Given Student's medical history involving chronic pain, report of experiencing depression for several years, episodes of anxiety, the presence of familial stress, periodic sleep disturbance, and possible body image issues, Neuropsychologist diagnosed Student with Childhood Emotional Disorder, Unspecified, including mood disorder(s) for which Student had a familial risk factor and post-traumatic stress disorder (given medical history, and past bullying). Neuropsychologist reported that Student was working very hard at managing his/her emotions and was at notable risk for becoming emotionally overwhelmed in response to stress, including routine educational stress. Neuropsychologist strongly suggested that Student be provided academic accommodations "via a Section 504 plan" to help his/her emotional development. Exhibit DCPS-3.

7. On March 11, 2020, DCPS updated Student's Section 504 Plan. The updated plan added as accommodations a tracker to monitor homework assignments and check-in with the teacher (as needed) for additional classwork support during an arranged time. Exhibit P-14.

8. On April 14, 2020, Mother informed DCPS School staff by email that Student had returned to the hospital emergency room and would miss some school days. Mother implied that the hospitalization was due to emotional stress. Exhibit P-15.

9. Student was hospitalized at a psychiatric unit from April 19, 2020 to May

4, 2020 out of concern for self-destructive behaviors and suicidal ideation. Student was discharged from the psychiatric unit to RTC. Exhibit P-132.

10. On May 4, 2020, the Parents unilaterally placed Student at RTC. Exhibit P-21.

11. On May 8, 2020, Mother wrote DCPS School staff that Student had started spiraling downward maybe 5 to 6 weeks before and that “[p]oor and unsafe choices were abounding.” She wrote that the Parents had made the decision to get Student placed in a therapeutic boarding school (RTC) in another state and Mother and Student had flown out there on May 4, 2020. By May 8, 2020, Mother had already returned home.

Mother wrote that Student would definitely be at RTC for the summer of 2020 and almost certainly for the fall semester of the 2020-2021 school year. Mother wrote that RTC would work with Student to curb his/her unhealthy over-responses to stress and was also going to help Student work through his/her school anxiety. Exhibit P-15. The Parents did not request DCPS to place Student at RTC and they do not seek reimbursement from DCPS for their unilateral placement of Student at RTC. Hearing Officer Notice.

12. On May 17, 2020, Mother wrote DCPS School staff that Student had been experiencing waves of depression, risky behaviors and debilitating school anxiety for a year and a half. Mother wrote that after some pronounced downward spiraling over the

preceding 6-8 weeks, the Parents had made the decision to enroll Student in the therapeutic boarding school. Mother wrote that Student was already adjusting well to the boarding school. Mother wrote that Student would be at the boarding school through the summer and very likely during the 2020-2021 fall semester. Exhibit P-15.

13. On November 30, 2020, when Student was still at RTC, Mother wrote School Counselor at DCPS School to ask what the process would be to get Student an IEP. School Counselor put Mother in touch with SPECIAL EDUCATION COORDINATOR who reached out to Mother within a few days. On December 9, 2020, Mother responded to Special Education Coordinator by email advising that due to a medical situation, she would need a couple of days and would be in touch with him later. Exhibit P-32.

14. On December 11, 2020, a counselor at RTC provided a letter for the Parents' health insurance carrier describing Student's need for ongoing services. The counselor wrote that Student had been admitted to RTC due to significant suicidal ideation and attempts; that Student would be returning to a high-risk environment and be at high risk for relapse should he/she decreased the level of care past intensive outpatient at that time; that Student had demonstrated that he/she could expertly conceal his/her emotions and thoughts and fake good as a way to manage his/her anxiety; that Student had started to share emotions and noted feeling more at peace

with him/herself which progress would be jeopardized by returning home prematurely; that Student had signs and symptoms of anxiety and depression which led to his/her withdrawing from school work and peer and family relationships; that Student's lack of communication when struggling was concerning and suggested he/she was not yet ready to verbalize a need for help when distressed; that this necessitated having multiple points of contact with a treatment program throughout each week; that Student continued to report triggers of traumatic experiences from his/her past which could influence his/her mood and symptoms of depression; that Student's recent Patient Health Questionnaire (PHQ) scores suggested extreme symptoms of depression, lack of motivation to engage in activities of daily living and school, and lack of distress tolerance; and that RTC staff recommended that Student and his/her family continue to work at an intensive level of care. Exhibit P-34. Mother provided a copy of this letter to DCPS on January 29, 2021. Id.

15. On January 4, 2021, Petitioners' Counsel wrote Special Education Coordinator by email that it was obvious that Student should have had an IEP long ago. Petitioners' Counsel wrote that she was formally requesting to have Student found eligible for special education and that an appropriate IEP and placement be offered without delay. Petitioners' Counsel wrote that Student was being brought back from RTC and the Parents were going to have to fund whatever appropriate placement they



could find while the eligibility process took place. Exhibit P-32.

16. On January 7, 2021, because Student was no longer enrolled in DCPS School, Special Education Coordinator referred Petitioners' Counsel to the DCPS Central Office team. On January 12, 2021, RESOLUTION SPECIALIST wrote Petitioners' Counsel by email advising that the DCPS Central IEP (CIEP) team would be conducting the eligibility evaluation process for Student. Resolution Specialist requested that the Parents complete DCPS' child-find referral form in order to schedule an Analysis of Existing Data (AED) meeting and sign a release to obtain Student's records from RTC. Exhibit P-34.

17. On January 13, 2021, Petitioners' attorneys wrote DCPS by email to give notice that the Parents intended to unilaterally place Student at Private School 1 and intended to take legal action to pursue reimbursement from DCPS for the cost of tuition, related services and transportation to Private School 1. The Parents' attorneys alleged that DCPS had failed to provide Student with FAPE, even though DCPS had been aware for years that Student was a student with an IDEA disability. Exhibit P-33.

18. On February 8, 2021, the DCPS CIEP team convened, by telephone, an AED meeting for Student. Mother and Educational Consultant attended the meeting. The team at the meeting discussed Student's fall 2019 neuropsychological assessment, Student's performance, struggles, emotional difficulties and history at DCPS School,

Student's outside therapy and what evaluations of Student would be conducted by DCPS. Testimony of Educational Consultant; Exhibit R-12.

19. On February 22, 2021, Student underwent spinal surgery, a discectomy, at a Virginia hospital. Exhibits P-134, P-135, Testimony of Mother.

20. The CIEP multidisciplinary team decided to conduct a comprehensive psychological assessment of Student, a functional behavioral assessment (FBA-2) and a social history. On March 18, 2021, Mother provided signed parental consent for DCPS to conduct Student's initial eligibility evaluation. Exhibit P-36.

21. DCPS completed an FBA of Student on May 6, 2021, Exhibit P-95, and a comprehensive psychological evaluation on May 10, 2021. Exhibit P-96. In her psychological evaluation report, the DCPS psychologist reported that Student's full-scale IQ score was in the Very High range, Student's educational achievement scores were in the Average to High Average range and results of the Behavior Assessment System for Children 3rd Ed. (BASC-3) indicated clinically significant concerns for depression and at-risk concerns for anxiety, somatization and conduct problems (per Parent responses) and clinically significant concerns for anxiety and at-risk concerns for somatization and leadership (per teacher responses). The DCPS psychologist reported that Student met all criteria for the IDEA Emotional Disturbance (ED) disability. Exhibit P-96.

22. At a DCPS eligibility meeting on May 11, 2021, Student was determined

eligible for special education under the IDEA ED disability category. The team reported that Student's anxiety impacted his/her ability to access the general education curriculum in mathematics, reading and social-emotional-behavioral development.

Exhibit DCPS-14.

23. DCPS convened the initial IEP meeting for Student on June 2, 2021. Mother and Educational Consultant attended the meeting. Educational Consultant stressed the importance of Mother's concern about avoiding placement of Student around "acting-out" kids. The IEP provided annual goals for mathematics, reading and social/emotional/behavioral development. For special education and related services, the IEP provided 29 hours per week of Specialized Instruction and 240 minutes per month of Behavioral Support Services. The IEP team determined that Student required a full-time special education placement in a separate day school to address his/her social-emotional needs. Exhibit OSSE-2; Testimony of Educational Consultant.

24. CIEP Specialist told the IEP team that Student needed a challenging curriculum because at that point Student was "academically sound." Testimony of CIEP Coordinator.

25. On or about June 16, 2021, DCPS submitted to OSSE a Justification for Removal Statement (JRS) requesting a change in placement for Student to a nonpublic day school. Exhibit OSSE-4. On July 26, 2021, Placement Coordinator reported that

after a review of documents and discussion with key stakeholders, OSSE recommended that a change in placement into a more restrictive environment was not warranted for Student. OSSE submitted that with a robust IEP, supported by other appropriate interventions, DCPS could successfully serve the Student. OSSE conveyed its position to the Change in Placement (CIP) team at a meeting that day. Exhibit OSSE-7.

Notwithstanding OSSE's recommendation, Student's DCPS IEP team decided to move forward with placing Student at a separate day school. OSSE then proceeded with the nonpublic school placement process. Testimony of Placement Coordinator.

26. From mid-June 2021 until September 14, 2021, DCPS had no role in identifying a school location for Student. Once OSSE would identify the school location, DCPS would resume responsibility. Testimony of CIEP Specialist.

27. Beginning August 2, 2021, OSSE notified the Parents of the nonpublic schools under consideration for Student. The first group of schools included SCHOOL GROUP 1. Exhibit OSSE-10.

28. On September 14, 2021, Placement Coordinator notified the Parents that referrals to SCHOOL GROUP 2 had been made for Student. Exhibit OSSE-12.

29. On September 14, 2021, Placement Coordinator notified the Parents that Student has been accepted by Nonpublic School B and that OSSE would be issuing a location assignment for this program. Exhibit OSSE-12. The same day, OSSE issued to

Mother a Notice of Location Assignment for Nonpublic School B. Student was accepted by Nonpublic School B, without an interview, on the same day as OSSE made the referral to the school. Nonpublic School B was the only nonpublic school acceptance for Student secured by OSSE. Testimony of Placement Coordinator.

30. Nonpublic School B primarily serves students with emotional and behavioral disabilities. The vast majority of students are working toward post-secondary employment. In the cohort proposed for Student at that school, most of the children had a history of failure in school. A majority of those students were 2 to 3 years below grade level. Nonpublic School B does not offer advanced placement (AP) courses or honors classes. Nonpublic School B does not offer a SAT preparation class. In the last 5 years, no Nonpublic School B student has gone on to a 4-year college. Only a handful of students have gone on to a community college program. After meeting with Mother and Student in September 2021, Nonpublic School B Director did not consider Student a “fit” for their program, even temporarily. Testimony of Nonpublic School B Director.

31. OSSE made another referral for Student at Nonpublic School B in the 2022-2023 school year. Nonpublic School B responded with a “clear no.” Testimony of Nonpublic School B Director.

32. Besides Nonpublic School B, OSSE did not offer Student a school

placement location for the 2021-2022 school year. Testimony of Placement Coordinator.

33. Student started at Private School 1, after returning home from RTF, in January 2021. Private School 1 is a very small private school for students in grades 6 through 12. The school is accredited by the Association of Independent Maryland Schools. All students are on the diploma track. Many students at Private School 1 have educational impairments such as high functioning Autism Spectrum Disorder, Attention Deficit-Hyperactivity Disorder, Learning Disabilities and emotional challenges. However not all students are diagnosed with a disability. In Student's grade, there were usually 8-12 students in a class, taught by one teacher. Teachers must have bachelor's degrees, but no higher level of education is required. Private School 1 does not hold a Certificate of Approval (COA) from OSSE. The tuition is about \$40,000 per year.

Testimony of Private School 1 Dean.

34. Student attended Private School 1 through December 2021. At Private School 1, Student made a lot of progress getting work done and asking for help when needed. Student became much more independent during the period he/she attended the school. Testimony of Private School 1 Dean.

35. Private School 2 is a private day school in suburban Maryland serving children in grades K through 12. It is a college preparatory school for students who have

learning differences. The vast majority of students there are diagnosed with disabilities. The school offers multiple advanced placement courses. In the upper school there are 198 students. The school tries to cap class size at 13 students. Most teachers have masters or doctorate degrees. Private School 2 does not have a COA from OSSE. It is accredited by the AIMS. The yearly cost of the school is around 40 to 50 thousand dollars. Testimony of Private School 2 Head.

36. Student currently attends Private School 2, where he/she was unilaterally placed by the Parents in January 2022. He/she acclimated very quickly to the school and has been a model student. Since being at Private School 2, Student has been consistent in attending classes and has exhibited no behavioral concerns. Student was named by the faculty to the student discipline committee. Students named to that committee have exhibited solid behavior as well as social maturity. Student has 7 teachers. Student has done well in school and gets his/her homework done. Student is still working on “chunking” larger assignments. Testimony of Private School 2 Head. Private School 2 has served Student really well. Student is a dance captain, involved in extra-curricular activities, has a sober friends social group and is positive about the school. Testimony of LPC.

37. On August 11, 2021, Petitioners’ Counsel provided written notice to DCPS and OSSE that the Parents did not consider that the nonpublic schools to which OSSE

had made referrals were appropriate to meet Student's needs and that the Parents intended to unilaterally place Student at either Private School 1, Private School 2 or a third school for the 2021-2022 school year and would seek reimbursement from the District for the cost of tuition, related services, and transportation. Exhibit P-39. By email of August 27, 2022, RESOLUTION TEAM DIRECTOR responded that DCPS did not agree to bear the cost of a private placement for Student and requested counsel to identify which of the three private schools listed by the attorney Student would attend. On August 30, 2021, Petitioners' Counsel responded that Student would attend Private School 1. Exhibit P-41.

38. On December 18, 2021, Petitioners' Counsel provided written notice to DCPS that the Parents intended to place Student unilaterally at Private School 2 within 10 days of receipt of the letter, unless DCPS offered a FAPE consistent with Student's needs. Exhibit P-43.

39. LPC is a Licensed Professional Counselor whose services include assisting families with children transitioning out of residential treatment facilities. Exhibit P-143. LPC has worked with Student and his/her family since December 2021 and she still provides cognitive behavioral therapy services to Student on a regular schedule.

Testimony of LPC.



**CONCLUSIONS OF LAW**

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

**Burden of Proof**

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Parents this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by the public agency, the agency shall hold the burden of persuasion on the appropriateness of the proposed IEP or placement; provided that the Parents shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the agency. Here, the Parents have established a *prima facie* case that DCPS' June 2, 2021 IEP was, in part, inappropriate for Student and that DCPS and OSSE failed to propose an appropriate placement or location to implement the initial IEP. DCPS, therefore, holds the burden of persuasion as to the appropriateness of the June 2, 2021 IEP and DCPS and OSSE hold the burden of persuasion as to the appropriateness of any school location proposed by OSSE for Student. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

Analysis

1. Did DCPS deny Student a FAPE by failing to abide by its child find obligations because it should have proceeded with finding Student eligible for special education services by February 2020?

Student has a history of physical ailments, as well as mental health issues, including depression, anxiety, and suicidal ideation, that date back some years. On November 30, 2020, when Student was at the out-of-state residential treatment facility, Mother made a request for special education consideration for Student. After Student returned to the District, DCPS started the initial eligibility evaluation process and, on May 11, 2021, determined Student eligible for special education under the IDEA Emotional Disturbance (ED) disability category. The Parents contend that under the IDEA's child find mandate, DCPS should have evaluated Student for special education much earlier. DCPS responds while it had knowledge of Student's social-emotional issues, which entitled him/her to accommodations under Section 504 of the Rehabilitation Act of 1973, the District did not have cause to suspect that Student might have an IDEA disability until Mother requested consideration in November 2020. The Parents have the burden of persuasion on this claim.

As U.S. District Judge Boasberg explained in *Davis v. District of Columbia*, 244 F. Supp. 3d 27 (D.D.C. 2017),

A school district must “evaluate a student who may have a disability and

who may require special education services.” D.C. Code § 38–2561.02(a)(2) (emphases added). This duty applies to any “child suspected of having a disability who may need special education.” 5–E D.C. Mun. Regs. § 3004.1(a) (emphases added); see 34 C.F.R. § 300.111(c)(1) (extending duty to “[c]hildren who are suspected of being a child with a disability ... and in need of special education, even though they are advancing from grade to grade”). Courts in this Circuit have thus repeatedly held that school districts are required to complete an evaluation process “as soon as a student is identified as a potential candidate for special education services.”

*Davis, supra*, 244 F. Supp. 3d at 49, *citing N.G. v. District of Columbia*, 556 F.Supp.2d 11, 25 (D.D.C. 2008) (emphasis in original). “The ‘child find’ duty extends even to ‘[c]hildren who are suspected of being a child with a disability . . . even though they are advancing from grade to grade.’ 34 C.F.R. § 300.111(c)(1).” *Sch. Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928, 941 (E.D.Va. 2010). “School districts may not ignore disabled students’ needs, nor may they await parental demands before providing special instruction.” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).

Petitioners’ expert, Special Education Consultant, opined in his testimony that under the IDEA’s child find mandate, DCPS should have determined Student eligible for special education by February 2020. His opinion was based on Student’s extensive history of self-harm, hospitalizations for suicidal ideation, shutting down in school and class absenteeism, especially in 2019. DCPS’ expert, School Psychologist, disagreed.

She noted first that prior to November 2020, Student had not been referred by anyone for special education. School Psychologist agreed that Student had some “severe stumbles” before November 2020, but opined that it was best practice not to jump into special education because a child is in a mental health crisis. School Psychologist testified that before referring a child for special education, a school district should try interventions, including Section 504 accommodations.

While both experts were credible witnesses, I found Special Education Consultant’s opinion more persuasive. School Psychologist testified accurately that the psychologists engaged by the Parents in 2019, Clinical Psychologist and Neuropsychologist, both recommended Section 504 Plan accommodations for Student and neither proposed consideration for special education. But Neuropsychologist did report that Student was at notable risk for becoming emotionally overwhelmed in response to stress, including routine educational stress. Moreover, DCPS School staff were aware that Student was hospitalized for a depressive episode and missed school for about four weeks in October 2018. In March 2019, Student experienced extreme anxiety about returning to DCPS School and had taken an overdose of Motrin, leading to another lengthy hospitalization and outpatient therapy. Mother’s numerous emails to DCPS School staff in the spring and fall of 2019, informed the educators of Student’s reported extreme school-based anxiety and loss of self-confidence. I find that DCPS’

knowledge of Student's hospitalizations and outpatient treatment for anxiety and depression in the 2018-2019 school year and his/her school absences, as well as the email communications from Mother, gave the District reason to suspect, at latest by the start of the 2019-2020 school year, that Student may have been a child with an IDEA disability who may have required special education services. *See, e.g., Horne v. Potomac Preparatory P.C.S.*, 209 F. Supp. 3d 146, 158 (D.D.C. 2016) (Student's suicide attempt put charter school on notice that he was potentially suffering from a disability that would qualify him for services under the IDEA); *Integrated Design and Elec. Acad. Pub. Charter Sch. v. McKinley*, 570 F.Supp.2d 28, 35 (D.D.C.2008) (holding that student's suicide attempt at school triggered child find obligation). I conclude that DCPS' failure to evaluate Student for special education by the fall of 2019 violated its child find obligations.

DCPS' failure to timely conduct an initial eligibility evaluation for Student was a procedural violation of the IDEA. *See, e.g., Simms v. District of Columbia*, No. 17-CV-970 (JDB/GMH), 2018 WL 4761625, at \*12 (D.D.C. July 26, 2018), *report and recommendation adopted*, No. CV 17-970 (JDB)(GMH), 2018 WL 5044245 (D.D.C. Sept. 28, 2018). Procedural violations may only be deemed a denial of FAPE 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 CFR § 300.513(a)(2).

When DCPS did evaluate Student in spring 2021, Student was determined eligible for special education under the ED disability and the IEP team decided that he/she needed a full-time separate day school program. Educational Consultant opined credibly that Student should have already been determined eligible for special education by February 2020. It follows that if DCPS had met its child find obligation, the District should have convened an IEP team to develop Student's initial IEP by the end of March 2020. *See* 34 C.F.R. § 300.323(c)(1) (Meeting to develop an IEP must be conducted within 30 days of a determination that the child needs special education and related services.) Here, Student's initial IEP was not completed until June 2, 2021. By not starting Student's eligibility evaluation until February 2021, DCPS delayed Student's receiving special education services by over one year. I find that this procedural violation must be deemed a denial of FAPE because it impeded Student's right to a free appropriate public education.

2. Did DCPS deny Student a FAPE by failing to provide him/her with an appropriate IEP and corresponding educational placement capable of addressing his/her needs and providing him/her with an environment in which he/she can

access the learning environment from February 2020 through the present (and at all times in between)?

3. Did DCPS deny Student a FAPE through the development of the June 2, 2021 IEP because: a.) The IEP contains goals that are vague, unmeasurable, and not all are appropriate or tailored to Student's individual needs; and/or b.) The baselines are not goal specific and do not allow for comparison of Student's progress on his/her IEP goals as needed; and/or c.) the IEP fails to adequately describe Student's educational and programming needs and/or the type of placement that would be appropriate to meet his/her needs; and/or d.) the IEP requires an inappropriate level of behavioral support services (too much) based on the unique needs of the student at the time?

The Parents next allege that DCPS failed to offer Student an appropriate IEP beginning in February 2020. As explained above in this decision, I have found that DCPS' failure to ensure that an initial IEP was developed for Student by April 2020 was a denial of FAPE.

With regard to the appropriateness of the initial June 2, 2021 IEP, the CIEP team decided that Student required a full-time special education placement in a separate day school to address his/her social-emotional needs. The Parents complain that the IEP annual goals and baselines were not appropriate and that the IEP did not adequately identify Student's educational and programming needs or what would be an appropriate educational placement. These claims lack merit. Petitioners' expert, Educational Consultant participated in the June 2, 2021 IEP team meeting and he opined that except for the provision for Behavioral Support related services, which the Parents did not

think Student needed, there was no disagreement about the IEP content. Educational Consultant opined, specifically, that the initial IEP goals were appropriate.

The June 2, 2021 IEP provided for Student to receive 240 minutes per month of Behavioral Support Services. The Parents contend that the IEP should have omitted Behavioral Support Services because Student was receiving psychological therapy from outside providers retained by the Parents. IEPs must include “related services,” including Behavioral Support Services, as may be required to assist a child with a disability to benefit from special education. *See* 34 C.F.R. §§ 300.34(a), 300.320(a)(4). The IDEA requires that the IEP team consider the use of positive behavioral interventions and supports when a child’s behavior impedes the child’s learning. *See* 34 CFR § 300.324(a)(2)(i).

School Social Worker testified that Behavioral Support Services for Student were appropriate in the initial IEP because Student’s challenging behaviors in the prior school, Private School 1, could have precluded him/her from attending in class effectively. In light of Student’s documented school-based anxiety, even after his/her enrollment at Private School 1, I find that the CIEP team’s decision that Behavioral Support Services were appropriate in Student’s IEP is entitled to deference from the hearing officer. *See T.T. v. District of Columbia*, 2007 WL 2111032, 9 (D.D.C. 2007) (DCPS personnel had special education expertise requiring deference.) I conclude that



DCPS has met its burden of persuasion that the June 2, 2021 IEP was appropriate for Student.

4. Did DCPS and/or OSSE deny Student a FAPE by failing to provide the student with an educational placement or location of services prior to the beginning of the 2021-2022 school year, justifying the Parents' unilateral placements of their child at PRIVATE SCHOOL 1 (September 2021-December 2021) and at PRIVATE SCHOOL 2 (January 2022-June 2022) for the 2021-2022 school year?

5. Did DCPS and/or OSSE deny Student a FAPE through the assignment of the student to NONPUBLIC SCHOOL B on September 15, 2021 because a.) The program and placement was not offered prior to the beginning of the school year; and/or b.) A prior written notice placing the student at any placement or location of services was never issued; c.) Even if the program and placement had been offered timely and appropriately, the placement is not appropriate for Student's unique individual needs and could not offer him/her a FAPE when it was offered; d.) The parents were not afforded appropriate participation in the placement decision; and/or; e.) The process by which Student was assigned to Nonpublic School B was in violation of OSSE's own policies regarding parent and student involvement in the admissions process?

Petitioners' final claims concern the alleged failure of DCPS or OSSE to make an appropriate school location assignment to implement Student's June 2, 2021 IEP requirement for a full-time special education placement in a separate day school. Under OSSE's policies and procedures, after the CIEP team decided Student required a separate day school, it fell to OSSE to make a nonpublic school location assignment for Student. OSSE had a duty to offer Student an appropriate school in time for the beginning of the 2021-2022 school year. *See Leggett v. Dist. of Columbia*, 793 F.3d 59,

70 (D.C. Cir. 2015). Per the June 2, 2021 IEP, an “appropriate” placement would be a separate day school reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances. *Id. at 72; Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

OSSE initially recommended to the CIEP team that Student did not need a nonpublic placement. When the IEP team confirmed its decision that Student required a separate day school, OSSE promptly reached out to a number of its approved nonpublic schools to request consideration of admission for Student. Apparently Student was a challenge for OSSE to place because of his/her profile as an academically superior student with a history of disability-based behavioral challenges.

Only a single school on OSSE’s list, Nonpublic School B, accepted Student. The acceptance was issued based on the paperwork forwarded by OSSE, without an admissions interview. However, after meetings with Mother and with Student, Nonpublic School B’s Education Director determined that Student was not a “fit” for their program, even temporarily. I conclude that OSSE did not meet its burden of persuasion that its proposed placement at Nonpublic School B was appropriate for Student. Nor did OSSE offer Student any other placement location before the start of the 2021-2022 school year. I find that OSSE’s failure to offer Student an appropriate placement for the 2021-2022 school year was a denial of FAPE.

Remedies

For their principal claim for relief in this case, the Parents seek reimbursement from the Respondents for their unilateral placement of Student at Private School 1 from January 2021 through December 2022 and at Private School 2 from January 2022 through the end of the 2021-2022 school year. As U.S. District Judge Rosemary M. Collyer, explained in *R.B. v. District of Columbia*, No. CV 18-662, 2019 WL 4750410, (D.D.C. Sept. 30, 2019), the IDEA authorizes reimbursement to parents for private-school expenses under certain circumstances:

School districts must “reimburse parents for their private-school expenses if[:] (1) school officials failed to offer the child a [FAPE] in a public or private school; (2) the private-school placement chosen by the parents was otherwise ‘proper under the [IDEA]’; and (3) the equities weigh in favor of reimbursement.” *Leggett v. District of Columbia*, 793 F.3d 59, 66-67 (D.C. Cir. 2015) (citing *Florence Cty. Sch. Dist. Four v. Carter By and Through Carter*, 510 U.S. 7, 15-16 (1993)).

*R.B.*, *supra* at 7. See, also, *School Committee of Town of Burlington v. Department of Education of Massachusetts*, 471 U.S. 359, 369, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985).

This is often cited as the *Burlington Carter* test.

Applying the *Burlington Carter* test to this case, the first factor for deciding whether DCPS or OSSE must reimburse the Parents for Student’s Private School 1 and Private School 2 expenses is whether the Respondents failed to offer Student a FAPE in a public or private school. In this decision, I have determined that DCPS denied Student

a FAPE by not determining Student eligible for special education by February 2020 and not developing an initial IEP by the end of March 2020. DCPS failed to offer Student a FAPE in any school prior to developing the June 2, 2021 IEP. For its part OSSE denied Student a FAPE by failing to offer an appropriate separate day school location for the 2021-2022 school year. If the remaining *Burlington Carter* factors are met, the Parents are entitled to reimbursement from DCPS for their private school expenses for Student from January 2021 through the end of the 2020-2021 school year and to reimbursement from OSSE for the 2021-2022 school year. (The Parents do not seek reimbursement for their RTC private school expenses.)

The other two requirements for tuition reimbursement, pronounced by the D.C. Circuit in the *Leggett* decision, are that the private schools chosen by the parents, Private School 1 and Private School 2, were proper and that the parents did not otherwise act unreasonably. Analogizing to the standard for IEP appropriateness from the U.S. Supreme Court's decision in *Bd. of Ed. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176 (1982), the D.C. Circuit held in *Leggett* that for the private school chosen by the parents to be proper, it need be "reasonably calculated to enable the child to receive educational benefits." *Leggett, supra*, at 71. After the U.S. Supreme Court's *Endrew F.* decision, the *Leggett* "proper" standard must be updated to require that the private school chosen by the parents was "reasonably

calculated to enable [the] child to make progress appropriate in light of the child's circumstances." *See Andrew F.*, 137 S.Ct. at 999; *L.H. v. Hamilton Cty. Dep't of Educ.*, 900 F.3d 779, 791.

The Parents unilaterally placed Student at Private School 1 from January to June 2021 and from September through December 2021. Private School 1 is a very small private school for students in grades 6 through 12. The school is accredited by the Association of Independent Maryland Schools (AIMS). The tuition is about \$40,000 per year. All students are on the diploma track. Many, but not all, students at Private School 1 have educational impairments such as high functioning Autism Spectrum Disorder, Attention Deficit-Hyperactivity Disorder, Learning Disabilities and emotional challenges. In Student's grade, there were usually 8-12 students in a class, taught by one teacher. Possible negatives are that at Private School 1, teachers are not required to have post-bachelor level degrees or special education certifications. Also, Private School 1 does not hold a COA from OSSE. However, a parental placement may be found to be appropriate by a hearing officer even if it does not meet the standards that apply to education provided by OSSE or DCPS. *See* 34 C.F.R. § 300.148(c).

The hearing evidence established that Student became much more independent during the period he/she attended Private School 1 from January 2021 through December 2021. At Private School 1, Student made a lot of progress getting work done

and asking for help when needed. I find that the Parents have established that their choice of Private School 1 for their child was reasonably calculated to enable Student to make progress appropriate in light of his/her circumstance. That is, Private School 1 was proper for Student.

Private School 2 is a private day school in suburban Maryland serving students who have learning differences. The school offers a college preparatory program with multiple advanced placement courses. It is accredited by the AIMS. The yearly cost of the school is around 40 to 50 thousand dollars. Student has attended Private School 2 since January 2022. He/she has acclimated very quickly to the school and has been a model student. Since being at Private School 2, Student has been consistent in attending classes, gets his/her homework done and has exhibited no behavioral concerns. Like Private School 1, Private School 2 does not hold an OSSE COA, but as noted above, OSSE approval is not required for unilateral parental placements. I find that the Parents have established that their choice of Private School 2 for Student was also proper under the *Leggett* standard.

Lastly, the *Leggett* decision requires that the “equities weigh in favor of reimbursement — that is, the parents did not otherwise act ‘unreasonabl[y].” *Leggett*, 793 F.3d at 67. Reimbursement may be “reduced or denied” if the parents failed to notify school officials of their intent to withdraw the child or otherwise acted

unreasonably. *Leggett, supra*, 793 F.3d at 67. On January 13, 2021, Petitioners' attorneys wrote DCPS by email to give notice that the Parents intended to unilaterally place Student at Private School 1 and intended to pursue reimbursement from DCPS because DCPS had allegedly failed to provide Student with FAPE. On August 11, 2021, Petitioners' Counsel provided written notice to DCPS and OSSE that the Parents did not consider that OSSE had made referrals to appropriate nonpublic schools for Student and that the Parents intended to unilaterally place Student at one of three identified private schools for the 2021-2022 school year and would seek reimbursement from DCPS or OSSE. On December 18, 2021, Petitioners' Counsel provided written notice to DCPS that the Parents intended to place Student unilaterally at Private School 2 within 10 days of receipt of the letter, unless DCPS offered a FAPE consistent with Student's needs.

I find that the Parents properly notified DCPS and OSSE officials of their intent to seek agency reimbursement for their unilateral placement of Student at Private School 1 for parts of the 2020-2021 and 2021-2022 school years and at Private School 2 beginning January 2022. Nor has DCPS or OSSE made a showing that the Parents otherwise acted unreasonably with regard to these unilateral private school placements. I conclude that the Parents are entitled to reimbursement from DCPS for covered private school expenses for Student at Private School 1 from January 2021 through the

end of the 2020-2021 school year and from OSSE for expenses for Student at Private School 1 and Private School 2 for the 2021-2022 school year.

The Parents also seek reimbursement from DCPS for their payments to LPC who provided Student social/emotional support and therapy during the step-down from Residential Treatment Center (RTC) to home. LPC is a Licensed Professional Counselor whose services include assisting families with children transitioning out of residential treatment facilities. LPC is also a therapist and she still provides cognitive behavioral therapy services to Student on a regular schedule.

Normally, parents are not entitled to reimbursement for privately obtained psychological or counseling services. The IDEA provides for IEP related services, as may be required to assist a child with a disability to benefit from special education. *See* 34 C.F.R. § 300.34(a). Related services could include Behavioral Support Services, including counseling services and social work services. However, the hearing evidence did not establish that to benefit from special education, Student required step-down transition counseling or cognitive behavioral therapy. I find that the Parents are not entitled to reimbursement from DCPS or OSSE for their expenses for LPC's services.

#### Compensatory Education

The Parents seek an award of compensatory education for DCPS' failure to determine Student eligible for special education between February 2020 and May 2021.



[A]n award of compensatory education must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.) The compensatory education inquiry requires “figuring out both [(1)] what position a student would be in absent a FAPE denial and [(2)] how to get the student to that position.” *See Butler v. District of Columbia*, 275 F. Supp. 3d 1, 6 (D.D.C. 2017). In this decision, I have determined, *inter alia*, that DCPS denied Student a FAPE by not conducting an initial eligibility evaluation and ensuring that Student had an appropriate IEP by April 1, 2020.

Here, the evidence does not establish that Student would likely be in a different position if DCPS had offered him/her an IEP by April 2020. That is because from April 19, 2020 to May 4, 2020, Student was hospitalized in the District out of concern for self-destructive behaviors and suicidal ideation. Upon Student’s discharge from the psychiatric hospital, the Parents immediately placed him/her at RTC. Student remained at the residential center until December 2020. The Parents then unilaterally placed Student at Private School 1. The Parents will be awarded reimbursement from DCPS for their placement of Student at Private School 1 from January 2021 through the end of the school year. (The Parents do not seek reimbursement for their RTC expenses.) In these

circumstances, I find that no compensatory education is warranted because the evidence does not establish that additional educational benefits would likely have accrued, had DCPS timely developed an IEP for Student by April 1, 2020.

**ORDER**

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

ORDERED:

1. Upon receipt of documentation as may be reasonably required, DCPS shall promptly reimburse the Parents for covered expenses, including transportation, incurred for their unilateral placement of Student at Private School 1 for the period January 2021 through the end of the 2020-2021 school year;
2. Upon receipt of documentation as may be reasonably required, OSSE shall promptly reimburse the Parents for covered expenses, including transportation, incurred for their unilateral placement of Student at Private School 1 and at Private School 2 during the 2021-2022 school year and
3. All other relief requested by the Petitioners herein is denied.

Date: October 27, 2022

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

**NOTICE OF RIGHT TO APPEAL**

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

cc: Counsel of Record  
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