

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, NE, 3rd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
October 3, 2025

PARENTS, on behalf of STUDENT, ¹)	Date Issued: October 3, 2025
)	
Petitioners,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2025-0135
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Dates:
Respondent.)	September 29 and 30, 2025
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner parents under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the parents seek private school tuition reimbursement from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied their child a free appropriate public education (FAPE) by failing to offer the student appropriate Individualized Education Programs (IEPs) and service locations for the 2024-2025 school year.

Petitioners' Due Process Complaint, filed on July 31, 2025, named DCPS as Respondent. The undersigned hearing officer was appointed on August 1, 2025. The

¹ Personal identification information is provided in Appendix A.

parties met for a Resolution Session Meeting on August 18, 2025 and did not resolve the issues in dispute. On September 18, 2025, I convened a videoconference prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. The final decision due date is October 14, 2025.

With the parents' consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on September 29 and 30, 2025. FATHER appeared online for the hearing and the parents were represented by PETITIONERS' COUNSEL and PETITIONERS' CO-COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL and by LEA REPRESENTATIVE. Petitioners' Counsel made an opening statement. Petitioners called as witnesses Student, Father, EDUCATIONAL ADVOCATE and HEAD OF SCHOOL. Petitioners' Exhibits P-1, P-2, P-18, P-19, P-28 and P-30 through P-124 were admitted into evidence, including Exhibits P-1, P-2, P-18, P-19 and P-28 admitted over DCPS' objections. I sustained DCPS' objection to Exhibit P-3. Exhibits P-4 through P-17, P-20 through P-27 and P-29 were not offered or withdrawn. DCPS' Exhibits R-1 through R-26 were admitted into evidence without objection. Following completion of the presentation of evidence on September 30, 2025, Petitioners' Counsel and DCPS' Counsel made oral closing arguments. There was no request to file written closings.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issues for determination in this case, as set out in the September 18, 2025 Prehearing Order are:

- A. Whether DCPS denied Student a FAPE by failing to offer an updated or otherwise appropriate IEP (or corresponding educational placement) before the first day of school for the 2024-2025 school year, as the May 23, 2023 IEP was expired and that expired IEP was found inappropriate in Case No. 2024-0147.

- B. Whether DCPS denied Student a FAPE by proposing an inappropriate IEP, finalized on September 26, 2024, because the IEP failed to adequately consider the relevant findings from prior HODs which should have led DCPS to offer small classes throughout the school day earlier than it did; because DCPS proposed returning Student to a public school setting which did not offer as much Specialized Instruction and other support which Student needed and was less than what he/she had received previously in public school; the IEP contained insufficient hours and type of Specialized Instruction based on the data available to the IEP team; the IEP failed to provide Student small class sizes throughout his/her day; the IEP team removed Assistive Technology from Student's IEP without data to support the removal; the IEP goals were largely inappropriate because they were inadequate to address the issues described in the present levels of performance, were vague/immeasurable, and/or outdated and not designed to address the individual needs of the student; the IEP lacked direct behavioral support services that Student needed for expected school-related anxiety and executive functioning deficits; the IEP contained inappropriate other classroom aids and services which were found to be inappropriate in a prior HOD, and were incompatible with the proposed hours of Specialized Instruction, and the IEP did not include important additions requested by the parents which DCPS had agreed to make.

- C. Whether DCPS denied Student a FAPE from December 2024 through the end of the school year, because DCPS had agreed Student required a change in

placement to a more restrictive environment, but failed to act timely or reasonably to effectuate a change in placement;

D. Whether DCPS denied Student a FAPE by amending the IEP at a February 3, 2025, meeting without providing a prior written notice and because the amended IEP was inappropriate because the only updates in the document were the Specialized Instruction hours and LRE description, and the IEP included each of the deficiencies alleged with the September 26, 2024 IEP except the hours of Specialized Instruction.

E. Whether DCPS denied Student a FAPE by failing to provide Student with a placement capable of implementing the February 3, 2025 IEP and therefore failed to implement the amended IEP from February 3, 2025 through the end of the 2024-2025 school year.

For relief, the Petitioners request that the hearing officer order DCPS to reimburse the parents for their costs associated with Student's attendance at Nonpublic School 1 during the 2024-2025 school year, including transportation, deposits, fees, whether made prior to or after the first day of school for the school year and any and all other relief which the Hearing Officer deems equitable, just, and appropriate.

Prior Due Process Proceedings

This is the fifth due process proceeding instituted by the parents seeking reimbursement from DCPS for their unilateral placement of Student at Nonpublic School 1. In each of the prior cases – Case No. 2020-0213 decided March 8, 2021, Case No. 2021-0159 decided April 8, 2022, Case No. 2023-0072 decided July 22, 2023² and Case No. 2024-0147 decided October 23, 2024 – the assigned Impartial Hearing Officer determined that DCPS had failed to offer Student an appropriate IEP and ordered DCPS

² This hearing officer decided Case No. 2023-0072.

to reimburse the parents for their private school tuition expenses. *See* Exhibits P-1, P-4, P-19 and P-61. In the most recent prior case, Case No. 2024-0147, decided October 23, 2024, Impartial Hearing Officer Michael Lazan agreed with the Petitioners that DCPS' proposed May 26, 2023, IEP did not provide the Student with a sufficient mandate for Specialized Instruction, a requirement for an appropriately small class size, and a requirement for an appropriately small school size. Hearing Officer Lazan ordered DCPS to reimburse the parents for covered tuition and related expenses for Student's 2023-2024 school year enrollment at Nonpublic School 1.

FINDINGS OF FACT

Prior Hearing Officer Determination in Case No. 2024-0147

The parties, by counsel, have agreed that I may adopt relevant findings of fact made by Hearing Officer Lazan in Case No. 2024-0147, decided October 23, 2024. I adopt the following findings of fact from that decision:

A. Student is eligible for special education services as a student with a Specific Learning Disability. The Student has a history of issues with, among other things, inattention, long-term working memory, and multi-step problems. Academically, the Student is below grade level in reading, and well below grade level in mathematics. Cognitively, the Student consistently scores in the average range, though the Student's working memory depresses his/her scores. Without the Student's working memory issues, the Student showed higher ability on testing.

B. During the 2019-2020 school year, the Student attended CITY SCHOOL 1, a DCPS public school. Student received ten hours of Specialized Instruction inside general education every week. Student felt that the general education instruction was delivered at a pace that was too fast for him/her. The Student felt uncomfortable in an environment where s/he was functioning below most of the other students in the room. The Student's grades were poor during this time at City School 1.

C. After the 2019-2020 school year, Petitioners removed the Student from DCPS schools and sent the Student to Nonpublic School 1, a private school for students with disabilities, which he/she currently attends.

D Student attended Nonpublic School 1 for the 2020-2021 and 2021-2022 school years.

E. Student's DCPS IEP dated May 25, 2021, which Petitioners disagreed with, included recommendations for ten hours per day of Specialized Instruction inside general education and five hours per week of Specialized Instruction outside general education, with 120 minutes per month of behavioral support (consultation) services. The "Other Classroom Aids and Services" in the IEP included teacher check-ins when needed, pre-teach and re-teach when needed, visual supports, chunked assignments, one-to-one support when needed, a small group setting, computerized access to reading intervention programs, a laptop or computer for written work using enlarged font and spell checks, a task list to breakdown steps, checklists, graphic organizers, checks for

understanding multisensory instruction, color coding, highlighting, scaffolding, an assignment tracker, and daily check-ins for social/emotional concerns.

F. Student's April 1, 2022 DCPS IEP contained the same recommendations as the May 25, 2021 IEP, except that the "Other Classroom Aids and Services" section included language stating that exemplars were to include math manipulatives and reading and writing evidence-based interventions. Petitioners disagreed with this IEP and again unilaterally placed the Student at Nonpublic School 1 for the 2022-2023 school year.

G. By the fall of 2022, Measures of Academic Progress ("MAP") testing indicated that the Student's "growth rate" in reading was at the 90th percentile, which meant that he/she made more progress than ninety percent of his/her peers. Testing also indicated that the Student's growth rate in math was at the 72nd percentile, which means that he/she made more progress than seventy-two percent of his/her peers.

G. DCPS May 2023 IEP for Student recommended Specialized Instruction for ten hours per week inside general education and six hours per week outside general education, with 120 minutes per month of behavioral support consultation services. The six hours outside general education would be provided by a special education teacher in a self-contained classroom, to work on goals. Petitioners did not receive the IEP until after the 2022-2023 school year ended.

H. An HOD on a due process complaint filed by Petitioners with respect to the 2022-2023 school year was decided in Petitioners' favor on July 22, 2023 by

Hearing Officer Vaden. After the issuance of this HOD, Petitioners expected that there would be an IEP meeting to address the findings of the HOD (since Petitioners felt that the May 2023 IEP was similar to the IEP that Hearing Officer Vaden found to be defective).

Hearing Officer's Additional Findings of Fact

After considering all of the evidence received at the due process hearing in this case on September 29 and 30, 2025, as well as the argument of counsel, my additional findings of fact are as follows:

1. Student, an AGE youth, resides with the parents in the District of Columbia. Testimony of Father.
2. Student is eligible for special education as a student with a Specific Learning Disability (SLD). Exhibit R-4.
3. On or about April 1, 2022, DCPS proposed an IEP, under which Student would receive Specialized Instruction for 10 hours per week inside general education and 5 hours per week outside of general education. The proposed hours of Specialized Instruction were intended to cover all areas of goals for reading, writing and math. The proposed April 1, 2022 IEP also provided for 120 minutes per month of consultation behavioral support services. Exhibit P-19.
4. In the July 22, 2023 Hearing Officer Determination (HOD), this Hearing Officer concluded, *inter alia*, that DCPS did not meet its burden of persuasion that its

proposed April 1, 2022 IEP met Student's need for small classes with a modified instructional approach, discussed by Hearing Officer Lazan in the April 8, 2022 HOD. In the July 22, 2023 HOD, this hearing officer ordered DCPS to reimburse the parents for their private school expenses for Student's enrollment at Nonpublic School 1 for the 2022-2023 school year. Exhibit P-19.

5. On or about May 26, 2023, the DCPS Central IEP (CIEP) team reviewed and updated Student's IEP. The May 26, 2023 IEP provided for Specialized Instruction for ten hours per week inside general education and six hours per week outside general education, with 120 minutes per month of behavioral support consultation services. DCPS staff said that the ten hours inside general education would consist of a special education teacher pushing-in for classes. The six hours outside general education would be provided by a special education teacher in a self-contained classroom to work on goals. Exhibit P-61.

6. In the October 23, 2024 HOD, Hearing Officer Lazan determined, *inter alia*, that the May 26, 2023, IEP did not provide the Student with a sufficient mandate for Specialized Instruction, a requirement for an appropriately small class size, and a requirement for an appropriately small school size; that DCPS' failure to incorporate agreed-upon IEP changes, including goals, in the final draft of the IEP was problematic; that an IEP would have been appropriate if it had recommended that the Student receive small special education classes in all academic subjects, in a small setting, even

without the accommodations in the “Other Classroom Aids and Services” section of the IEP; that the annual goals in the May 26, 2023, IEP were defective and that DCPS’ choice to include behavioral support services on a consultation basis was unfairly calculated, given the Student’s virtually behavior-free experience at Nonpublic School 1. In sum, Hearing Officer Lazan found that DCPS denied Student a FAPE with its May 26, 2023 IEP. Hearing Officer Lazan ordered DCPS to reimburse the parents for their costs for covered tuition and related expenses for Student’s enrollment at Nonpublic School 1 for the 2023-2024 school year. Exhibit P-61. Neither party appealed the October 23, 2024 HOD. Representation of Counsel.

7. In summer 2024, DCPS conducted a triennial special education eligibility reevaluation of Student. A DCPS psychologist conducted a comprehensive psychological reevaluation. In a July 3, 2024 Comprehensive Psychological Reevaluation report, the DCPS psychologist reported, *inter alia*, that results of cognitive testing indicated Student presented with “average” cognitive ability. This was evident in his/her Wechsler Adult Intelligence Scale | Fourth Edition (WAIS-IV) Full Scale IQ score of 93 and Student’s General Abilities Index (GAI) score of 99. Student’s relative strength was verbal reasoning. Working memory was an area of weakness. The DCPS psychologist reported that Student’s working memory may affect his/her learning and may influence the weaknesses Student had in mathematics calculations and spelling. The psychologist reported that Student’s academic achievement was within the “low average” range.

Student's relative strengths were sentence writing fluency, oral reading, sentence reading fluency, and writing samples. Mathematics and spelling were his/her greatest areas of weakness. Student presented with "average" global behavioral functioning. The psychologist reported that Student may evidence a slight level of anxiety at times. The psychologist recommended that Student continued to meet the eligibility criteria for special education services due to a specific learning disability, in that he/she displayed weaknesses in mathematics calculations that were greater than or equal to 1.5 standard deviations below the mean. Exhibit P-44.

8. On August 12, 2024, following an eligibility committee meeting on August 2, 2024, DCPS sent the parents a Prior Written Notice to inform them that DCPS proposed to continue Student's special education eligibility as a student with a specific learning disability in the areas of reading, writing, and math. Exhibit P-49.

9. By email letter of August 9, 2024, Petitioners' Counsel provided written notice to DCPS that the parents intended to unilaterally place Student at Nonpublic School 1 for the 2024-2025 school year and to seek private school tuition reimbursement from DCPS because DCPS had allegedly failed to provide the student a FAPE. Petitioners' Counsel asserted that DCPS' proposed May 23, 2023 IEP was "wildly inappropriate/inadequate," "in contradiction to the last two HODs" because the May 23, 2023 IEP provided mostly general education support (10 hours of inclusion) with just 6 hours a week of pull out, provided no direct behavior support and only 120 minutes of

consultation per month even though Student had anxiety that would impact him/her if he/she had to move to the large public high school environment at CITY SCHOOL 2.

Petitioners' Counsel also asserted that Student's May 2023 DCPS IEP had expired.

Exhibit P-47. By email letter of August 15, 2024, the Interim Director of DCPS' Central IEP (CIEP) team responded that it was DCPS' position that DCPS had made, and would continue to make, a FAPE available to Student and that DCPS did not agree to bear the cost of a private placement for Student. Exhibit P-48.

10. By email of August 22, 2024, DCPS wrote the parents to propose an IEP review meeting for Student on September 19 or 20, 2024. The virtual IEP team meeting was held on September 19, 2024. Both parents and Educational Advocate participated. At the September 19, 2024 IEP meeting, DCPS proposed to provide Student 16 hours per week of Specialized Instruction at City School 2, including 10 hours inside general education and 6 hours outside general education. The IEP also provided for 2 hours per month of consultation Behavioral Support Services. The parents did not agree with the IEP services. Educational Advocate stated that the parents believed that Student required small classes and support and instruction throughout the school day for all classes. Educational Advocate stated that the proposed September 2024 IEP did not take into account Student's anxiety and executive functioning impact and how his/her current Nonpublic School 1 setting and supports resulted in these challenges not impacting him/her as greatly. Exhibit P-55. DCPS finalized the proposed IEP, without

changing the service hours or setting, and issued the final IEP on September 26, 2024.

Exhibit P-57.

11. Student continued at Nonpublic School 1, under the Parents' unilateral placement, from the start of the 2024-2025 school year through the end of the school year. The parents also unilaterally placed Student at Nonpublic School 1 for the current, 2025-2026, school year. Testimony of Father.

12. Following issuance of the October 23, 2024 HOD by Hearing Officer Lazan, on December 17, 2024, DCPS' CIEP team sent an email to the parents requesting to schedule an IEP amendment meeting for Student. The CIEP team offered January 2, 2025 as a meeting date. Petitioners' attorneys were not available on that date. To accommodate the availability of counsel and the parents, DCPS set the IEP amendment meeting for February 3, 2025. Exhibits P-68, P-72.

13. At the February 3, 2025 virtual IEP team meeting, Student's IEP was amended to provide for 30 hours per week of Specialized Instruction outside general education, 2 hours per month of consultation behavioral support services and 1 hours per week of consultation Specialized Instruction. DCPS amended the IEP in response to the October 23, 2024 HOD. At the meeting, DCPS informed the parents that it would submit a change in placement request for a nonpublic school to the Office of the State Superintendent of Education (OSSE) to identify an appropriate nonpublic location for Student. DCPS explained to the parents the OSSE process for finding nonpublic

placements. Exhibits P-77.

14. On March 24, 2025, OSSE convened a change in placement meeting for Student. The parents and Educational Advocate attended the virtual meeting. The OSSE representative explained the change of placement process to the parents. Educational Advocate asked to send an application for Student to Nonpublic School 1, which was declined because Nonpublic School 1 is not part of the OSSE-approved nonpublic school list. Exhibit R-12.

15. OSSE was not able to secure Student's admission to a nonpublic school to start until after the end of the 2024-2025 school year. Testimony of CIEP Team Manager. On June 10, 2025, OSSE issued a notice of service location to the parents, identifying NONPUBLIC SCHOOL 2 as the service location for Student. Nonpublic School 2 had stated in its acceptance letter that Student could begin attending the school as early as July 7, 2025, which was the first day of Nonpublic School 2's ESY program. Exhibit P-105. By email of July 28, 2025, Petitioners' Counsel gave notice to DCPS that because locating Student at Nonpublic School 2 allegedly would deny Student a FAPE and it would be harmful for Student to move there, the parents would be unilaterally placing Student at Nonpublic School 1 for the 2025-2026 school year. Exhibit P-114. The appropriateness of the proposed location assignment at Nonpublic School 2 for Student is not at issue in this proceeding.

16. Nonpublic School 1 is a day school in suburban Maryland for student's

with language-based learning disabilities. It has an enrollment of 140 students in grades 3 through 12. All students at Nonpublic School 1 have learning disability diagnoses. The classroom student to teacher ration is 10:1. Teaching is individualized based upon students' needs and teachers' expectations. Most teachers at Nonpublic School 1 have a Masters degree, but that is not required. The school provides a lot of training on evidence-based education practices for student's with learning disabilities. All students have Chromebook laptop computers available with a suite of Assistive Technology tools. The private school provides support to students for executive functioning deficits including an assigned advisor, break-down of assignments, study hall email addresses and daily template slides with assignments. A school counselor provides support, as needed for emotional support. The school's program is college preparatory and all students are college-bound. The school does not have a Certificate of Approval from OSSE or certification as a special education school by the state of Maryland. It is accredited by the Middle States Association of Colleges and Schools Commission on Elementary and Secondary Schools. The annual tuition charge is around \$53 thousand.

Testimony of Head of School.

17. Student is doing well at Nonpublic School 1. Using the tools and strategies offered by the school, he/she is able to access the common core grade-level curriculum and is earning A and B grades. Student is a leader at school and is involved in the school community, including sports and drama. Testimony of Head of School, Nonpublic

School 1 is a good fit for Student. He/she wants to go to school. During the 2024-2025 school year, Student did not have a lot of school-related anxiety. He/she was able to keep up with school work and it was not a stressful academic year for him/her.

Testimony of Student.

CONCLUSIONS OF LAW

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

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Parents in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the child's IEP or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

ANALYSIS

IS DCPS OBLIGED TO REIMBURSE THE PARENTS FOR STUDENT'S PRIVATE SCHOOL EXPENSES FOR THE 2024-2025 SCHOOL YEAR?

Student has been unilaterally placed by the parents at Nonpublic School 1 since January 2020. In four prior due process proceedings, the respective Impartial Hearing Officers ordered DCPS to fund, or reimburse the parents for, Student's Nonpublic School 1 expenses for part of the 2019-2020 school year and for the 2020-2021, 2021-2022, 2022-2023 and 2023-2024 school years. In the present proceeding, the parents seek private school reimbursement for the 2024-2025 school year.

To analyze the 2024-2025 school year claim, the starting point is DCPS' May 25, 2021 IEP proposed for Student. That IEP provided for Student to have ten hours per week of Specialized Instruction services inside the general education classroom at City School 1 and five hours per week of Specialized Instruction outside general education. In Case No. 2021-0159, Hearing Officer Michael Lazan determined that the May 25, 2021 IEP was inappropriate because the IEP offered the Student the same kind of classes that he/she had been unsuccessful in before at City School 1.

In Case No. 2023-0072, this hearing officer issued a Hearing Officer Determination on July 22, 2023 which considered the appropriateness of DCPS' proposed April 1, 2022 IEP for Student. In the April 1, 2022 IEP, DCPS proposed for Student to attend City School 1 for the remainder of the 2021-2022 school year and City School 2 for the 2022-2023 school year. Both schools are large District of Columbia

public schools. Student's proposed educational placement would have been primarily in the general education classroom at the respective DCPS schools, where he/she would receive Specialized Instruction for 10 hours per week in the general education setting and 5 hours per week outside general education. The special education services and setting in the April 1, 2022 IEP were identical to what DCPS had proposed for Student in the May 25, 2021 IEP, which Hearing Officer Lazan had determined to be inappropriate in Case No. 2021-0159. In my July 22, 2023 HOD in Case No. 2023-0072, I concluded that DCPS has not met its burden of persuasion that the proposed April 1, 2022 IEP was appropriate for Student.

On May 23, 2023, prior to the issuance of my July 22, 2023 HOD, DCPS convened an annual IEP meeting for Student. At that meeting, over the parents' objections, DCPS proposed for Student to receive Specialized Instruction at City School 2 for 16 hours per week, including 10 hours inside the regular education classroom and six hours outside general education. That was only one more hour of Specialized Instruction per week than DCPS had proposed in the April 1, 2022 IEP. DCPS did not update the May 23, 2023 IEP until September 19, 2024.

This brings us to the 2024-2025 school year which is at issue in the present proceeding. On August 9, 2024, Petitioners' Counsel wrote DCPS to give notice that the parents intended to unilaterally place Student at Nonpublic School 1 for the 2024-2025 school year and to seek tuition reimbursement from DCPS. As justification, Petitioners'

Counsel asserted that DCPS' May 23, 2023 IEP was "wildly inappropriate/inadequate," "in contradiction to" the April 8, 2022 and July 22, 2023 HODs. In the notice, Petitioners' Counsel also pointed out to DCPS that the May 23, 2023 IEP had "expired." On August 15, 2024, DCPS sent counsel a boilerplate response that DCPS had made, and would continue to make, a FAPE available to Student. The parents carried through with unilaterally placing Student back at Nonpublic School 1 for the 2024-2025 school year.

On August 22, 2024, DCPS wrote the parents to propose an IEP review meeting for September 19, 2024. At the September 19, 2024 IEP meeting, DCPS again offered Student 16 hours per week of Specialized Instruction at City School 2, including 10 hours inside the general education classroom and 6 hours outside general education.

Subsequent to the September 19, 2024 IEP meeting, Hearing Officer Lazan issued the October 23, 2024 HOD in Case No. 2024-0147, in which he determined that the May 23, 2023, IEP was inappropriate because, *inter alia*, the revised IEP did not provide the Student with a sufficient mandate for Specialized Instruction, a requirement for an appropriately small class size, and a requirement for an appropriately small school size. Hearing Officer Lazan ordered DCPS to reimburse the parents for Student's 2023-2024 school year private school expenses.

Following issuance of Hearing Officer Lazan's October 23, 2024 HOD, DCPS convened an "IEP Amendment" meeting on February 3, 2025. At that meeting, DCPS revised Student's IEP to provide for 30 hours per week of Specialized Instruction in a

nonpublic school setting. Student's placement was referred to OSSE, which handles nonpublic school applications for DCPS students. OSSE was not able to identify an appropriate nonpublic school where Student could start until after the 2024-2025 year ended.

That brings us to the present proceeding. The parents are seeking reimbursement from DCPS for their private school expenses for Student's continued enrollment at Nonpublic School 1 for the 2024-2025 school year. For the reasons explained below, I find that the parents are entitled to reimbursement from DCPS.

Reimbursement for Private School Expenses

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

[P]arents who "unilaterally" place a child with a disability in a private school, without consent of the school system, "do so at their own financial risk." *Florence Cty. Sch. Distr. Four v. Carter*, 510 U.S. 7, 15 (1993) (quoting *School Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 373-74 (1996)). To qualify for tuition reimbursement under the IDEA, a plaintiff must demonstrate that: (1) the school district failed to provide a FAPE; (2) the plaintiff's private placement was suitable; and (3) the equities warrant reimbursement for some or all of the cost of the child's private education. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 247 (2009).

E.W.-G. at *2 (D.D.C. Mar. 22, 2023). See, also, *Leggett v. District of Columbia*, 793

F.3d 59, 63 (D.C. Cir. 2015) (IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education; (2) the private-school placement chosen by the parents was otherwise proper under the Act; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act unreasonably.) The first, indispensable, requirement for private school tuition reimbursement is that the District failed to offer the child a FAPE. Petitioners have alleged the following denials of FAPE by DCPS in this case:

- A. Whether DCPS denied Student a FAPE by failing to offer an updated or otherwise appropriate IEP (or corresponding educational placement) before the first day of school for the 2024-2025 school year, as the May 23, 2023 IEP was expired and that expired IEP was found inappropriate in case 2024-0147.
- B. Whether DCPS denied Student a FAPE by proposing an inappropriate IEP, finalized on September 26, 2024, because the IEP failed to adequately consider the relevant findings from prior HODs which should have led DCPS to offer small classes throughout the school day earlier than it did; because DCPS proposed returning Student to a public school setting which did not offer as much Specialized Instruction and other support which Student needed and was less than what he/she had received previously in public school; the IEP contained insufficient hours and type of Specialized Instruction based on the data available to the IEP team; the IEP failed to provide Student small class sizes throughout his/her day; the IEP team removed Assistive Technology from Student's IEP without data to support the removal; the IEP goals were largely inappropriate because they were inadequate to address the issues described in the present levels of performance, were vague/immeasurable, and/or outdated and not designed to address the individual needs of the student; the IEP lacked direct behavioral support services that student needed for expected school-related anxiety and executive functioning deficits; the IEP contained inappropriate other classroom aids and services which were found to be inappropriate in a prior HOD and were incompatible with the proposed hours of Specialized Instruction; and

the IEP did not include important additions requested by the parents which DCPS had agreed to make.

C. Whether DCPS denied Student a FAPE from December 2024 through the end of the school year, because DCPS had agreed Student required a change in placement to a more restrictive environment, but failed to act timely or reasonably to effectuate a change in placement;

D. Whether DCPS denied Student a FAPE by amending the IEP at a February 3, 2025, meeting without providing a prior written notice and because the amended IEP was inappropriate because the only updates in the document were the Specialized Instruction hours and LRE description, and the IEP included each of the deficiencies alleged with the September 26, 2024 IEP except for the hours of Specialized Instruction.

E. Whether DCPS denied Student a FAPE by failing to provide Student with a placement capable of implementing the February 3, 2025, IEP and therefore failed to implement the Amended IEP from February 3, 2025 through the end of the 2024-2025 school year.

All of these claims, except Issue E, concern the appropriateness of the IEPs DCPS proposed for Student for the 2024-2025 school year. I find that through the testimony of Petitioners' expert, Educational Advocate, Petitioners made a *prima facie* case that the 2024-2025 school year program which DCPS proposed for Student was inappropriate. Therefore the burden of persuasion as to the program's appropriateness falls on DCPS.

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

In reviewing a challenge under the IDEA, courts conduct a two-part

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

Middleton at 128.

With regard to procedural compliance, Petitioners complain that DCPS did conduct a timely annual review of Student’s May 23, 2023 IEP prior to the start of the 2024-2025 school year. The IDEA requires that an LEA must ensure that a child’s IEP is reviewed not less than annually and that the IEP team revises the IEP, as appropriate. *See* 34 C.F.R. § 300.324(b). As the parents allege, Student’s May 23, 2023 IEP expired some three months before the start of the 2024-2025 school year. An LEA’s failure to have an IEP in place at the beginning of the school year for a student with a disability is a procedural violation of the IDEA. *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015).

A procedural violation of the IDEA requires a separate showing of substantive harm in order to be deemed a denial of FAPE. *Id.* However, “[if] a school district fails to . . . offer the student an appropriate IEP, and if that failure affects the child’s education, then the district has necessarily denied the student a free appropriate public education.” *Laque v. District of Columbia*, 130 F. Supp. 3d 305, 314–15 (D.D.C. 2015) (*quoting* *Boose v. District of Columbia*, 786 F.3d 1054, 1056 (D.C.Cir.2015)). “[O]nly where [a

violation of IDEA] was not obviously substantive []” has the Circuit required parents “to demonstrate . . . that [the student’s] education was affected[.]” *Lague* at 315 (quoting *Leggett*, 793 F.3d at 68 (citations and internal quotation marks omitted)).

I find that DCPS’ failure to conduct an annual review of Student’s May 2023 IEP, prior to the start of the 2024-2025 school year, was an “obviously substantive” violation of the IDEA. That is because in the July 22, 2023 HOD, this hearing officer determined that the April 1, 2022 IEP, in which DCPS proposed for Student to receive 15 hours per week of Specialized Instruction at City School 2, including 5 hours per week outside of general education, was inappropriate. In the May 23, 2023 IEP, DCPS offered a substantively similar program with ten hours per week of Specialized Instruction inside general education classroom and six hours per week outside general education. That was only 1 more hour per week of Specialized Instruction than DCPS had proposed in the April 1, 2022 IEP. In light of the decisions against DCPS in the April 8, 2022 and July 22, 2023 HODs, which held that DCPS’ proposed prior IEPs were inadequate, I find that DCPS’ failure to review and revise the May 23, 2023 IEP before the start of the 2024-2025 school year was an “obviously substantive” violation of the IDEA and necessarily denied Student a FAPE. *See Lague, supra.*

DCPS did not cure that violation by revising Student’s IEP at the September 19, 2024 IEP meeting, even if that IEP revision had not been untimely, because DCPS continued to offer Student only 16 hours per week of Specialized Instruction, mostly in

the general education classroom at City School 2. It was not until February 3, 2025 that DCPS finally amended Student’s IEP to provide for 30 hours per week of Specialized Instruction in a nonpublic school setting. The February IEP amendment had no impact on Student’s education in the 2024-2025 school year because, even assuming a mid-year school transfer would have been appropriate, OSSE was unable to secure a nonpublic placement for Student before the school year ended.

I conclude that DCPS failed to meet its burden of persuasion that it offered Student an appropriate IEP by the start of the 2024-2025 school year and that this was a denial of FAPE. In light of this finding, I do not reach Petitioners’ remaining claims regarding the alleged inappropriateness of the September 26, 2024 IEP and the February 3, 2025 IEP Amendment, or the timeliness and implementation of the February 3, 2025 IEP Amendment. *See, e.g., Adams v. District of Columbia*, 285 F. Supp. 3d 381 (D.D.C. 2018) (“[W]hen an HOD finds an IDEA violation, ‘[w]hether the Hearing Officer based such a finding on one, or two, or three alleged violations is irrelevant—the result would be the same.’” *Id.* at 391 (*quoting Green v. District of Columbia*, 2006 WL 1193866, at 9 (D.D.C. May 2, 2006))).

Nonpublic School 1 was proper.

Having found that DCPS failed to offer Student a FAPE for the 2024-2025 school year, I turn, next, to the other two requirements for tuition reimbursement pronounced in the D.C. Circuit’s *Leggett* decision – that the private-school placement chosen by the

parents was otherwise “proper under the Act”; and the equities weigh in favor of reimbursement—that is, the parents did not otherwise act “unreasonabl[y]” *Leggett*, 793 F.3d at 66–67. “A unilateral private-school placement is proper when it is ‘reasonably calculated to enable the child to receive educational benefits.’ *Leggett*, 793 F.3d at 71 (quoting *Rowley*, 458 U.S. at 207). “Like a public placement, a unilateral private placement ‘need not guarantee the best possible education or even a potential maximizing one.’ *M.G. v. District of Columbia*, 246 F.Supp.3d 1, 12 (D.D.C. 2017) (quoting *Leggett*, 793 F.3d at 70).” *G.L. v. District of Columbia*, No. 24-CV-00280-TSC/ZMF, 2025 WL 2424310, at *11 (D.D.C. Aug. 22, 2025).

Nonpublic School 1 is a day school in suburban Maryland for students with language-based learning disabilities. It has an enrollment of about 140 students in grades 3 through 12. The school offers small class size and individualized education. Although the school is not certified by the Maryland State Department of Education and does not hold an OSSE Certificate of Approval, it is accredited by the Middle States Association of Colleges and Schools Commission on Elementary and Secondary Schools. Nonpublic School 1 provides a lot of training to staff on evidence-based education practices for student’s with learning disabilities. While most teachers at Nonpublic School 1 have at least a Masters degree, it does not appear that many of the school’s teachers are certified in special education. However, neither teacher certification nor an OSSE Certificate of Approval is a requirement for a private school to be deemed proper.

See Florence Cnty. Sch. Dist. Four v. Carter By & Through Carter, 510 U.S. 7, 14, 114 S. Ct. 361, 365, 126 L. Ed. 2d 284 (1993) (Requirement that the school meet the standards of the state educational agency does not apply to private parental placements.)

Student appears to have thrived a Nonpublic School 1 and is doing well academically. He/she plans to attend college after graduation. In Case Number 2023-0072 and 2024-0147 respectively, this hearing officer and Hearing Officer Lazan found that Nonpublic School 1 was proper for Student. In the present case, I likewise find that the parents' choice of Nonpublic School 1 for Student for the 2024-2025 school year was reasonably calculated to enable their child to receive educational benefit.

Parents did not act unreasonably.

Lastly, the D.C. Circuit's *Leggett* decision requires that the "equities weigh in favor of reimbursement — that is, the parents did not otherwise act 'unreasonabl[y].'" *Leggett*, 793 F.3d at 67. Reimbursement may be "reduced or denied" if the parents failed to notify school officials of their intent to withdraw the child or otherwise acted unreasonably. *Leggett, supra*, at 63; 34 C.F.R. § 300.148(d).³

³ Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—

(1) If—

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day)

By email letter of August 19, 2024, Petitioners' Counsel provided written notice to DCPS that the parents intended to re-enroll Student in Nonpublic School 1 for the 2024-2025 school year because DCPS had allegedly failed to provide the student a FAPE – on the grounds that DCPS had not revised the already expired May 23, 2023 IEP, which the parents alleged was inappropriate. In its August 15, 2024 response, DCPS did not responsively address the parents' concerns. Nor did DCPS attempt to reconvene Student's IEP team to revise the expired May 2023 IEP prior to the start of the 2024-2025 school year. On these facts, I find that there has been no showing that the parents acted unreasonably in continuing Student's unilateral placement at Nonpublic School 1 for the 2024-2025 school year.

In this proceeding, the parents have met the three requirements for reimbursement of private school expenses pronounced by the D.C. Circuit in its *Leggett* decision. The parents are therefore entitled to reimbursement from DCPS for their tuition and related expenses incurred for Student's enrollment at Nonpublic School 1 for

prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

34 C.F.R. § 300.148(d)

the 2024-2025 school year.

To be clear, while I find that the Petitioners have met their burden of persuasion that DCPS denied Student a FAPE by not having an appropriate IEP in place for Student in time for the start of the 2024-2025 school year and that the parents are entitled to private school reimbursement for the entire school year, I make no finding as to the appropriateness of the February 2, 2025 IEP amendment or of the suitability of the proposed service location at Nonpublic School 2 for Student for the 2025-2026 school year.

ORDER

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

ORDERED:

1. Upon receipt of documentation of payment by the parents as may be reasonably required, DCPS shall promptly reimburse the parents their expenses heretofore paid for covered tuition and related expenses, including covered privately-owned vehicle transportation expenses, incurred for Student's enrollment at Nonpublic School 1 for the private school's 2024-2025 regular school year and
2. All other relief requested by the Petitioners herein is denied.

Date: October 3, 2025

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

NOTICE OF RIGHT TO APPEAL

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

cc: Counsel of Record
Office of Dispute Resolution