



**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD**



Date: July 9, 2026

In the matter of:

Petitioner

Case No. E-24-003

APPEAL BOARD DECISION

APPEARANCES

FOR PETITIONER

Pro se

FOR RESPONDENT

Alison O'Connell, Esq., Department Counsel

Lauren A. Shure, Esq., Department Counsel

Nicole Smith, Esq., Department Counsel

On October 16, 2024, Petitioner (also, the “Child”), through his parent (“Parent”), filed a due process complaint alleging that the Department of Defense Education Activity (DoDEA) and the Respondent School District (collectively, “Respondents”) denied Petitioner a Free Appropriate Public Education (FAPE) and committed procedural and substantive violations of the Individuals with Disabilities Education Act,¹ Department of Defense (DoD) Instruction 1342.12,² and DoD Manual 1342.12.³ The matter was assigned to a hearing officer with the Defense Office of Hearings and Appeals (DOHA), Administrative Judge Braden M. Murphy, on October 23, 2024.

¹ Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (1990) (“IDEA”).

² DoD Instruction 1342.12, “Provision of Early Intervention and Special Education Services to Eligible DoD Dependents,” June 17, 2015 (“Instruction”). *See also* Code of Federal Regulations, Title 32, Part 57 (2015). The Instruction applies IDEA, except for its funding and reporting provisions, to eligible DoD dependents.

³ DoD Manual 1342.12, “Implementation of Early Intervention and Special Education Services to Eligible DoD Dependents,” June 17, 2015 (“Manual”).

On November 21, 2024, Petitioner filed an amended complaint (“Complaint”), which included 22 numbered paragraphs. Respondents denied all claims and, on January 3, 2025, moved to dismiss the Complaint for failure to allege any actionable violation of FAPE for which relief could be granted and because certain allegations were time-barred by the statute of limitations. Manual ¶ E6.5.j(1). Petitioner responded in opposition (“MTD Resp.”). On February 21, 2025, the Judge granted Respondents’ motion in part. Respondents thereafter moved for summary judgment on the surviving claims. Petitioner responded regarding the surviving claims (Claims 1 through 9) and raised additional claims (Claims 10 through 16). On March 13, 2025, the Judge granted summary judgment.

Petitioner appealed the Order for Summary Judgment, arguing that the Judge erred in concluding that the Child had not been denied FAPE and specifically challenging the Judge’s rulings on Claims 1 through 8 and 10 through 15. On July 29, 2025, the Appeal Board remanded the case’s outstanding claims⁴ with instructions for the Judge to conduct a full due process hearing and reach findings of fact and conclusions of law on multiple specific remanded issues.

On March 18, 2026, the Judge issued a Decision on Remand (“Decision”), wherein he concluded that Respondent School District’s failure to timely proceed to mediation was both a procedural and a substantive violation of FAPE and impacted multiple other procedural failures. Accordingly, he granted Petitioner’s claim for compensatory services. The Judge denied Petitioner’s claims for compensatory parent training and reimbursement of homeschool expenses. Petitioner appealed the Decision pursuant to Manual ¶ E6.17 and Respondents timely replied.

Judge’s Findings of Fact and Background

Parent has two children, a daughter and Petitioner, now both mid-teenagers. Petitioner was diagnosed with autism spectrum disorder (ASD) and is eligible for special education and related services as a child with a disability under IDEA. Beginning in kindergarten, while living in the continental United States (CONUS), Petitioner attended a specialized non-integrated private school with an intensive full-day program for students with ASD (“Day School S”) and was eligible for extended school year (ESY) programming, which continued his special education services into July and early August. Petitioner’s public school district procured this specialized placement because of the district’s inability to provide him sufficient services and support within their special education resources.

2022-2023 School Year IEP

On April 7, 2022, the district’s Committee on Special Education (CSE) convened with Parent to conduct an annual review of the Child’s individualized education program (IEP). The CSE chairperson reviewed the triennial re-evaluation timeline with Parent and advised that only the psychoeducational evaluation was complete. Parent elected to defer triennial review until all evaluations were available. Respondent Exhibit (RE) 9.

⁴ The Board ordered that issues not raised on first appeal (Claims 9, 12 (virtual services only), and 16) or fully resolved based on the existing record (Claims 2 and 6 (auxiliary services only)) did not need to be addressed on remand.

In advance of the meeting, Parent was provided the Child's Annual Review Report and the 2022-2023 Goals and Objectives. RE 8; RE 11. During the meeting, the team considered the Child's current IEP for the 2021-2022 school year (the "2021 IEP"), his behavior intervention plan (BIP), the psychoeducational evaluation, and reports from Parent and the Child's special education teacher and related service providers. RE 9.

Based on his progress during the current school year under the 2021 IEP, the CSE updated the Child's Measurable Annual Goals for the upcoming school year, determined that he remained eligible for ESY services, and concluded that his Least Restrictive Environment (LRE) placement remained at Day School S in a program with nine students and six staff. A new IEP for the 2022-2023 school year (the "2022 IEP") was finalized during the meeting, which identified that the Child "requires special instruction in an environment with a smaller student-to-teacher ratio and minimal distractions in order to progress in achieving the learning standards." RE 10 at 14.

OCONUS Employment

In about May 2022, Parent, a special education teacher by master's degree and training, applied for and was offered a DoDEA job located outside of CONUS (OCONUS). Parent testified that, considering the Child's educational needs in terms of her job opportunity, she reviewed the DoDEA Overseas Directory and identified an OCONUS middle school (OMS) where the Child could be enrolled that offered "Level 3" (sustained or intensive instructional support) ASD educational services, which she believed aligned with the services identified in the Child's IEP.

The family subsequently participated in an Exceptional Family Member Program (EFMP) screening for the potential relocation. In conjunction with the screening, Day School S completed a Special Education Summary and emailed Parent a scanned copy of the Child's then-active 2021 IEP. RE 14 at 9; RE 4 at 17-18. In the Summary, Day School S indicated that the Child "exhibits high risk or dangerous behavior at times" and "has an individual behavior plan." RE 4 at 17-18 (embedded attachments). On May 12, Parent forwarded the 2021 IEP and the Summary to the EFMP. RE 4 at 16.

Based on the submitted materials, the EFMP concluded that educational services to support the Child's needs *were not* available in the OCONUS location. Parent received the EFMP conclusion on May 31 and was advised that, if she accepted the position, she "*must* provide a copy of [the Child's] IEP *along with a printout of this email*, to the school administrative office upon arrival to the duty station." RE 4 at 4 (emphasis added). Despite notification of the unavailability of services, Parent responded, "I would like to proceed with accepting this offer as I've already researched the services available in the area. They have ASD level 3 so that is perfect!" *Id.* at 3. Parent never sought to confirm her interpretation of the Overseas Directory with EFMP personnel or anyone at DoDEA.

Respondents' witness, B.K., possessed over 50 years of experience as a special education teacher and administrator, spent six years as an EFMP screener, and worked for DoDEA for the prior 20 years, including as the Regional Supervisory Instructional System Specialist (ISS) for Special Education with Respondent School District. In that capacity, she had direct and extensive professional involvement with Respondents' efforts to serve the Child beginning in early October 2022. B.K. testified that the Overseas Directory is not intended for parental use; rather, it is a guide

for “qualified personnel to screen . . . for the various types of disabilities or levels of resources that students will need educationally in all of [DoDEA’s] worldwide locations.” Transcript (Tr.) at 370.

OCONUS Relocation & OMS Enrollment

The family arrived OCONUS and, on September 21, 2022, Parent provided Respondents with the Child’s now outdated 2021 IEP. RE 14 at 8-9. She testified that she was unaware of the 2022 IEP until she received it through discovery in this case. Parent did not provide Respondents with other records, such as the Child’s BIP or the May 31 EFMP email. Although she testified that she told Respondents about the EFMP determination, nothing in the record corroborated that testimony. Tr. at 135-36.

Upon reviewing the 2021 IEP, the District ISS asked to meet with Parent to discuss questions about the Child’s placement and IEP, and Parent requested to bring the Child because he was out of school. RE 14 at 4-5. During the September 22 meeting, the District ISS briefly observed the Child and asked him a few questions. Shortly after the meeting, in response to the District ISS’s request for the Child’s BIP, Parent indicated, “I will have to find a scanner to send the BIP. I thought I had one in my email but I don’t.” *Id.* at 4.

The next day, Parent enrolled the Child at OMS with a start date of September 26. Parent testified to her belief that, by enrolling the Child at OMS, Respondent School District was acknowledging that they could serve him there; however, Parent also acknowledged that enrollment at OMS was not the same as accepting the Child’s IEP and that a change of placement could not occur without a meeting of the Case Study Committee (CSC). Regarding the implications of enrollment, B.K. testified that DoDEA was required to enroll the Child because he was a dependent of a DoDEA employee, but that enrollment did not guarantee the ability to serve the Child locally. Rather, enrollment was required to conduct a CSC meeting, which was necessary to discuss putting an IEP in place.

The Child began attending OMS on September 26 and was placed in the pull-out learning impaired moderate to severe (LIMS) classroom. In an effort to provide the Child with analogous placement to the 2021 IEP in their possession, the classroom included two teachers and one or two paraprofessional aides, including a special education teacher certified for students with moderate to severe disabilities and a district autism teacher leader assigned specially to OMS for the Child. B.K. testified that this LIMS classroom was meant only to be an interim placement pending Respondent School District’s ability to identify an appropriate placement for the Child.

During his first four days of attendance, OMS documented two dozen behavioral incidents involving the Child, including elopements, disruptive behaviors, kicking, biting, screaming, and physical contact with staff that caused bruising and drew blood.

B.K. testified that the Child’s behavioral issues made it very difficult to teach him, with his elopements and aggressive behaviors being of particular concern for the safety of staff, other students, and the Child. The staff and teachers involved with serving the Child at OMS were the most qualified special education and autism providers in Respondent School District, who, despite attempts to address the Child’s behavioral issues with adjustments, saw no improvement in his progress over the four days. B.K. testified that the primary goal while the Child was in the LIMS

classroom became “to keep him safe and regulated in a school environment all day,” rather than to address his goals and objectives. Tr. at 423.

On September 28, 2022, Parent authorized OMS to obtain the Child’s records from Day School S. RE 16. OMS staff contacted the school’s program director and the Child’s previous case worker, and discussed the Child’s educational history, latest programming, and known behavioral issues. OMS learned that standard procedures for working with the Child included utilizing personal protective equipment (PPE), that Parent had been working with a specialist to find medications to assist with behaviors, and that there was a more current IEP – the 2022 IEP. RE 24.

On September 29, 2022, the CSC convened a meeting to discuss the Child’s transportation needs and IEP programming. During the meeting, Parent acknowledged some of the Child’s existing elopement, non-compliance, and aggressive behaviors and was apparently asked both about behavioral incidents at Day School S during the summer ESY and about certain materials not provided to OMS. After Parent cited her need to return to work, the meeting was paused and continued to October 3. Tr. at 58. Shortly after leaving the meeting, Parent emailed Day School S about matters raised, including the ESY incidents, staff use of PPE with the Child, and additional take-home materials. RE 22.⁵

On October 3, 2022, an urgent CSC meeting was convened to address a change of placement for the Child.⁶ Parent declined postponing the meeting. Based on continued behavioral incidents, Parent was advised that the Child was being immediately placed in an alternative education setting (AES) for up to 45 school days due to safety concerns for him, other students, teachers, and staff. Parent was also advised that the AES would be home-based and that, due to the injuries the Child had caused to school staff, teachers would be unable to provide instructional activities directly; rather, various special education and autism specialists would provide Parent with regular instructional materials and supports, including materials from speech/language and occupational therapy providers. RE 27.

Additionally, because the Child’s previous LRE was a non-integrated specialized school, the CSC determined that trying to service him in a public school like OMS would not represent an appropriate program. Parent was again advised that no non-integrated special education programs were available locally that could implement the 2022 IEP and, accordingly, the CSC proposed to utilize the AES period to identify an out-of-district placement. Because there were no day or residential programs that could meet the Child’s needs in Respondent School District, the CSC proposed to identify CONUS residential placements.⁷ Parent disagreed with the idea of placing the Child in a CONUS residential school while she remained OCONUS. The October 3 meeting ended, and Parent was advised that the CSC would contact her “shortly to schedule an IEP

⁵ Where applicable for identifying chronology, email timestamps have been adjusted to reflect the conversion from Eastern Time to OCONUS Standard Time.

⁶ The October 3 continuation date was originally postponed but later revived for the urgent CSC meeting.

⁷ The Child was eligible for DoDEA services as a dependent of Parent, the DoDEA employee sponsor, and therefore a day program was not a viable option as long as Parent remained living OCONUS. If Parent remained OCONUS and the Child relocated CONUS to attend a *day* program, he would have to establish a household with other family, which would sever his eligibility for DoDEA services. If the Child attended a *residential* program, however, he would remain attached to Parent’s household and eligible for DoDEA services.

modification meeting to be convened as soon as possible . . . to formally generate a DoDEA IEP that reflects the full scope of [the Child's] needs in order for DoDEA to move forward in pursuing an appropriate program to meet his needs." RE 28 at 5.

On October 4, 2022, Parent revoked her consent for OMS to contact the Day School S to access the Child's records. RE 17. She testified that she did not want OMS to have access to those records without explaining what they needed and why.

On October 5, 2022, Parent received Prior Written Notice (PWN) of the placement proposal presented during the October 3 CSC meeting, noting Parent's opposition to the proposal, and indicating that another CSC meeting would be coordinated shortly. In response, Parent formally requested mediation, and Respondents prepared and submitted the mediation request the following day.

On October 6, 2022, Parent requested from OMS certain records compiled about the Child. Whether Respondents provided a timely or complete response underlies Petitioner's tolling claim discussed further below.

AES & Homeschool

Parent testified that she took leave from work during the first week of the Child's AES and identified A.S., whom Parent regarded as both a childcare provider and educator. A.S. began working with the Child on October 4 or 5, initially under Parent's instruction and eventually independently, using materials that the school provided and that Parent procured directly.

On October 11, 2022, OMS notified Parent that special education support materials were compiled for the Child's educational program during the AES. When Parent retrieved the materials the following day, she was informed that she would monitor the Child's progress and could request additional materials when he progressed through the current lessons. RE 58. Parent was provided data collection sheets but contends that she was not instructed on how to use them and elected not to ask until another CSC meeting was held. She requested no additional materials during the AES.

Between October 4 and October 26, 2022, the Superintendent for Respondent School District met with Parent multiple times to discuss equivalent employment options for Parent at CONUS bases with proximity to appropriate educational placements for the Child. RE 35; RE 37. The offers included DoDEA assuming responsibility for all costs associated with the move. On October 28, Parent relayed that she had "found a homeschool cohort [OCONUS]" and requested additional time to consider DoDEA's proposal. RE 38 at 4.

On October 31, Parent declined the relocation offer and expressed that she wanted to stay OCONUS, citing that her "children have found a routine and a community" and that she had "found a homeschool option for [the Child]" and "a way to meet [his] needs *outside of DoDEA*." *Id.* at 2-3 (emphasis added). A few hours later, Parent inquired about the steps to "remove [the Child] from school," noting affirmatively that she wanted "to proceed with the homeschooling as he has begun to make a lot of progress and has an excellent caregiver taking him to meetings," and was thriving. *Id.* at 1. The Superintendent instructed Parent to contact OMS directly to process the change in enrollment and advised B.K. of Parent's homeschool plan. *Id.*; RE 40 at 2.

In response, B.K. advised Parent that homeschool students may either be withdrawn from DoDEA enrollment or remain enrolled, in which case DoDEA would “not provide curriculum materials” but could “provide books and some other materials to supplement [Parent’s] own selected homeschool curriculum.” RE 40 at 2-3. Parent elected to keep the Child enrolled, citing that it would be “less paperwork that way.” *Id.* at 1.

The Child was classified as a homeschool student effective November 9, 2022, and Parent was advised, “The choices for [the Child’s] curriculum sequence, pace, and grades reside[] solely with you and how you choose to document the work.” *Id.* Parent requested no additional materials or services for the remainder of the 2022-2023 school year. Additional findings about the homeschool program are discussed along with Petitioner’s reimbursement claim, below.

Mediation

On November 9, 2022, after confirming her decision to homeschool the Child, Parent also confirmed wanting to “continue with mediation so [the Child] will have an IEP in place once we leave here.” *Id.* No further CSC meetings were requested or pursued by either Respondents or Parent during the 2022-2023 school year. Parent testified to her belief there would have been further CSC meetings to discuss the Child’s needs and placement but also testified that she was told that the CSC had not contacted her because Respondents were waiting for mediation, which could take up to four months. Respondents, however, interpreted Parent’s mediation request, which she had explicitly tied to finalizing an IEP to use after the family moved, as her being unwilling to participate in a CSC meeting outside of mediation.

There is no evidence that Parent inquired about the status of the mediation again after November 9. During conference calls with DoDEA headquarters in December 2022 and January 2023, B.K. inquired about the status of the request and was told that the mediation contract was still being negotiated. Tr. at 506-07. On February 27, 2023, B.K. followed up by email and a DoDEA official expressed that the mediation request must have “gotten lost in the shuffle” and would be worked as soon as possible. RE 48 at 8. On March 6, having been notified that mediation would be scheduled soon, Parent requested legal assistance for the mediation from a regional judge advocate office. MTD Resp., Ex. 5 at 1.

Mediation commenced on April 25 and was continued to May 4; however, at the start of the May 4 session, Parent cancelled, citing a family matter. RE 49 at 1; RE 52 at 5; RE 53 at 1. The session could not be rescheduled immediately because the mediator’s contract needed to be extended due to the May 4 cancellation.

On May 11, 2023, while the contract extension was pending and noting a tentative rescheduled mediation date, Parent engaged with a private law firm, who inquired whether there had been updated evaluations or an updated IEP since the 2021 IEP in their possession. MTD Resp., Ex. 5 at 19. Parent replied she was unsure why the Child’s IEP meeting had not been conducted prior to the relocation and suggested a mix of circumstances and oversight. *Id.* at 20. Importantly, the annual IEP meeting *had* been conducted on schedule in April 2022 and Parent participated in developing the 2022 IEP, which was finalized on April 7, effective on July 4, and enabled the Child’s realized access to ESY services immediately prior to the OCONUS relocation.

Once the mediator's contract extension was finalized, a two-session mediation was scheduled for June 7 and 8, and the first session occurred; however, Parent cancelled mediation on the morning of June 8, citing her inability to have legal counsel review the draft settlement agreement in time. RE 54. Because mediation ended at an impasse, B.K. advised Parent that the Child's status would remain as a homeschool student and reiterated Parent's ability to request materials to augment her homeschool curriculum. RE 57. The 2022-2023 school year ended one day earlier, and the CSC was unavailable to reconvene until August. Tr. at 572-73.

2023-2024 School Year

Neither Parent nor Respondents attempted to convene a CSC meeting at the beginning of the 2023-2024 school year while Petitioner remained OCONUS. In a post-hearing brief, Respondents conceded their obligation to have done so.

On August 31, 2023, Parent requested additional homeschool materials from OMS, including for speech/language and occupational therapy. RE 60. Except for occupational therapy materials, which were not included because the team did not "have a clear understanding of [the] child's current present level of performance" and would not "provide materials that may be counterproductive to his motor growth," the requested materials were compiled and made available to Parent a week later. RE 59 at 1.

On September 7, citing that both her daughter's and Petitioner's "extensive medical, educational, and social demands" were not being met OCONUS, Parent requested a compassionate transfer to CONUS, which DoDEA approved the next day. RE 76. Parent accepted employment at a DoDEA school on one of the CONUS bases to which DoDEA had offered to transfer her employment one year earlier.

The family relocated and, on October 30, 2023, Parent began the process of enrolling the Child at a DoDEA middle school on base (BMS). RE 77. She provided BMS with a sealed package of the Child's special education records compiled by OMS, which she never opened while the package was in her possession. Tr. at 242. Parent did not provide any materials related to the Child's homeschool curriculum or related progress data. *Id.* at 243. On November 6, BMS was ready "to start online/virtual services" with the Child whenever Parent was ready to start his attendance. RE 78 at 5. Parent initially suggested November 13 but was willing to wait an additional week "[i]f additional time [was] required to review the records and formulate a plan." RE 78 at 4. BMS confirmed that the Child would receive virtual services initially, to which Parent expressed that he "displays regression and a lack of progress towards his goals under [a virtual learning] model." RE 78 at 9-10.

On November 8, BMS confirmed the Child's November 13 start date and that he would receive virtual services until his incoming IEP meeting could be held. *Id.* at 2-3. Noting again that the Child "is not a strong virtual learner," Parent elected to postpone the Child's start date until after his IEP meeting. *Id.* at 1-2; Tr. at 245-47.

On November 28, 2023, an initial CSC meeting was held with BMS, for which the team reviewed "extensive records" from Day School S, an exception being the Child's BIP. RE 79 at 2-3. Upon inquiry, Parent asserted she needed to "look to see" if she had it. *Id.* at 2. The CSC

reconvened on December 1 to discuss the Child's gradual reintroduction to a traditional school setting and the criteria that would be considered to increase his instructional time beyond the initial 90 minutes per day. RE 81 at 4. The Child began attending BMS on December 4, 2023.

On January 11, 2024, the CSC convened and finalized a DoDEA IEP by accepting the Child's 2022 IEP with minimal amendments, including to reflect differences in services minutes due to his abbreviated school day and in LRE placement due to his attending BMS. RE 83 at 2, 4; RE 87 at 1. Over the next several months, the CSC conducted additional assessments and implemented additional IEPs. On May 8, 2024, following a triennial review, a new IEP was finalized, which remained the Child's active IEP at the time the Complaint was filed. RE 99; RE 100; RE 101.

B.K. testified that BMS's structure affords them greater expertise and resources to develop and implement programs for children with significant special needs. Tr. at 601-03. Her review of BMS records reflected that the Child continued to demonstrate similar behaviors to those during his attendance at OMS and, despite BMS's greater resources, educators still struggled to provide the Child an LRE. *Id.*

The Child attended BMS through December 2024. In January 2025, Parent left DoDEA employment, and the family moved back to the state they left in 2022. Parent reenrolled the Child in the local public school district and, following a period of homebound instruction, the Child began attending a new specialized private day program in March 2025. Tr. at 252-57; RE 106.

Judge's Analysis

Following a three-day due process hearing, the Judge found that Respondents violated IDEA and denied FAPE through the Child's 45-day disciplinary removal to an AES (Claim 1)⁸ and – most significantly – the months-long delay in commencing mediation (Claim 7), including any negative impact that delay implied to parental participation, additional CSC meetings, LRE placement (Claim 6), development of a DoDEA IEP (Claim 5), and provision of materials and services to the Child while a homeschool student (Claim 9). Accordingly, the Judge granted Petitioner's request for compensatory education and, finding that the mediation delay "encompasse[d] the entire timeframe after the October 3, 2022 CSC meeting," awarded 43 weeks of compensatory services, accounting for the majority of the 2022-2023 school year, 2023 ESY, and start of the 2023-2024 school year. Decision at 32, 47-48.⁹

The Judge also acknowledged Respondents' obligations to conduct a manifestation determination review and finalize a new BIP (Claim 2), the failures of which arguably amounted to procedural violations of IDEA. He concluded, however, that the violations did not independently result in denial of FAPE and, alternatively, that any substantive harm arguably

⁸ Regarding the decision to place the Child in an AES on October 3, 2022, the Judge concluded that the decision itself fell outside the two-year statute of limitations, but that certain "*impacts* of the decision" that developed within the two-year period (i.e., after October 16, 2022) were not time barred. Decision at 33 (emphasis in original).

⁹ Neither Petitioner nor Respondents challenge the Judge's compensatory education award.

resulting from those violations ran parallel to that caused by the mediation delay and was therefore already addressed through his compensatory education remedy calculation.

With regard to Petitioner's claims that Respondents caused substantive harm by predetermining the Child's placement (Claim 3) and not implementing his incoming IEP (Claim 4), the Judge found that Respondents intended to pursue these obligations in additional CSC meetings, which they reasonably came to believe were not possible without a mediator's involvement because Parent had linked mediation to finalizing a DoDEA IEP for use after leaving OCONUS. Moreover, Respondents' obligations were severely frustrated by Parent's contributory and interfering conduct, as discussed further below. Similarly, the Judge found that any regression suffered during the homeschool period (Claim 10) was not attributable to OMS considering Parent's decisions in implementing that program.

Finally, in resolving the reimbursement claim, the Judge leaned heavily on the absence of supporting documentation in the record to find that Petitioner failed to establish that the homeschool program was appropriate or what expenses were actually incurred. The Judge highlighted the absence of "documentation in the record of A.S.'s qualifications or credentials as an appropriate homeschool provider for Child" and that Parent's lesson plans were essentially activity schedules that were not "geared towards goals or objectives." *Id.* at 46. Additionally, despite "claim[ing] reimbursement for over \$48,000 in payments to, and other expenses incurred by" A.S., Petitioner "did not document any payments for A.S.'s services" or provide receipts or other documentation reflecting expenses actually paid for field trips, commissary trips, certain curriculum materials and programs, and grocery and other food purchases. *Id.* Considering the foregoing factors and other equitable considerations of Parent's actions, the Judge denied Petitioner reimbursement of approximately \$61,000 in claimed homeschool expenses.

IDEA and DoD Implementing Regulations

IDEA ensures that children with disabilities "have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A).¹⁰ Noting that the statutory definition of FAPE comprises both special education (*i.e.*, instruction tailored to meet a child's unique needs) *and* related services (*i.e.*, transportation and other supportive services to permit the child to benefit from that instruction),¹¹ the Supreme Court assessed that the purpose of IDEA is not to merely provide access to public education, but to ensure that such access is meaningful and individually designed to confer some educational benefit. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 192, 200-01 (1982). Therefore, to determine whether a school district has provided access to FAPE, a court must ask whether: (1) the school complied with the IDEA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits. *Id.* at 206-07.

The primary vehicle for providing FAPE is the IEP – a personalized plan to meet the student's educational needs, which documents current levels of academic achievement and functional performance, specifies measurable academic and functional annual goals, and identifies

¹⁰ Implementing the policy set forth in IDEA, the Manual requires that FAPE be made available to children with disabilities who are entitled to enroll in DoDEA schools. Manual ¶ E2.3.b.

¹¹ See 20 U.S.C. § 1401(9), (26), (29).

the special education and related services to be provided so that the child can advance appropriately toward those goals. *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 158-59 (2017). Ultimately, the IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). This standard requires an IEP that is “appropriately ambitious,” reflecting the student’s potential for growth, rather than one offering minimal progress or mere procedural compliance. *Id.* at 400-02.

Development of the IEP contemplates a cooperative and collaborative process between parents and education professionals – together, the student’s “IEP team” or “CSC”¹² – both having significant roles in the evaluation, development, and placement decisions of the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 53 (2005). When disagreements arise between parents and educators about an IEP, either party may pursue mediation or – alternatively, subsequently, or simultaneously – a due process complaint. Manual ¶¶ E6.4, E6.5. Should impasse continue, the matter may proceed to an impartial due process hearing before a hearing officer.

The hearing officer is responsible for determining whether the student received access to FAPE. Assessing whether an IEP provides that access requires appropriate deference to the judgments and decisions of the education professionals who, using their expertise, develop and implement the IEP. *See Endrew F.*, 580 U.S. at 404. The burden of persuasion generally falls upon the party seeking relief. *Schaffer*, 546 U.S. at 57-58, 62.

Standard of Review

IDEA is a largely procedural statute, and compliance with its procedural safeguards is “essential to ensuring that every eligible child” receives the substantive benefits of FAPE, with the procedures providing for meaningful parent participation being “particularly important.”¹³

A due process complaint may allege procedural or substantive violations. Procedural violations generally concern the preparation of an IEP, such as the evaluation, placement, and IEP-formation procedures, while substantive violations concern the substance of the IEP and whether the school has provided an educational program reasonably calculated to enable a child to make progress. *Rowley*, 458 U.S. at 206; *Endrew F.*, 580 U.S. at 399. While a district’s failure to comply with procedural requirements may be sufficient to support denial of FAPE, not every procedural defect demands such a finding. Rather, to be actionable, a petitioner must establish that the violation resulted in substantive harm by impeding the child’s right to FAPE, significantly impeding parental participation, or causing a deprivation of educational benefits. Manual ¶ E6.8.b(10). Such an evaluation and determination of substantive harm must be made based on the facts and circumstances of each case.

¹² See 20 U.S.C. § 1414(d)(1)(B)(i); Manual, Glossary.

¹³ *Amanda J. ex rel. Annette J. v. Clark Cty. Sch. Dist.*, 267 F.3d 877, 891 (9th Cir. 2001). *See also Rowley*, 458 U.S. at 187-89, 205-06 (discussing importance of procedural safeguards in statute); *Sch. Comm. of Town of Burlington v. Dep’t of Ed. of Mass.*, 471 U.S. 359, 368 (1985) (noting importance of procedural safeguards to ensure “full participation of the parents and proper resolution of substantive disagreements”).

When there is no final IEP, evaluating whether a district offered FAPE may require consideration of “issues such as the way in which the IEP process unfolded and the relative responsibility of the participants for the breakdown of the process.” *C.G. ex rel. A.S. v. Five Town Cmty. Sch. Dist.*, 513 F.3d 279, 286 (1st Cir. 2008). Even where a school district fails to offer FAPE, if the development of a final IEP was frustrated by parental obstruction or refusal to cooperate in the process, such unreasonable conduct impacts negatively on their charge of substantive harm or ability to seek remedies.¹⁴

In special education cases, the Appeal Board employs a modified *de novo* standard of review, giving due deference to a hearing officer’s credibility determinations and resolution of conflicting evidence, provided they are based on a preponderance of the evidence. *See* DoDDS Case No. 97-E-001 at 3 (App. Bd. Dec. 2, 1997).¹⁵ A hearing officer’s interpretation of statutory authorities or DoD regulations is subject to plenary or *de novo* review on appeal. *Id.*

Discussion

On appeal, Petitioner argues that the Judge failed to adhere to the Remand Order, violated his due process rights during and after the hearing, and erroneously denied his request for reimbursement of homeschool expenses. In reply, Respondents contend that Petitioner’s appeal fails to demonstrate the Judge erred. For reasons set forth below, we affirm the Judge’s decision.

Violation of IDEA & Denial of FAPE

Petitioner first argues that the Judge improperly “limited the scope of analysis” on remand, thereby failing to adhere to the Appeal Board’s Remand Order, which directed “full development of the record on multiple claims, including whether Respondents denied FAPE and what remedies were appropriate.” Appeal Brief at 9-10. In support of that overarching argument, Petitioner restates his arguments on each claim that the Judge addressed at hearing and, importantly, resolved largely in Petitioner’s favor.

To that end, the record supports the Judge’s finding that Respondents violated IDEA and denied FAPE through the AES removal and prolonged mediation delay, the timing of which encompassed and impacted upon numerous of Petitioner’s other claims. These findings resulted in an award of compensatory services covering almost the entirety of the available relief timeframe. The fully developed record further supports the Judge’s finding that Parent’s conduct impeded Respondents’ ability to finalize a DoDEA IEP, and he properly considered that conduct in determining the extent to which Respondents were responsible for certain other procedural failures and any resulting substantive harm. Petitioner’s arguments amount to a disagreement with the

¹⁴ *Id.* at 286-88 (no substantive harm where parents’ actions “disrupted the IEP process, stalling its consummation and preventing the development of a final IEP”); *MM ex rel. DM v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 534-35 (4th Cir. 2002) (no substantive harm where IEP was not finalized due to parents’ lack of cooperation, including cancelling a third IEP meeting, failing to notify the district when ready to reconvene IEP Team, and failing to respond to district’s written notice that a space was being held for the child); *Sytsema ex rel. Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1315 (10th Cir. 2008) (no substantive harm where lack of final IEP was due to parents unilaterally terminating IEP development process due to their concerns about proposed placement).

¹⁵ Whether a child was denied access to FAPE is a mixed question of law and fact and is reviewed *de novo*. *Id.* *See also MM*, 303 F.3d at 530-531.

Judge's weighing of the evidence, and he fails to articulate how the Judge improperly limited his analysis on remand or otherwise failed to adhere to the Remand Order. We find no harmful error in the Judge's findings on any of the foregoing claims.

Tolling Due to Delayed Record Production (Claim 8)

Petitioner also argues that Respondent School District's failure to timely respond to Parent's document request tolled the two-year statute of limitations for his claims arising before October 16, 2022.

On October 6, 2022, shortly after the AES removal, Parent requested certain records pertaining to the Child, including "copies of all data compiled" by OMS, the September 27 CSC meeting minutes, serious incident reports (SIRs) and notes made about Parent's awareness of serious incidents, attendance records, and notes about any consultation with behavioral therapists or conducting a functional behavioral assessment. RE 33. She had already received the PWN for the October 3 CSC meeting. RE 28; RE 29. Responding that same day, Respondents provided Parent with the October 3 CSC meeting minutes, to which Parent wanted to offer corrections and additions. RE 27; RE 31. She was instructed to sign and date her input so that it could be incorporated as an addendum to the minutes; however, she provided only an unsigned document. Respondents also indicated that any other records would be compiled and made available the following week. As of her request, the Child had attended OMS for less than four full school days.

Prior to the family's 2023 return to CONUS and with the help of an attorney, Parent submitted another records request to OMS. It is unclear when the request was made or what it originally sought. On October 20, 2023, OMS advised that it had no academic records because the Child was a homeschool student, but that it could provide medical and special education records, and Parent clarified her interest in receiving the Child's "entire special education file/folder" to include "meeting minutes/notes/data/incident reports/etc." RE 45 at 1-2. OMS prepared the Child's "entire IEP/special education records" and made them available to Parent the same day. *Id.* at 1. The full scope of this response is unknown because OMS provided the records to Parent in a sealed package, which Parent never opened before giving to BMS.¹⁶

The Judge found it was unclear what Parent meant in the October 2022 request by "data collected" by OMS, that there were no separate minutes from the September 27 CSC meeting because it was continued to October 3 and the notes were combined, and that OMS prepared no SIRs. Decision at 41. Additionally, it was unclear if Parent received anything else prior to the attorney-involved response in October 2023, or what she received at that point because she declined to open the sealed package. Finally, it was unclear what records Petitioner contends were in OMS's possession and responsive to the request at the time but not provided. Accordingly, the Judge concluded that Petitioner failed to meet "his burden of establishing with sufficient clarity

¹⁶ Notably, at various points in this case, Petitioner describes the October 2023 records response as a complete and meaningful production, as an incomplete response to the October 2022 request, and as differing from subsequent productions. *See* Appeal Brief at 15, 22; Tr. at 70-71; Petitioner Exhibit (PE) I at 88. Parent's assertion that she did not open and review the October 2023 response fatally undermines any arguments about its contents and sufficiency.

the records Parent believes she did not receive (assuming they existed) to support a procedural or substantive violation” of IDEA that resulted in denial of FAPE. *Id.*

On appeal, Petitioner claims only that the “delay significantly impeded [Parent’s] ability to participate in the IEP process and to evaluate Respondents’ actions in real time.” Appeal Brief at 15.¹⁷ He fails to specify which claims he believes the Judge incorrectly held fell outside of the statutory window or how such findings impacted the outcome of this case considering the breadth of the Judge’s remedy award stemming from the AES and mediation claims. Without identifying what documents were withheld and articulating a reasonable causal link between their absence and Parent’s ability to participate beyond that which the Judge already determined, we are not persuaded that the Judge erred in his analysis of this claim or those potentially impacted by it.

Due Process Violations

Petitioner next challenges that the hearing process “reflects procedural imbalance” between the Judge’s treatment of the parties, including by limiting Petitioner’s cross-examination and permitting post-hearing submissions only by Respondents, which “unequal treatment” he argues “undermined the fairness and integrity of the proceedings.” Appeal Brief at 17. Neither argument is persuasive.

Regarding alleged hearing inequities, there is a rebuttable presumption that quasi-judicial officers are impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion.¹⁸ We have examined the entire record and Decision, paying particular attention to the three-day hearing transcript, and find nothing therein that would cause a reasonable person to question the Judge’s impartiality or handling of this case. The Judge’s questions, comments, and rulings on objections appear to be ordinary efforts at hearing administration and do not establish partiality or a due process violation.¹⁹

Respondents’ Post-Hearing Brief

Petitioner also challenges that the Judge “allowed Respondents to submit additional materials” after the hearing without affording Petitioner the same opportunity. Appeal Brief at 17. The “material” to which Petitioner refers is Respondents’ two-page post-hearing brief addressing a legal question raised at hearing. To that end, the transcript reflects that a question arose during B.K.’s direct examination regarding whether Respondents had a duty to initiate a CSC meeting after mediation ended unsuccessfully in June 2023 and the Child remained a homeschool student. The question came up on the final day of hearing, and the Judge granted Respondents’ request for leave to research and brief the issue in a post-hearing submission. Tr. at 572-73, 827. Petitioner did not object to the request, which ultimately resolved the issue generally in his favor when

¹⁷ Petitioner also contends that “additional critical records were produced a mere 13 days before” the January 2026 hearing, which he argues impaired his ability to prepare. *Id.* at 16. Petitioner again fails to identify what “critical records” were not provided in advance of the exhibit exchange, the deadline for which was set on January 14, 2026 – five business days before the hearing commenced on January 21, as required pursuant to the Manual. *See* Manual ¶ E6.13.a. Petitioner’s argument in this regard is without merit.

¹⁸ *See Schweiker v. McClure*, 456 U.S. 188, 195-96 (1982).

¹⁹ *See Liteky v. United States*, 510 U.S. 540, 555-56 (1994).

Respondents acknowledged their obligation to have attempted to convene a CSC meeting at the beginning of the 2023-2024 school year. Respondents' request was an ordinary procedural matter within the Judge's discretion, and Petitioner has not established that the Judge erred in determining the brief would serve a useful purpose or that he violated due process in allowing it.

Petitioner's Post-Hearing Evidence

Conversely, Petitioner contends that he was unfairly prejudiced by the Judge's refusal to accept additional post-hearing evidence supporting his claim for reimbursement of homeschool expenses, arguing that the Judge improperly "created the evidentiary gap and relied on it." Appeal Brief at 8-9. Petitioner's argument is unpersuasive and ignores the pre-hearing record and the Judge's discretion in resolving matters arising therein.

In the July 2025 Remand Order, the Board specifically identified that reimbursement of homeschool expenses "may be an available remedy *if Petitioner is able to establish the appropriateness of the program.*" Remand Order at 21 (emphasis added). The record in this case reflects that both parties engaged in extensive discovery, each issuing document requests and interrogatories to the other. Respondents sought documents, generally, that Petitioner might use in support of his claims and, more specifically, about the Child's homeschool program, including providers, credentials, curriculum, schedule, progress, and expenses incurred.²⁰ Petitioner produced receipts and other materials in response. Petitioner and Respondents agreed via a Joint Status Report that discovery was complete as of December 2, 2025, and the Judge instructed the parties to exchange exhibits that each intended to use at hearing by January 14, 2026.²¹

At hearing, in response to cross-examination about inconsistent claims and limited supporting documentation, Parent indicated that she might have additional receipts and intimated her desire to look for and submit them. Tr. at 308-20. To the extent that Parent's intimations amounted to a request to introduce additional evidence, the Judge denied it, citing the parties' agreement that discovery was complete on December 2, 2025, and noting that there was no provision for submission of more documents after the hearing. *Id.* at 322-23.

The Judge was authorized to rule on discovery issues, bar introduction of materials not properly disclosed in advance of hearing, and decide when the record closed.²² Petitioner bore the evidentiary burden to establish his claim for homeschool reimbursement, documentation for which there was both repeated opportunity and explicit demand to produce prior to the hearing. The record in this case therefore does not support that the Judge abused his discretion in rejecting Parent's untimely and dubious proffer of additional evidence that was neither produced during discovery nor provided in the pre-hearing exhibit exchange, and Petitioner has not established that he was denied any due process afforded him under the Manual.

²⁰ See Resp. 2nd RFP at 4-6.

²¹ See Case Management Order at 1. See also Manual ¶ E6.13.a.

²² Manual ¶¶ E6.8.b(4), 8.b(8), 13.c.

Reimbursement for Homeschool Expenses

Petitioner's final argument on appeal is that the Judge improperly denied his claim for reimbursement of homeschool costs, which he estimated were about \$61,000. The underlying expenses were itemized, albeit inconsistently, in broad categories in various documents created by Parent and during her testimony, and included: between \$36,400 and \$43,200 paid to A.S. for wages and, on the higher end, expenses incurred while she was with the Child, such as gas and activity fees; either \$9,300 or \$9,870 for Parent-provided instructional time; between \$2,000 and \$3,000 for curriculum materials; about \$4,600 for lunch, snack, and vending machine purchases; about \$2,500 for field trips and community activities; and \$3,000 for related speech services.

Courts are authorized to grant such relief as they determine is appropriate, which entails "broad discretion" and implicates "equitable considerations." *Burlington*, 471 U.S. at 369, 374 (citing 20 U.S.C. § 1415(i)(2)(C)(iii)).²³ We identified in our Remand Order that a parent who unilaterally places their child in a private school setting, including homeschool instruction, may be entitled to reimbursement for those expenses, but only if the parent demonstrates that the school district failed to provide FAPE *and* that the alternative placement was appropriate under IDEA.²⁴ The second requirement – that the placement be appropriate – is "essential to ensuring that reimbursement awards are granted only when such relief furthers the purposes of [IDEA]." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 242 n.9 (2009).

In response to Petitioner's appeal, Respondents do not challenge the Judge's finding that there was a denial of FAPE, but reiterate that Petitioner was not entitled to reimbursement because: 1) he failed to demonstrate that the homeschool program was appropriate; 2) he failed to document the actual costs incurred; and 3) equitable considerations of the case do not warrant reimbursement. For all these reasons, we agree.

Homeschool Program

To address Petitioner's argument in terms of the appropriateness of the Child's homeschool program, we note the following pertinent facts drawn from the Decision and record.

Worth noting first is that Petitioner advances inconsistent positions about the homeschool program, claiming both that: 1) the Child *progressed* academically, socially, and behaviorally during the homeschool period, as demonstrated by Parent's purported data collection;²⁵ and 2) the

²³ See also Manual ¶ E6.8(b)(11) (hearing officer may order "such relief as is necessary for the child to receive a FAPE.").

²⁴ See *Burlington*, 471 U.S. at 369-70; *Florence Cty. Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 15 (1993). See also *Sumter Cty. Sch. Dist. 17 v. Heffernan ex rel. TH*, 642 F.3d 478 (4th Cir. 2011) (affirming reimbursement for purely home-based program); *R.L. v. Miami-Dade Cty. Sch. Bd.*, 757 F.3d 1173, 1186 n.6 (11th Cir. 2014) (reimbursement authorized for homebound instruction). See also Manual ¶ E4.15(d)(1); 20 U.S.C. § 1412(a)(10)(C)(ii).

²⁵ See RE 113 at 10.

Child *regressed* academically and socially during the homeschool period and continues to experience the educational harm due to Respondents' failure to provide FAPE.²⁶

Parent identified A.S. as having been involved in the Child's homeschool programming for the first time during mediation in April 2023.²⁷ Prior to that, she referred only to a "childcare" provider or "babysitter" to identify the individual caring for the Child after the October 3 AES.²⁸

At hearing, Parent asserted that she and A.S. were the Child's only homeschool providers, with Parent allegedly providing five hours per week "compiling materials, grading materials, reteaching, and scheduling." RE 112 at 13.²⁹ Parent "testified that A.S. had been an educational aide for a school system and had a bachelor's degree in biology and math." Decision at 26. Petitioner produced an Affidavit of Service and Payment prepared by Parent and signed by A.S. and a letter prepared by A.S.³⁰ The record does not substantiate A.S.'s education, background, qualifications, credentials, or certifications as an appropriate homeschool provider or how long she worked with the Child's education.

Relying on her own credentials, Parent planned the Child's homeschool program for A.S. to implement. She based the program on the Child's 2021 IEP, not his current 2022 IEP, and asserted that she took "his current needs" into account based on "what [she] noticed he needed." Tr. at 337. Parent testified that the Child worked on his IEP skills two mornings per week; however, this programming "was largely undefined." *Id.* at 26. Parent also testified that the Child "occasionally participated in homeschool social groups (co-ops) with other homeschooled children from local U.S. military families." *Id.*

Regarding documentation supporting the programming itself, Petitioner primarily submitted standardized materials that were created by Parent at unclear times, including: two different versions of quarterly progress reports (QPRs); 340 pages of daily lesson plans (DLPs), which Parent testified represented the Child's homeschool work schedule; and a one-week

²⁶ See RE 109 at 11; Tr. at 80-85.

²⁷ See RE 49 at 13.

²⁸ See, e.g., RE 34 at 3 (Oct. 11: Parent "scrambled to find adequate childcare for [the Child] so that [she] can return to work"); RE 36 at 3 (Oct. 24: Parent "was able to secure a babysitter for [the Child] to return to work after a week of leave"); RE 38 at 1 (Oct. 31: the Child "has an excellent caregiver taking him to meetings.").

²⁹ For this time, Petitioner sought reimbursement at Parent's hourly DoDEA rate. The Judge found that it was "not appropriate to reimburse a parent for her time in this manner," noting that "Parent was responsible for homeschooling her Child" and "[s]he is not entitled to compensation of her time for doing so." Decision at 46. In so finding, the Judge erred to the extent that he concluded that parents are *per se* not entitled to reimbursement of their time. Courts have held that reimbursement is available for parental time and services, in addition to out-of-pocket expenses, in fashioning "appropriate relief." See, e.g., *Bucks Cty. Dep't of Mental Health v. Pennsylvania*, 379 F.3d 61, 71-72 (3d Cir. 2004) (affirming reimbursement of parent's time training and eventually providing therapy to child); *Hurry v. Jones*, 734 F.2d 879, 883-85 (1st Cir. 1984) (affirming reimbursement of parent's time transporting child to school). Parents seeking such relief, however, must still demonstrate that the services provided were designed to meet their child's unique needs, essentially functioning as trained educators or service providers rather than simply performing typical parental duties. As discussed further below, the Judge reasonably found that Petitioner failed in that regard – to demonstrate that Parent provided special education services that were appropriate under IDEA and beyond her role as a parent – and his legal error about the general availability of this relief was therefore harmless.

³⁰ RE 72; RE 73.

standardized “Homeschool Weekly Schedule,” which assigned hours to various general subjects, such as reading, math, science, social skills, communication, and “project time.”

The Judge noted that the “DLPs cover seven days a week, including weekends, have little to no variance, provide no breaks in the Child’s daily schedule during the school day, and have no days off for holidays, other school breaks, or sick days.” Decision at 26. The DLPs also allotted weekly time for multiple hours-long trips, including to the commissary, library, and other regular field trips. There were numerous inconsistencies regarding both the schedules and costs between Petitioner’s various documents, including that the DLP schedules did not match the Homeschool Weekly Schedule.

Parent did not produce evidence of: 1) the homeschool provider’s contemporaneous records; 2) the specific lessons that the Child followed each day; 3) notes or underlying data that was purportedly regularly collected by both Parent and A.S. regarding the Child’s progress; or 4) the Child’s quarterly goals and objectives.

B.K. testified that Parent’s homeschool materials did not represent “a comprehensive instructional support system” expected “for a student with [the Child’s] level of need.” Tr. at 592. Regarding lesson planning in special education, B.K. identified that “there are appropriate lesson plans available for homeschool students like the Child, covering adaptive life skills, functional literacy, reading and writing, numeracy skills, social interaction, and communication components,” which “are user friendly, designed for a parent or caregiver, and allow for flexible delivery in a homeschool setting.” Decision at 28 (citing Tr. at 578). B.K. opined that the DLPs created by Parent, however, “did not represent a comprehensive connection” to the Child’s needs. Tr. at 577. Rather, lesson plans should be linked to specific IEP goals, and the documentation should reflect that the instructional activities are aligned with those goals. Lesson plans should include “certain specifics, such as the length of time they cover (days, weeks, months) and the goals the lessons are to achieve in a certain skill area.” Decision at 27. Additionally, the DLPs did not change over the course of the year, and instead “remained sort of a loose itinerary of things.” Tr. at 580. Lesson plans should not be static, but rather are “dynamic, changing document[s] . . . based on observations of the child’s progress.” Decision at 27 (citing Tr. at 576-77).

B.K. also addressed the data collection and progress monitoring appropriate in special education, including the need for a regular tracking process to document the work being delivered for “specially designed instruction.” Tr. at 579. The decision about “adjusting the pace of learning and the level of learning, should be driven by the data,” which “should be collected on a daily basis.” *Id.* at 579. However, A.S.’s affidavit did not detail any recognizable data collection methods, Parent’s QPRs did not detail specific, measurable goals and were not clearly aligned to IEP benchmarks, and there was no way to evaluate the homeschool data to determine whether the Child had progressed, remained stagnant, or regressed. Here, the goals identified in the QPRs were “not specific and measurable,” but rather used subjective terminology, with words like “frequent” or “occasional,” that are difficult to quantify. Tr. at 580-81.

Appropriateness of Placement

Petitioner challenges the Judge’s conclusion that he failed to establish the homeschool placement was appropriate, arguing that a private placement “need not be perfect, need not mirror

a public program, and need not meet state standards,” but instead must be “appropriate under the circumstances,” and that the lack of “perfect documentation or strict accounting” does not fatally undermine that claim. Appeal Brief at 22, 28. Petitioner’s argument, although citing in part the correct legal standard, is unpersuasive.

“While parents are free to decide whether to expend their own money to obtain additional educational services or benefits for their children, they should not do so under any illusion that they can act unilaterally and receive reimbursement” as a matter of right. DoDDS Case No. 97-E-001 at 13 (citations omitted). The private placement need not comport with all technical requirements of IDEA;³¹ however, parents seeking reimbursement bear the burden of demonstrating that the placement was appropriate – that it provided “educational instruction specially designed to meet the unique needs” of that disabled child and was “reasonably calculated to enable the child to receive educational benefits,” *i.e.* “likely to produce progress, not regression.” *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 364-65 (2d Cir. 2006) (quoting *Rowley*, 458 U.S. at 188-89, 206-07; *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998)). Whether a private placement reasonably serves a child’s unique individual needs requires consideration of the totality of the circumstances, including the nature and severity of the child’s disability, the child’s specialized educational needs and the link between those needs and the services offered by the private placement, and, in appropriate situations, academic success (grades, test scores, regular advancement).³² The quality of a parent’s chosen alternative placement is relevant in fashioning relief, both because that quality bears on the extent of the injuries suffered by a student when the district fails to offer FAPE and the extent to which those injuries are caused by that failure, and because parents have a responsibility to make sure their child is provided for in terms of their education.³³

Respondents contend that Petitioner’s reimbursement claim properly failed, citing the “exceedingly vague and internally inconsistent” nature of his supporting documentation and its absence of educational goals, specific data collection, or measurable progress related to the homeschool program, and A.S.’s lack of qualification, training, and experience. Reply Brief at 7. Respondents further argue that the homeschool program could not produce progress because Parent developed its curriculum based on goals and objectives that the Child had already achieved, having pulled them from the *outdated* 2021 IEP instead of the *active* 2022 IEP. *Id.* at 8.

Regarding her reliance on the 2021 IEP, Parent testified that she was unaware of the 2022 IEP until she received it during discovery in this matter. Tr. at 117-18. The Judge found Parent’s assertions “simply not credible and . . . belied by the record.” Decision at 38. We defer to the Judge’s credibility determination in this regard as based on a preponderance of the evidence, including that Parent, a member of the Child’s IEP team, participated in the April 2022 CSE meeting and contributed to the development of the 2022 IEP, which was finalized that same day. In advance of that meeting, Parent received the 2022-2023 Goals and Objectives that identified the

³¹ *Carter*, 510 U.S. at 13-14 (codified at 34 C.F.R. § 300.148).

³² See *id.* at 364; *Branham v. Dist. of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005); *Mr. I. ex rel. L.I. v. Maine Sch. Admin. Dist. No. 55*, 480 F.3d 1, 25 (1st Cir. 2007) (“[R]easonableness of the private placement necessarily depends on the nexus between the special education required and the special education provided.”).

³³ *R.L.*, 757 F.3d at 1192.

Child's projected goals in various subjects broken down by quarterly benchmarks, which were used verbatim in the 2022 IEP.³⁴ The 2022 IEP was effective on July 4 and authorized the ESY services that the Child accessed during the summer immediately prior to moving OCONUS.³⁵ Additionally, OMS learned of the 2022 IEP directly from Day School S on or about September 29, 2022, and the discrepancy was raised with Parent during the CSC meeting that day.³⁶

Once Parent informed OMS that she identified an OCONUS homeschool program that would support the Child's needs and elected to change his placement, the onus for educating him transferred to her. This included a responsibility for working from the 2022 IEP as the most up-to-date program. Even if it was credible that Parent did not receive the 2022 IEP before relocating, she undeniably had the specific input for its Measurable Annual Goals and was alerted about the 2022 IEP by the CSC meeting on September 29, 2022. To the extent that Parent suggests that she intentionally set the Child's homeschool progress data points low to account for his time out of school, the record does not support that such a significant adjustment was reasonable, even considering most generously the period that the Child was out of a formal school setting between early August 2022 (the end of the CONUS ESY) and early October 2022 (when Parent claims A.S. began providing educational services). In summary, the record does not establish that the homeschool program was specially designed to meet the Child's unique needs or reasonably calculated to enable him to receive educational benefit.

Proof of Costs

Respondents argue in the alternative that, even if Petitioner had established that the homeschool program was appropriate, his claim for reimbursement still fails because he did not "provide sufficient documentation to prove the legitimacy of many of his alleged homeschool expenses." Appeal Brief at 31. Of approximately \$61,000 included in his reimbursement claim, Petitioner only documented about \$1,200 for curriculum expenses³⁷ and about \$500 for related services;³⁸ however, the evidence was insufficient to establish that even these expenses were for appropriate programs for the Child.

Petitioner challenges the Judge's emphasis on supporting documentation, arguing that reimbursement is "routinely award[ed] based on sworn testimony and reasonable documentation." Appeal Brief at 28. Petitioner cites nothing to support this position. To the contrary, parents seeking reimbursement for expenses of private placement bear the burden of demonstrating the

³⁴ Compare RE 11 with RE 10 at 6-11. See also RE 8.

³⁵ See, e.g., RE 12 at 2, 4.

³⁶ See RE 22; RE 24.

³⁷ Decision at 29-30 (citing RE 61; RE 66; RE 67; RE 68; RE 71), 46.

³⁸ Petitioner produced an invoice for apparent speech services in fall 2023 that totaled \$3,028, of which \$2,455 had already been paid by insurance, leaving an out-of-pocket cost of about \$573. RE 71. Despite previously averring that she was "not aware of any insurance reimbursements for homeschool costs" and that "[a]ll relevant expenses were paid out-of-pocket," and including the total invoice amount in the reimbursement claim, Parent acknowledged the insurance payment after confrontation during cross-examination at hearing. RE 113 at 11; Tr. at 320-21.

costs actually incurred by preponderance of the evidence, and the Judge acted within his discretion in determining that Parent’s almost entirely uncorroborated assertions failed in this regard.

Notice & Other Equitable Considerations

Even if a parent successfully demonstrates that the school district failed to provide FAPE and that the private placement was appropriate, a hearing officer “must consider all relevant factors” in determining if reimbursement is warranted, and an award may be impacted “if the equities so warrant.” *Forest Grove*, 557 U.S. at 246-47. For example, reimbursement may be reduced or denied if parents fail to inform the CSC, either at the most recent CSC meeting or in writing at least 10 business days prior to the child’s removal from a DoDEA school, that they are rejecting the placement proposed by the DoDEA school to provide their child FAPE, “including stating their concerns and their intent to enroll their child in non-DoD school at DoD expense.”³⁹

Parent never communicated that her homeschool election was in response to Respondents denying the Child a DoDEA IEP or access to FAPE. To the contrary, her statements and actions indicated that there was no causal link. When Parent formally voiced her decision to homeschool the Child on October 31, 2022, she stated that she found a homeschool co-op option and indicated that homeschooling was a personal and positive choice that she wanted to pursue as a flexible educational opportunity, noting the Child was “thriving,” “comfortable,” “growing,” “connect[ing],” and “progress[ing].”⁴⁰ When she affirmed her interest in mediation, Parent indicated it was for the express purpose of finalizing a DoDEA IEP, not for the Child to use during his homeschool education or at any time while he remained OCONUS, but for his use after the family left OCONUS. When she confirmed her homeschool election on November 9, Parent was advised of her responsibility for the Child’s homeschool programming and that DoDEA could provide materials to supplement Parent’s curriculum. Parent requested no additional materials, services, or guidance for the rest of the 2022-2023 school year, and the record does not reflect that Parent ever *had*, let alone *communicated* to Respondents, concerns about the sufficiency of her homeschool program or the Child’s educational and functional progress.

The requirement that parents give advance notice about their homeschool intentions is not a trivial step. Rather, it serves the important purpose of affording the public school district a meaningful pre-removal opportunity to meet its obligations under IDEA.⁴¹ Had Parent given proper notice, Respondent School District would have been unambiguously alerted to her position and may have pursued different actions in response. She did not, and the Judge acted within his discretion to deny the reimbursement claim as a result.

Finally, reimbursement may be reduced or denied upon a finding of unreasonableness with respect to actions taken by the parents.⁴² In addition to the circumstances of her failure to give

³⁹ See Manual ¶ E4.15(d)(2)(a)-(b) (emphasis added); 20 U.S.C. § 1412(a)(10)(C)(iii).

⁴⁰ See RE 38 at 1.

⁴¹ See *Greenland Sch. Dist. v. Amy N.*, 358 F.3d 150, 160 (1st Cir. 2004); *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 72 (3d Cir. 2010). See also *Forest Grove*, 557 U.S. at 247 (noting the importance of “the notice provided by the parents and the school district’s opportunities for evaluating the child”).

⁴² See Manual ¶ E4.15(d)(2)(d); 20 U.S.C. § 1412(a)(10)(C)(iii).

proper notice, Parent acted unreasonably at multiple significant points throughout this matter, beginning with her decision to relocate OCONUS in the first place. In making that decision, she disregarded the clear EFMP determination about unavailability of services OCONUS and, despite the recommendation against relocating, relied on her own, unconfirmed interpretation of the Overseas Directory to decide that OMS could serve the Child. The Judge opined that “[t]his was unreasonable . . . given the stakes involved.” Decision at 32. We agree.

Then, after relocation, Parent failed to provide OMS with the EFMP determination email as instructed, and there is no evidence corroborating when, or if, Parent provided the Child’s incoming BIP.⁴³ Parent also provided OMS with the Child’s outdated 2021 IEP⁴⁴ and, when OMS learned of an updated program, Parent responded by revoking OMS’s authorization to contact Day School S. Barring direct access to Day School S and the Child’s special education history obstructed OMS’s ability to conduct assessments, craft a DoDEA IEP, and identify appropriate placement options.

Additionally, having recognized the extent of the Child’s educational needs and their inability to appropriately serve those needs OCONUS, and after Parent voiced opposition to the Child returning to CONUS for a residential placement, Respondent School District offered to facilitate the family’s transfer to one of several CONUS bases. The proposals included locations with access to facilities and services to appropriately serve the Child, offering Parent equivalent DoDEA employment, and paying for all relocation expenses. Parent rejected the proposals, choosing instead for her family to remain OCONUS because she was confident in her homeschool choice and her children had “found a routine and a community.” RE 38 at 2, 3.

In consideration of the foregoing, the Judge was justified in concluding that equitable considerations did not favor reimbursement, and we affirm the denial of Petitioner’s request for tuition reimbursement.

⁴³ Parent initially testified that she “told [Respondents] about the BIP,” but later asserted that she provided it electronically. Tr. at 135-36. No evidence substantiates Parent’s latter assertion, and some tends to refute it. For example, B.K. testified to her belief that OMS did not have the BIP as of the Child’s first day of attendance and that she was not aware that Parent ever provided it. *Id.* at 404-05. Additionally, had OMS ever obtained the BIP, the school presumably would have included it in compiling the Child’s “entire IEP/special education records” that were provided via sealed package to BMS. It appears it was not, however, because the new school district had to ask for the BIP during the Child’s incoming IEP meeting.

In response to Respondents’ request for the Child’s 2022 BIP, Petitioner objected, arguing that “discovery requests for educational records from other schools that were not parties to the alleged FAPE denial are irrelevant” to the issues remanded. Pet. Obj. to Disc. at 2. The Judge denied Petitioner’s request to limit the discovery. Still, Petitioner did not produce the BIP, and the record is devoid of that intervention plan and its contents.

⁴⁴ One difference between the 2021 IEP and 2022 IEP is worth noting from our review of the record – whether the Child’s behaviors yet warranted a BIP. Both IEPs reflect that the Child needed “positive behavioral interventions, supports and other strategies to address behaviors that impede the student’s learning or that of others.” RE 1 at 5; RE 10 at 5. The 2021 IEP indicated that, although the Child had “an individual behavior plan,” a BIP was *not* necessary. RE 1 at 4, 5. By the 2022 IEP, the Child required a BIP. RE 10 at 5.

Conclusion and Order

The decision in Case No. E-24-003 is **AFFIRMED**.

This constitutes the final agency decision in this case. Accordingly, the Board hereby advises Petitioner that he has a right to bring a civil action on the matters in dispute in a district court of the United States without regard to the amount in controversy.⁴⁵

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Eric H. Borgstrom

Eric H. Borgstrom
Administrative Judge
Member, Appeal Board

⁴⁵ 20 U.S.C. § 1415(i)(1)(B), (i)(2).