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OSSE
Office of Dispute Resolution
October 01, 2025

Confidential

<p>Parents on Behalf of Student, ¹</p> <p>Petitioners,</p> <p>v.</p> <p>District of Columbia Public Schools “DCPS” (Local Education Agency “LEA”)</p> <p>Respondent.</p> <p>Case # 2025-0119</p> <p>Date Issued: October 1, 2025</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Dates:</p> <p>September 8, 2025 September 11, 2025 September 12, 2025</p> <p>Counsel for Each Party listed in Appendix A</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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¹ Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

The hearing was conducted, and this decision was made in accordance with the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17, the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter 5-A30.

BACKGROUND AND PROCEDURAL HISTORY:

The student who is the subject of this due process hearing (“the Student”) and the Student’s parents (“Petitioners”) are residents of the District of Columbia. The District of Columbia Public Schools (“DCPS”) serves as the Student’s local education agency (“LEA”). The Student has been found eligible for special education and related services pursuant to IDEA, classified with a disability of multiple disabilities (“MD”), including specific learning disability (“SLD”) and other health impairment (“OHI”).

DCPS developed an individualized education program (“IEP”) for the Student on April 8, 2024, during school year (“SY”) 2023-2024, while the Student was attending his/her neighborhood DCPS school (“School A”). Petitioners unilaterally placed the Student in a non-public special education day school (“School B”) for SY 2024-2025 and filed a due process complaint (“DPC”) on December 23, 2024, seeking reimbursement for the Student’s attendance at School B. Petitioners and DCPS reached a settlement agreement on February 20, 2025. Pursuant to the settlement agreement, the parties convened an IEP meeting on May 2, 2025, and developed an IEP for the Student. DCPS proposed to implement the Student’s May 2, 2025, IEP at the Student’s neighborhood DCPS school (“School C”).

Petitioners filed the current DPC on July 1, 2025, alleging that DCPS denied the Student a free appropriate public education (“FAPE”), challenging the appropriateness of the May 2, 2025, IEP.² Petitioners maintained the Student at School B for SY 2025-2026, and seek an order that DCPS reimburse them for the Student’s attendance at School B for that school year. They also seek the Student’s prospective placement at School B for the remainder of SY 2025-2026.

LEA Response to the DPC:

DCPS filed a response to the DPC on July 21, 2025. In its response, DCPS stated, inter alia, the following:

On May 2, 2025, the IEP team provided the Student with an IEP that was reasonably calculated to provide her/him with meaningful educational benefit in light of the Student’s unique circumstances. The IEP provided a placement of 20 hours per week of specialized instruction outside general education, 1.5 hours per month of behavior support services (“BSS”), 3 hours per month of occupational therapy (“OT”), 30 minutes per month of BSS consultation, 30 minutes per month of OT consultation, and 30 minutes per month of special education (“SPED”) consultation. Additionally, the IEP contains an extensive list of other classroom aides and services to support

² Petitioners also challenged the appropriateness of the Student’s placement at School C, and alleged that DCPS failed to allow their educational consultant to observe School C.

the Student. DCPS made a FAPE available and provided the Student's parents the opportunity to participate fully in the IEP process, and they understood the IEP and placement being proposed.

On May 23, 2025, DCPS provided the Student's parents with a location of service ("LOS") letter notifying them that the IEP and placement would be implemented at School C in the specific learning support ("SLS") classroom for SY2025-2026. On June 23, 2025, DCPS held a meeting with the parents and their advocate at School C to assist in transitioning the Student to the new LOS. The parents made an informed decision and rejected the offer of a FAPE, which DCPS had made available to them, as they had already secured ongoing placement for the Student in a private school.

There has been no denial of FAPE related to observations or visits to School C. The parents requested a visit during the last week of school, but DCPS was unable to accommodate this request due to the short notice and the end-of-year activities. They were offered the opportunity to visit the school after the last week to see the program, but they declined. The parents were also welcome to visit School C and observe the program before the start of the school year, and they continue to be welcome to visit and observe. They have enough information to make an informed decision about School C, the IEP, and placement.

DCPS considers that the advocate/investigator is representing the parents in this case and/or that the request is for discovery purposes. This is very similar to issues in other cases where orders have denied observation requests. The parents had the chance to visit School C before the start of SY 2025-2026. IDEA does not require an observation or visit, and the investigator/advocate does not meet the definition of "designee" under D.C. law.

On July 17, 2025, Petitioners notified DCPS that they were enrolling the Student at School B for SY2025-2026. They failed to provide sufficient facts to demonstrate that School B will deliver the required special education and related services in accordance with the IEP at no cost to the parents, meeting the standards set by OSSE and DCPS, particularly regarding the highly qualified teacher requirement. Additionally, due to the results of the OSSE corrective action plan, School C is neither proper nor appropriate. DCPS has not denied the Student a FAPE, and this matter should be dismissed.

Resolution Meeting and Pre-Hearing Conference:

Petitioner and DCPS participated in a resolution meeting on July 16, 2025. The DPC was filed on July 1, 2025. The parties did not mutually agree to shorten the 30-day resolution period. The 45-day period began on August 1, 2025, and ended, and the HOD was originally due on September 14, 2025. The parties filed a motion to continue and extend the HOD, and the HOD is now due on October 1, 2025.

The undersigned impartial hearing officer ("IHO") conducted a pre-hearing conference ("PHC") on July 23, 2025, and issued a pre-hearing order ("PHO") on August 4, 2025, and a revised PHO on August 5, 2025, outlining, inter alia, the issues to be adjudicated.

ISSUES:³

The issues adjudicated are:

1. Did DCPS deny the Student a FAPE by failing to provide the Student an appropriate IEP and placement for SY 2025-26?
2. Did DCPS deny the Student a FAPE by failing to allow the Student's parents, as well as the family's educational consultant, to observe the SLS classroom at School C?
3. Is School B an appropriate placement?

DUE PROCESS HEARING:

The Due Process Hearing was held on September 8, 2025, September 11, 2025, and September 12, 2025, using a video teleconference on the Microsoft Teams platform.

RELEVANT EVIDENCE CONSIDERED:

The IHO considered the testimony of witnesses⁴ and the documents submitted in each party's disclosures (Petitioners' Exhibits 1 through 49, Respondent's Exhibits 1 through 27, which were admitted into the record and are listed in Appendix 2.

SUMMARY OF DECISION:

Once Petitioners presented a prima facie case on issue #1, Respondent held the burden of persuasion on that issue. Petitioners held the burden of persuasion on all other issues. Respondent did not sustain the burden of persuasion by a preponderance of the evidence on issue #1. Petitioners did not sustain the burden of persuasion on issues #2 and #3. The IHO dismissed the Petitioners' claim regarding issue #2. The IHO ordered DCPS to reimburse Petitioners for the Student's attendance at School B for part of SY 2025-2026, to amend the Student's IEP to provide all instruction outside general education, and to propose an appropriate placement for the Student for the remainder of SY 2025-2026.

³ The IHO restated the issues from the PHO at the outset of the due process hearing, and the parties agreed that these were the issues to be adjudicated.

⁴ Petitioner presented four witnesses: (1) Petitioners' educational consultant who testified as an expert; (2) an administrator of School B who testified as an expert; (3) the Student's mother, and (4) the Student's father (Petitioners). DCPS presented six witnesses, all of whom testified as experts: (1) a DCPS occupational therapist; (2) the DCPS placement monitor for School B; (3) the assistant principal of the School C, (4) a DCPS social worker; (5) a manager of the DCPS centralized IEP team and (6) a DCPS LEA representative who is a special educator. The IHO found the witnesses credible unless noted otherwise in the conclusions of law. Any material inconsistencies in the testimony of witnesses identified by the IHO are discussed in the conclusions of law.

FINDINGS OF FACT:⁵

1. The Student and his/her parents, Petitioners, are residents of the District of Columbia. DCPS serves as the Student's LEA. The Student has been found eligible for special education and related services pursuant to IDEA, classified with an MD disability classification, including SLD OHI. (Mother's testimony, Respondent's Exhibit 17)
2. During the 2023-2024 school year, the Student attended School A, her or his neighborhood DCPS school, and had an IEP with special education services under the SLD classification, with impairments in basic reading, reading fluency, reading comprehension, and written expression. The Student received the following services outside the general education setting: 2.5 hours of reading instruction per week, 1 hour of writing instruction per week, and 90 minutes of OT per month. In the general education setting, the Student received 1 hour of writing instruction weekly and 30 minutes of BSS per month. The Student also received 30 minutes of BSS consultation services each month. Additionally, 30 minutes per day of specialized reading and math instruction were provided through the extended school year ("ESY") program. (Petitioners' Exhibit 10, Respondent's Exhibit 8)
3. In December 2023, Petitioners engaged an educational consultant to help them with decisions related to the Student's educational programming. On January 17, 2024, the consultant completed a diagnostic educational evaluation of the Student to assess the Student's academic and executive functioning skills. She found that the Student's nonverbal IQ fell in the Average range, as did his/her receptive vocabulary. However, on academic achievement testing, the Student's scores ranged from Low Average to Average in reading and written language/spelling, and were Average in math. (Witness 1's testimony, Petitioners' Exhibit 6)
4. Petitioners also engaged an independent psychologist who coordinated testing of the Student with the educational advocate. In December 2023 and January 2024, the psychologist assessed the Student's cognitive, academic achievement, and behavioral/attention/executive functioning and diagnosed the Student with Attention-Deficit Hyperactivity Disorder ("ADHD"), specific learning impairments in reading and written expression, and provided a list of recommendations in each area of weakness. The psychologist recommended that the Student be reclassified as a student with OHI, with additional objectives focusing on executive functioning and math problem-solving skills. (Petitioners' Exhibit 7)
5. The educational consultant concluded that the Student's deficits in attention and executive functioning and learning disabilities affected the Student's performance across the curriculum, and recommended a more intensive school program than the Student was receiving at School A, with smaller classes and specialized instruction across the school

⁵ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained or the PDF page number of the entire disclosure document. When citing an exhibit that has been submitted by more than one party separately, the Hearing Officer may only cite one party's exhibit.

day. Specifically, it was recommended that the Student attend School B and two other schools, which she suggested all used evidence-based interventions to support academic skill development and offered support for attention and executive functioning in all classes throughout the school day to assist the Student in regulating these areas and becoming as independent as possible. Petitioners provided DCPS the independent evaluation reports (“IEE”) conducted by their educational consultant and a psychologist, which DCPS reviewed in April 2024. (Witness 1’s testimony, Petitioners’ Exhibits 6, 11)

6. On April 12, 2024, DCPS completed its OT evaluation of the Student. On the Beery-Buktenica Developmental Test of Visual-Motor Integration, 6th Edition (“Beery VMI”), the Student scored in the Below Average range on the Visual-Motor Integration and Visual Perception subtests and in the Very Low range on the Motor Coordination subtest. The Student also scored in the Below Average range on another measure of Fine Motor Integration. The school form of the Sensory Processing Measure, 2nd Edition (“SPM-2”), was completed by the Student’s teachers, with scores indicating Severe Difficulties in visual processing, hearing/auditory processing, touch/tactile processing, and body awareness, with a moderate impact on planning/ideas and social participation in the school setting. The evaluator concluded that the Student’s difficulties with visual processing, hearing/auditory processing, touch/tactile processing, and body awareness have a moderate impact on his/her planning/ideas and social participation. She observed that the Student occasionally fails to perform consistently in daily tasks, solve problems effectively, complete tasks with multiple steps, and replicate work from a finished model. The Student also frequently struggles to keep his/her workspace organized, takes longer than others to complete necessary tasks, and has difficulty judging personal space, often talking too close or standing too close to others. (Respondent’s Exhibit 10)
7. DCPS prepared a draft IEP dated April 9, 2024, reviewed the Petitioners’ IEE in a report dated April 12, 2024, that included classroom observations and an analysis of recent data, and prepared an evaluation summary report dated April 24, 2024. The IEE evaluator concluded that the Student was capable of responding appropriately to interventions and continued to be eligible for services as a student with an SLD in reading and writing, and recommended the Student also be found eligible under OHI. (Respondent’s Exhibits 9, 11, 12)
8. DCPS held another IEP meeting with Petitioners on July 8, 2024, and finally amended the Student’s IEP on August 6, 2024, to include the following services outside the general education setting: 2.5 hours per week of reading instruction, 2.5 hours per week of math instruction, 1.5 hours per week of writing instruction, 1.5 hours per month of OT, and 1.5 hours of BSS. In the general education setting, the Student was to receive 5 hours per week of reading instruction, 5 hours per week of math instruction, 1 hour per week of writing instruction, and 1.5 hours per month of OT. The Student was also to receive 30 minutes per month each of BSS and OT consultation services. The IEP included ESY services. DCPS proposed to implement the Student’s IEP at School C for SY 2024-2025. (Respondent’s Exhibits 13)
9. Petitioners disagreed with the IEP and placement that DCPS proposed, served notice on DCPS of their intent to enroll the Student at School B for SY 2024-2025 and requested

public funding for the Student's placement at School B. DCPS declined to fund the Student's placement at School B, maintaining that a FAPE had been made available to the Student. Petitioners unilaterally placed the Student at School B, for SY 2024-2025, and withdrew the Student from DCPS in August 2024. (Respondent's Exhibit 14)

10. The Student's mother visited School C in November 2024, accompanied by her educational consultant, and they submitted questions to DCPS after the visit that went unanswered. She was told that the Student would be in general education for music, art, and physical education. She was concerned with the Student being in a general education setting for those classes and was concerned that the Student would have difficulty handling transitions and the class size. (Mother's testimony, Witness 1's testimony)
11. Petitioners filed a DPC against DCPS on December 23, 2024, seeking reimbursement for the Student's attendance at School B. Petitioners and DCPS reached a settlement agreement on February 20, 2025. Pursuant to the settlement agreement, the parties convened an IEP meeting on May 2, 2025, and developed an IEP for the Student. DCPS proposed to implement the Student's May 2, 2025, IEP at School C, the Student's neighborhood DCPS school. (Respondent's Exhibits 2, 3, 4, 17, 20)
12. School A provided DCPS academic data and documentation in early April of 2025. On May 2, 2025, DCPS convened an annual IEP review meeting. Petitioners attended the May 2, 2025, IEP meeting along with their educational consultant, attorney, and representatives from School B. DCPS agreed to make changes to the present levels of performance, goals, classroom aids and services, and accommodations based on the input and documentation provided by Petitioners, their consultant and School B. Upon discussion of services, DCPS proposed 20 hours per week of self-contained specialized instruction, with which Petitioners and their representatives at the meeting disagreed. However, they agreed with all other parts of the IEP, including the related services, goals, and the list of other classroom aides and services and classroom and testing accommodations to support the Student. Although neither Petitioners nor their representatives asked for a specific number of hours of specialized instruction beyond 20 hours per week, there was no discussion during the meeting of the specific courses in which the Student would be provided the specialized instruction beyond stating that the instruction would support the Student in "all academic areas." (Witness 1's testimony, Mother's testimony, Respondent's Exhibits 17, 18)
13. The May 2, 2025, IEP prescribed the following services outside of general education: 20 hours per week of specialized instruction, 3 hours per month of OT, and 1.5 hours of BSS. The IEP also prescribed 30 minutes per week of specialized instruction, consultation services, and 30 minutes per month each of BSS and OT consultation. The IEP did not include ESY services. (Respondent's Exhibit 17)
14. The May 2, 2025, IEP noted the following least restrictive environment for the Student of 43.65 % of the school week would be inside general education, and 56.35% would be outside general education:

Hours/Minutes in the School Day: 7.5	Days per week in session: 5
Total Hour/Minutes in a School Week: 37.5	
Service Hours/Minutes Inside General Education: 16.37	Percent Inside General Education: 43.65%
Service Hours/Minutes Outside General Education: 21.13	Percent Outside General Education: 56.35%

(Petitioner’s Exhibit 17-66)

15. DCPS representatives who attended the Student’s May 2, 2025, meeting included some who observed and evaluated the Student at School B, such as a social worker, an occupational therapist, and a special educator. They believed that, based on their observations and information obtained from School B, the Student would benefit from interaction with non-disabled peers and agreed with the level of specialized instruction proposed in the May 2, 2025, IEP. (Testimony of Witnesses 3, 6, 8, Respondent’s Exhibits 15, 16, 17-1, 17-2)
16. On May 23, 2025, DCPS issued a LOS letter placing the Student in the SLS classroom at School C for SY 2025-2026. (Respondent’s Exhibit 20)
17. On May 30, 2025, Petitioners requested an opportunity to visit School C and proposed several dates in June 2025 to better understand the proposed program. The School C team spoke with the Petitioners’ consultant and conveyed that, due to activities at the end of the school year, they could not facilitate a tour on the requested dates, but were available during the summer. On June 9, 2025, DCPS contacted Petitioners to schedule a transition meeting with School C, which was held on June 13, 2025. Petitioners’ consultant also contacted DCPS about observation, but her request was denied. DCPS issued a prior written notice (“PWN”) on June 23, 2025, answering questions that were posed about School C’s program by Petitioners’ consultant. (Petitioners’ Exhibits 35, 36, Respondent’s Exhibit 21)
18. At School C, the Student's core academics would be in the SLS self-contained special education setting with approximately ten students, one teacher, and a teacher assistant for English, math, social studies, and science. The Student would take elective courses such as music, art, and physical education in a general education setting with as many as twenty students and one teacher. The Student would have lunch and recess with non-disabled peers. (Witness 5’s testimony, Respondent’s Exhibit 21)
19. The DCPS curriculum standards for music, art, and physical education require students to use strong reading and writing skills and master vocabulary. For example, the music standards specify that students listen to and analyze music, describe larger musical forms such as canon, fugue, suite, opera, and oratorio, analyze and compare the use of musical elements across different genres, styles, and cultures—focusing on tonality and intervals—and identify and explain specific musical elements like ostinato, form, sequence, repetition, and imitation while listening to musical examples. They are also expected to evaluate the quality of their own and others’ performances and compositions, providing constructive feedback for improvement. The visual arts standards require students to explore and understand the historical and cultural contexts of visual art, respond to, describe, analyze, and judge artworks. The physical education standards demand that students be physically

literate and apply knowledge of concepts, principles, strategies, and tactics related to movement and performance. (Witness 1's testimony, Petitioners' Exhibits 47, 48, 49)

20. Petitioners served DCPS a unilateral notice that they intended to place the Student at School B for SY 2025-2026 and seek DCPS funding. DCPS declined to fund the Student's placement at School B for SY 2025-2026. (Petitioners' Exhibit 42)
21. School B is a non-public day school that serves students with learning disabilities, ADHD, and executive functioning deficits. School B exclusively serves students with disabilities and holds a certificate of approval ("COA") from OSSE. There are 185 students in the division of School B that the Student attends. On average, the Student's classes at School B have approximately 6 to 8 students with one teacher. Some of the Student's classes, including physical education, include as many as 24 students. No specialized instruction or related services are provided to any School B students during lunch and recess. Most, but not all, of the individuals who instruct the Student at School B are either certified general education teachers or certified special education teachers. School B offers related services such as OT and speech-language therapy and has a social worker on staff. When they renewed the COA in 2023, there was an OSSE corrective plan in place because School B did not have certified licensed teachers. The corrective action plan required School B to submit proof of all teachers' and related service providers' licenses. (Witness 2's testimony, Witness 4's testimony, Respondent's Exhibit 25)
22. Decoding is an extreme weakness of the Student, which has improved since she/he has been attending School B. Due to the Student's learning disability, the Student requires intervention in all areas that involve reading fluency and writing. Although the Student has begun to use self-monitoring strategies to manage his/her focus and attention since attending School B, the Student continues to have attention and executive functioning deficits that require significant support and classes with low student-to-teacher ratios. The Student is making progress at School B because of the support being provided throughout the school day. (Witness 1's testimony, Witness 2's testimony, Petitioners' Exhibit 43)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c), Include an appropriate preschool, elementary school, or secondary school education in the State involved;
and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. West*, 546 U.S. 49, 126 S.Ct. 528 (2005). The burden of persuasion shall be met by a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii). DCPS held the burden of persuasion on issues #1, once Petitioners presented a prima facie case on that issue.⁶ Petitioners held the burden of persuasion on the remaining issues.

ISSUE 1: Did DCPS deny the Student a FAPE by failing to provide the Student an appropriate IEP and placement for SY 2025-26?

Conclusion: DCPS did not sustain the burden of persuasion by a preponderance of the evidence that the May 2, 2025, IEP and placement that it provided to the Student for SY 2025-2026 were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special education and related services that' are 'provided at public expense, under public supervision ...;' and that 'meet the standards of the State educational agency;' as well as 'conform[] with [each disabled student's] individualized education program.'" *Charles H. v. District of Columbia*, 2021 WL 2946127 (D.D.C. June 16, 2021) (quoting 20 U.S.C. § 1401(9)) (alterations in original).

⁶ DC Code § 38-2571.03 (6) provides:

(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

(i) 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. The burden of persuasion shall be met by a preponderance of the evidence.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement, provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

"Special education" is defined as "specially designed instruction, at no cost to parents, [that] meet[s] the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services," on the other hand, are defined as "such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." *Id.* § 1401(26)(A).

"Under [the] IDEA and its implementing regulations, students with disabilities ... are entitled to receive [a] FAPE through an Individualized Education Program (or IEP)." *Charles H.*, 2021 WL 2946127 (quoting 20 U.S.C. § 1401(9)(D)). An IEP is a written document that lays out how the student will obtain measurable annual goals and that mandates specific special education and related services that the student must receive. 20 U.S.C. § 1414(d)(1)(A)(i). It is created for each student by a special "IEP Team," consisting of the child's parents, at least one regular-education teacher, at least one special-education teacher, and other specified educational experts. *Id.* § 1414(d)(1)(B). An IEP is the main tool for ensuring that a student is provided a FAPE. See *Charles H.*, 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

The second substantive prong of the *Rowley* inquiry is whether the IEP developed was reasonably calculated to enable Student to make progress appropriate in light of Student's individual circumstances. In *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the "educational benefits" requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated into the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Andrew F.*, *supra*, 137 S. Ct. at 999–1000 (citations omitted).

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits."

The key inquiry regarding an IEP's substantive adequacy is whether taking account of what the

school knew or reasonably should have known of a student's needs at the time, the IEP offered was reasonably calculated to enable the specific student's progress...."Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra, 137 S. Ct. 988.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34 C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006)

"The IDEA requires that children with disabilities receive education in the regular classroom whenever possible" *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra, 137 S. Ct. at 999 (quoting *Rowley*, 458 U.S. at 202)

Pursuant to 34 C.F.R. § 300.323(a) ("At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.")

Under the IDEA, parents who unilaterally decide to place their disabled child in a private school without obtaining the consent of local school officials, "do so at their own financial risk." *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993) (quoting *Sch. Comm. of the Town of Burlington v. Dep't of Educ.*, 471 U.S. 359, 374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)). "As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise "proper under the Act"; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act "unreasonabl[y]." *Leggett v. District of Columbia*, 793 F.3d 59, 66–67 (D.C. Cir. 2015) (citing *Carter*, supra, 510 U.S. at 15–16, 114 S.Ct. 361; 20 U.S.C. § 1412(10)(C)(iii)(III)).

As stated above, pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits."

On May 2, 2025, DCPS convened an annual IEP review meeting that Petitioners attended along with their educational consultant, attorney, and representatives from School B. Petitioners and their representatives and the School B staff who participated agreed with all components of the IEP including the related services, goals, and the list of other classroom aides and services and classroom and testing accommodations. The only area of disagreement was the number of hours and the setting of specialized instruction.

DCPS proposed 20 hours per week of self-contained specialized instruction, with which Petitioners and their representatives at the meeting disagreed. Although neither Petitioners nor their representatives asked for a specific number of hours of specialized instruction beyond 20 hours per week, there was no discussion during the meeting of the specific courses in which the Student would

be provided the specialized instruction beyond stating that the instruction would support the Student in “all academic areas.”

DCPS proposed to implement the Student’s IEP in the SLS program at School C. At School C, the Student's core academics would be in the SLS self-contained special education setting with approximately ten students, one teacher, and a teacher assistant for English, math, social studies, and science. The Student would take elective courses such as music, art, and physical education in a general education setting with as many as twenty students and one teacher. The Student would have lunch and recess with non-disabled peers.

Although DCPS witnesses testified that based on their observations of the Student and the data that was provided regarding his/her progress at School B, the Student did not need specialized instruction throughout the school day and that the Student could reasonably be with non-disabled peers in a general education setting for elective courses such as music, art and physical education and would benefit from doing so.

However, Petitioners’ education consultant opined that the Student continues to require specialized instruction throughout the school day. Based on the curriculum demands for the rest of the academic day, even in elective courses that involve comparing, contrasting, researching, formulating, and conveying ideas, as well as learning and using vocabulary—tasks similar to those in core subjects like English—the Student’s deficits necessitate a low student-to-teacher ratio and specialized instruction, even for these electives. This witness supported her testimony by citing the curriculum standards of these DCPS courses, which require students to use reading and writing skills and master vocabulary.

In contrast, there was ineffective testimony from DCPS witnesses regarding the academic demands of these elective classes, and they emphasized that the Student would simply have exposure to non-disabled peers. The DCPS witnesses had limited interaction with the Student. The IHO infers from this testimony that the decision about the number of hours of specialized instruction proposed in the Student’s IEP was based on what is typical for the DCPS SLS program rather than the Student’s unique needs.

Petitioners’ witnesses who had more familiarity with the Student credibly testified that the Student continues to have an extreme weakness in decoding and requires intervention in all areas that involve reading fluency and writing, and although the Student has made progress at School B, the Student continues to have attention and executive functioning deficits that require significant support and classes with low student-to-teacher ratios.

Based on the evidence, the IHO concludes that the Student needs, as indicated in the IEP meeting notes, specialized instruction—at least during the period covered by the May 2, 2025, IEP—in “all academic areas,” including art, music, and physical education, which DCPS proposed the Student receive in the general education setting.

Based on the evidence presented, the IHO concludes that the IEP that DCPS developed for the Student on May 2, 2025, was not reasonably calculated to enable the Student to make progress appropriate in light of the Student’s circumstances.

The IHO, however, credits the DCPS witnesses' testimony, along with the IDEA mandate that students be placed in the least restrictive environment, indicating that the Student would benefit from being with non-disabled peers in a general education setting. Given that there is no evidence showing the Student is receiving any specialized instruction or supports during lunch and recess at School B, and that the Student participates in at least one class with as many as twenty-four students, the IHO concludes that the evidence supports placing the Student in a school environment where he/she will have at least some minimal exposure to nondisabled peers.

ISSUE 2: Did DCPS deny the Student a FAPE by failing to allow the Student's parents, as well as the family's educational consultant, to observe the SLS classroom at School C?

Conclusion: Petitioners did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

IDEA allows states to create additional procedural and substantive protections if they are consistent with IDEA. *Middleton v. District of Columbia*, 312 F.Supp.3d at 122. If a state creates a higher standard, "an individual may bring an action under the federal statute seeking to enforce the state standard." *Id.* (quoting *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1035).

In 2014, the District of Columbia passed the Student Rights Act. The Act "provides district parents with additional procedural safeguards to help make sure parents have the tools they need to stay informed, engaged, and empowered throughout the special education process." See D.C. Council Comm. Rep. on B 20-723 (D.C. 2014) at 1. Recognizing that "parents who do not have a specific background in the subject area ... often cannot adequately evaluate whether their child's instruction is sufficient [and that] parents are concerned that an LEA may limit such access to the point that the observation is unable to provide meaningful input into their child's educational progress," the Student Rights Act expanded on a parent's "right to observe" under the IDEA...⁷

The Act (D.C. Code § 38-2571.03) states in pertinent part the following:

5(A) Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child's current to proposed special education program:

(i) the parent of a child with a disability; or

(ii) a designee appointed by the parent of a child with a disability who has professional expertise in the area of special education being observed or is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent; provided, that the designee is neither representing the parent's child in litigation related to the provision of a free and appropriate public education for that child nor has a financial interest in the outcome of such litigation.

⁷ *Woodson, et al., v. District of Columbia*, 119 LRP 28316

(C) A parent, or the parent's designee, shall be allowed to view the child's instruction in the setting where it ordinarily occurs or the setting where the child's instruction will occur if the child attends the proposed program.

(D) the LEA *shall not impose any conditions or restrictions on such observations except those necessary to:*

(i) Ensure the safety of the children in the 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.

(E) An observer shall not disclose nor use any information obtained during the course of an observation for the purpose of seeking or engaging clients in litigation against the District or the LEA.

(F) The LEA may require advance notice and may require the designation of a parent's observer to be in writing.

(G) Each LEA shall make its observation policy publicly available.

The protections of the Student Rights Act have been further clarified in the DCMR:

5A DCMR §3041.1 provides:

Upon request, the LEA shall provide timely classroom access, either together or separately, to the following persons for the purpose of observing a child's current or proposed special educational program:

(a) The parent of a child with a disability;

(b) A designee appointed by the parent of a child with a disability, that is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation, and:

(1) Who has professional expertise in the area of special education being observed so long as the LEA has written consent of the parent on file prior to the parent's designee's observation of a child; or

(2) Who is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent.

5A DCMR §3041.2 provides:

The LEA shall develop and issue a written policy regarding child observation as follows:

(a) The LEA shall not impose any conditions or restrictions on such observations except those necessary to ensure that:

(1) The safety of the children in a program is maintained;

(2) The confidentiality of the other children in the program is protected by prohibiting observers from disclosing confidential and personally identifiable information in the event such information is obtained in the course of an observation by the parent or a designee; and

(3) Any potential disruption to the learning environment arising from multiple observations occurring in a classroom simultaneously is avoided;

(b) The LEA policy may require advance notice of parent observation;

(c) The LEA policy may require the designation of a parent's observer to be in writing; and

(d) The LEA shall make its written policy regarding child observation publicly available.

As previously stated, pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused Student a deprivation of educational benefits. There was no evidence presented by Petitioners from which that IHO conclude that DCPS failing to allow Petitioners and their educational consultant to observe School C impeded Petitioners' opportunity to participate in the decision-making process regarding the provision of FAPE, or caused Student a deprivation of educational benefits. The IHO concludes that Petitioners did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

Although Petitioners claim that they and their educational consultant were denied the opportunity to observe the SLS program at School C after the development of the May 2, 2025, IEP, the evidence shows they had previously observed the program at School C in November 2024 and participated in a transition meeting with School C staff. Additionally, Petitioners' consultant testified that she was familiar with School C because she had other clients attending the school and had visited on other occasions. There was evidence that DCPS provided written responses to questions asked by the consultant about the School C SLS program. School C offered Petitioners the opportunity to visit during the summer months, but there is no indication they made any additional attempts to visit after the transition meeting. They presented DCPS with unilateral notice of their intent to place the Student at School B for SY 2025-2026.

The IHO concludes that DCPS provided substantial information to Petitioners about School C's SLS program and offered an opportunity to visit. There was insufficient evidence that Petitioners and their consultant not visiting or observing the School C SLS classroom impeded Petitioners' opportunity to participate in the decision-making process regarding the provision of FAPE or caused the Student a deprivation of educational benefits.

ISSUE 3: Is School B an appropriate placement?

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that School B is a proper prospective placement for the Student.

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the least restrictive environment provisions of the IDEA; and the public agency must ensure that the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home. See 34 C.F.R. § 300.116.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34 C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment

possible.")

“The IDEA requires that children with disabilities receive education in the regular classroom whenever possible” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra, 137 S. Ct. at 999 (quoting Rowley, 458 U.S. at 202)

Pursuant to D.C. Code § 38-2561.02(c) Special education placements shall be made in the following order of priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this chapter: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school; (2) Private or residential District of Columbia facilities; and (3) Facilities outside of the District of Columbia.

The legal standard under the IDEA is that DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP.” *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013). See also *O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student’s IEP requirements).

Under the IDEA, parents who unilaterally decide to place their disabled child in a private school without obtaining the consent of local school officials "do so at their own financial risk." 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 Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993) (quoting *Sch. Comm. of the Town of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)).

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).

“As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise “proper under the Act”; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act “unreasonabl[y].” *Leggett v. District of Columbia*, 793 F.3d 59, 66–67 (D.C. Cir. 2015) (citing *Carter*, supra, 510 U.S. at 15–16, 114 S.Ct. 361; 20 U.S.C. § 1412(10)(C)(iii)(III)).

To evaluate prospective private school placement requests, "[c]ourts have identified a set of considerations 'relevant' to determining whether a particular placement is appropriate for a particular student, 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 school, ... and the extent to which the placement represents the least restrictive educational

environment." *R.B. v. District of Columbia*, No. CV 18-662 (RMC), 2019 WL 4750410 (D.D.C. Sept. 30, 2019), quoting *Branham v. District of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005).

Petitioners asserted that School B is a proper placement for the Student for SY 2024-2025. The evidence demonstrates that School B is a non-public day school that serves students with learning disabilities, ADHD, and executive functioning deficits, and only serves students with disabilities. Although School B has an OSSE COA, School B has been cited by OSSE for failing to have certified teachers, and not all of the individuals who provide the Student instruction at School B are certified general education teachers or certified special education teachers. As noted, no specialized instruction or related services are being provided to any School B students during lunch and recess.

Given that there is no evidence showing the Student is receiving any specialized instruction or supports during lunch and recess at School B, and that the Student participates in at least one class with as many as twenty-four students, the IHO concludes that the evidence supports placing the Student in a school environment where he/she will have at least some minimal exposure to nondisabled peers.

Although there was testimony that the Student has made progress at School B, as noted in the discussion of the evidence and conclusions made by the IHO on issue #1 above, the Student does not require a placement totally removed from non-disabled peers. Considering 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 School B, the IHO concludes that School B is not a proper placement for the Student's prospective placement. As previously stated, the IHO concludes that the evidence supports placing the Student in a school environment where he/she will have at least some minimal exposure to nondisabled peers and orders DCPS to take action in that regard in the order below.

Based on the Student's progress since attending School B and there being no evidence that Petitioner acted unreasonably, the IHO concludes that Petitioners' reimbursement for their costs for the Student's attendance at School B is appropriate for the portion of the Student's attendance at School B for SY 2025-2026 until DCPS complies with the order below.

ORDER: ⁸

1. Within ten (10) business days of the issuance of this order, DCPS shall amend the Student's IEP to provide for all instruction (at least 25 hours per week) outside general education with an LRE that prescribes that the Student will otherwise be in a setting where the Student has some interaction with non-disabled peers.
2. Within forty-five (45) days of the issuance of this order, DCPS shall identify and propose an appropriate educational placement and location of services for the Student for the remainder of SY 2025-2026.

⁸ Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioners shall extend the timelines on a day-for-day basis.

3. Within thirty (30) calendar days of Petitioners providing DCPS with appropriate documentation of their payment(s) to School B, DCPS shall reimburse Petitioners for the payment(s) they personally made to School B for the Student's attendance at School B during the portion of SY 2025-2026 until DCPS complies with the directives above concerning the Student's IEP, educational placement, and location of services for the rest of SY 2025-2026.
4. The Petitioners' claim that DCPS denied the Student a FAPE in issue #2 is hereby dismissed with prejudice.
5. All other relief requested by Petitioners is denied.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: October 1, 2025

Copies to: Counsel for Petitioners
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