

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

OSSE  
Office of Dispute Resolution  
August 11, 2014

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STUDENT, <sup>1</sup>	)	
through the Parent,	)	
	)	Date Issued: August 9, 2014
Petitioner,	)	
	)	Hearing Officer: John Straus
v.	)	
	)	
District of Columbia Public Schools	)	
	)	
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

The Petitioner, the grandmother of the student, filed a due process complaint notice on May 27, 2014, alleging that the student had been denied a free appropriate public education (“FAPE”) under the Individuals with Disabilities Education Act (“IDEA”).

The Petitioner alleged DCPS denied the Student a FAPE by failing to propose or provide an Individualized Education Program (“IEP”) or placement that was reasonably calculated to enable the student to make progress in the general education curriculum because the IEPs developed on or about December 16, 2014 and May 1, 2014, failed to provide the specialized instruction and related services in a separate special education therapeutic day school in light of the student’s lack of educational progress and ongoing behavior problems, and the result of current evaluations.

DCPS asserted that currently, the student is receiving all of the specialized instruction outside of the general education setting. The student is receiving specialized instruction in a self-contained classroom. The student does not require a separate day school because he does not need to be separated from his nondisabled peers.

**Subject Matter Jurisdiction**

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

## Hearing Officer Determination

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and 38 D.C. Code 2561.02.

### **Procedural History**

The due process complaint was filed on May 27, 2014. This Hearing Officer was assigned to the case on May 28, 2014. Neither Petitioner nor Respondent waived the resolution meeting. The resolution meeting took place on June 12, 2014. At the resolution meeting, the parties agreed to keep the 30-day resolution period open. The 30-day resolution period ended on June 26, 2014, the 45-day timeline to issue a final decision began on June 27, 2014 and the final decision is due on August 10, 2014. See 34 C.F.R. §§ 300.510 and .515.

On July 10, 2014, DCPS filed a Motion to Recuse the Hearing Officer. In its motion, DCPS alleged that the Hearing Officer was a former employee of the same law firm where the Petitioner’s counsel is employed and the Hearing Officer did not advise the parties of his previous employment at the Prehearing Conference.<sup>2</sup> DCPS further asserted that the Hearing Officer is a former co-worker of the Petitioner’s attorney and he should disqualify himself because there is a conflict of interest due to his prior relationship with the Petitioner’s counsel.

On July 15, 2014, the Petitioner, through counsel, filed an Opposition to DCPS’ Motion to Recuse the Hearing Officer. The opposition included an affidavit that stated the Petitioner’s counsel had never worked with the Hearing Officer and the Hearing Officer was not employed at the Petitioner counsel’s law firm while the Petitioner’s counsel was employed at the law firm. The affidavit further states that the Petitioner’s counsel had not met the Hearing Officer before or spoke with the Hearing Officer prior to the Prehearing Conference. On July 16, 2014, DCPS withdrew its Motion to Recuse the Hearing Officer.

The due process hearing was held July 17, 2014. The due process hearing was a closed hearing.

Neither party objected to the testimony of witnesses by telephone. The Petitioner participated in person throughout the hearing.

Petitioner presented six witnesses: Petitioner; Special Education Tutor; an Expert in School Psychology; an education advocate; the student’s probation officer; and a family therapist.

DCPS presented one witness: Assistant Principal (“AP”).

Petitioner’s disclosures dated July 11, 2014 and sent July 10, 2014, containing a witness list and Exhibits P-1 through P-32, were timely filed and admitted into evidence without objection.

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<sup>2</sup> The Hearing Officer did advise the parties of his previous employment in the Prehearing Order. Neither party objected to the Prehearing Order or objected to the Hearing Officer’s appointment prior to DCPS making it motion.

## Hearing Officer Determination

DCPS' disclosures dated July 10, 2014, containing a witness list and no exhibits, were timely filed. The Petitioner filed an objection to the following statement in DCPS' disclosure "DCPS reserves the right to rely upon documents and witnesses submitted by the parent and DCPS in previous disclosures for earlier scheduled and/or held due process hearings and/or other legal proceedings regarding the student at issue." The objection was overruled as this statement does not violate the Standard Operating Procedures.

Parties agreed to the following stipulation:

The December 16, 2013 IEP and May 1, 2014 IEP provide 26.5 hours of specialized instruction per week and 120 hours of behavior support services per month.

The sole issue to be determined in this Hearing Officer Determination are as follows:

Whether DCPS denied the Student a FAPE by failing to propose or provide an IEP or placement that was reasonably calculated to enable the student to make progress in the general education curriculum because the IEPs developed on or about December 16, 2013 and May 1, 2014, failed to provide the specialized instruction and related services in a separate special education therapeutic day school in light of the student's lack of educational progress and ongoing behavior problems, and the result of current evaluations.

For relief, Petitioner requested the Hearing Officer to order DCPS to revise the student's IEP to include placement in a therapeutic day school; DCPS to fund the student's placement and transportation to High Roads School in Washington, DC; award the student compensatory education in the form of tutoring and counseling services to redress the alleged lack of appropriate special education and related services for the time that the student's December 16, 2013 IEP did not provide a placement in a separate day school.

### **Findings of Fact**<sup>3</sup>

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The student is a student with an emotional disturbance under the IDEA who lives with his grandmother in the District of Columbia. He was retained in the fourth grade. He was in seventh grade at Middle School C during the 2013-2014 school year. Prior to his enrollment in Middle School C, the Student was in Elementary School. Then he attended Middle School A at the beginning of the 2012-2013 school year and was involuntarily

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<sup>3</sup> Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

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transferred Middle to School B which was closed at the end of the 2012-2013 school year.<sup>4</sup>

2. the student received a psychological assessment to determine whether the student continues to be a student with a disability under the IDEIA. The assessment yielded below average cognitive scores. The student was administered the Woodcock Johnson III Normative Update Tests of Achievement (“WJ-III”). The assessment yielded the following scores:

Basic Reading	92
Reading Comprehension	78
Math Calculation Skills	76
Math Reasoning	78
Brief Writing	83

These scores were commensurate with or above his cognitive scores. The Behavior Assessment System for Children-Second Edition (“BASC-2”) was given to the Petitioner and the student’s teachers. The student had significant scores in Hyperactivity, Conduct Problems, Attention Problems, Adaptability, Social Skills and Leadership and at-risk scores in Aggression, Activities of Daily Living and Functional Communication. The assessment states the student’s teachers reported problem behaviors such as laughs at other students, looks around the room, drum his hands or pencil on the desk, has difficulty settling down, likes to run down the hall and hide and knocks on doors while he is going down the hall.<sup>5</sup>

4. On May 10, 2012 the IEP team convened at Elementary School. The Petitioner participated via telephone. The team determined the student is a student with a Specific Learning Disability. The team noted the student exhibits oppositional defiant behaviors and aggressive and bullying behaviors. The team further noted the student received behavioral support services to address use socially acceptable coping skills in situations of stress and anxiety. The team developed academic goals for the student and determined the student requires five hours of specialized instruction per week outside of the general education setting and two hours per month of behavior support services outside the general education setting.<sup>7</sup>
5. the student was observed for a Functional Behavioral Assessment (“FBA”) after the student enrolled in Middle School A. The evaluator noted the student exhibits defiance, noncompliance, verbal aggression, bullying, depression, off task, withdraw, distracting others, illegal activity and seeking attention. The student’s

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<sup>4</sup> Petitioner

<sup>5</sup> P-20

<sup>7</sup> P-7, P-25

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academic achievement and functional performance are affected by his behavior. The evaluator developed strategies to address the student's behavior.<sup>8</sup>

6. On November 9, 2012, the IEP team reviewed the FBA and developed a Behavior Intervention Plan ("BIP").<sup>9</sup>
7. The student was enrolled in the Behavior Education System ("BES") program at Middle School C at the beginning of the 2013-2014 school year. The BES program offered a nine to one student to staff ratio. The student was in a class with a Special Education Teacher, a Behavior Tech, and two dedicated aides assigned to other students. The students were in a self-contained class throughout the school day and did not eat lunch with the general education population. The BES program was supported by a full time social worker to provide counseling services and crisis intervention. The program provided behavioral supports such as a levels system and a token economy where students received points for positive behavior. The staff at the BES program had safety training and access to a timeout room. However, the program did not have a full time clinical psychologist, school psychologist or a nurse to administer medications.<sup>10</sup>
8. Since the student enrolled at Middle School C, he was suspended for four school days for engaging in reckless behavior that may cause harm to self and others  
The student was also suspended due to fighting another student and had to be separated by staff on January 7, 2014.
9. the IEP team convened without the Petitioner present. The team determined the student is a student with an emotional disturbance under the IDEA. The team noted the student's behavior affects his educational performances. He does not respond to the BIP that is in place nor does he respond to any other incentives. The team further noted the student refuses to do things the teacher or parents ask and causes trouble for no reason, breaks the rules or the law. The student has difficulty expressing his feelings, can be aggressive towards others  
His teacher implemented a behavior tracking system with incentives to increase positive behaviors. However, the student's disruptive behaviors are preventing him from successfully accessing the general education curriculum. The team recommended the student receive help controlling his behavioral impulses following directions and improving his overall self-control to prevent removal from the general education setting. The student requires constant redirection and verbal reinforcement to keep him focused and to enable him to complete tasks to rigorously prepare him for increased participation in the general education setting. The team determined the student requires 26.5 hours of specialized instruction per week outside general education and 120 minutes per month of behavioral support services outside the general education setting.<sup>12</sup>

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<sup>8</sup> P-18

<sup>9</sup> P-17

<sup>10</sup> AP

<sup>11</sup> P-22

<sup>12</sup> P-6

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10. On January 24, 2014, the student received a psychiatric assessment pursuant to a January 15, 2014 Superior Court order. The evaluator noted the student was suspended for fighting and for his behavior.

The evaluator further stated the student repeated fourth grade. The evaluator recommended the student receive a full time psychoeducational experience and be placed in a residential placement.<sup>13</sup>

11. On February 27, 2014, the student received a \_\_\_\_\_ assessment pursuant to a Superior Court order. The evaluator reviewed school records. The evaluator noted that when the student was six years old, his mother was shot and killed. The assessment yielded extremely low cognitive scores. However, the evaluator stated that his resistance to completing this evaluation is likely a way to hide his own feelings; indicating the results of the cognitive assessment are not valid. The Vineland II was administered to rule out mental retardation. The student's adaptive behavior was rated as adequate for his age group. The student was administered the WJ-III. The assessment yielded the following standard scores:

Broad Reading	75
Basic Reading	92
Reading Comprehension	59
Broad Math	58
Math Calculation Skills	51
Math Reasoning	70
Broad Written Language	89
Written Expression	91
Academic Skills	77
Academic Fluency	71
Academic Applications	71

The evaluator determined the student is a student with Disruptive Mood Dysregulation Disorder, Attention Deficit/Hyperactivity Disorder and Uncomplicated Bereavement. The evaluator further states he has a longstanding history of acting out and assaulting peers. He assaulted a peer in his after school program.

The evaluator recommended the student be placed in a psychiatric residential treatment program and a school with a therapeutic environment equipped to work with youth who experience severe emotional disorders.<sup>14</sup>

12. On April 23, 2014, the IEP team convened. The team noted the student is jumping on tables and hitting people with belts. The social worker stated that social emotionally the student is not compliant. He behaves inappropriately in school. He does not come to his sessions unless he is threatened to be sent to jail. They meet once a week to participate in a program but the student leaves the room. The student's teacher stated that the student's

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<sup>13</sup> P-16

<sup>14</sup> P-15

## Hearing Officer Determination

does have an incentive system where he earns popsicle sticks and can purchase things, but he must have 30 days of consecutive good behavior. The team noted the student has a FBA and BIP. The team determined that DCPS will update the student's FBA and BIP.<sup>15</sup>

13. The Petitioner participated via telephone. The team noted the student's behavior continues affects his educational performances. He does not respond to the BIP that is in place nor does he respond to any other incentives. The student informs the teacher and staff that he does not care about school nor failing the seventh grade. None of the goals were updated. The team determined the student continues to require 26.5 hours of specialized instruction per week outside general education and 120 minutes per month of behavioral support services outside the general education setting.<sup>16</sup> The team revised the student's BIP.<sup>17</sup>
14. On May 14, 2014, the student was redirected several times by for erratic behavior. The student also pushed a student before leaving the cafeteria without permission. After lunch, the student was redirected to use the internet. He was instructed to get on teacher approved websites; however, the student did not comply with directions and continued to listen to music and watch inappropriate videos.<sup>18</sup>
15. The student was observed drawing on his desk possibly gang related drawings. On one occasion in May 2014, the student brought explosives to Middle School C. The student wears a court ordered monitoring bracelet. At school, he is sent on occasion to the library due to disruptive behaviors. The student resided in a youth shelter house and Youth Services Center for a portion of the school year and was driven to school.<sup>19</sup>
16. The student received a C- in Language Arts, a D in Mathematics and a C in Health and Physical Education at the end of the 2013-2014 school year. The student had perfect attendance and his teacher stated he exhibited poor behavior.<sup>20</sup>
17. The Expert in School Psychology reviewed the student's assessment reports and IEPs. She recommends the student be placed in a therapeutic setting that has intense behavior support services and staff; including a licensed social worker, licensed psychiatrist and licensed psychologist. However, he does not need a residential placement at this time.<sup>21</sup>
18. The Special Education Tutor also reviewed the student's assessment reports and IEPs and interviewed the Petitioner and student. He noted the student was harmed by DCPS refusing to place the student in a separate day school. Had he been placed in a separate day school, the student could have made two grade levels of growth. The Special

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<sup>15</sup> P-5

<sup>16</sup> P-4

<sup>17</sup> P-9

<sup>18</sup> P-21, P-24

<sup>19</sup> Probation Officer

<sup>20</sup> P-23

<sup>21</sup> Expert in School Psychology

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Education Tutor recommended the student received 6 hours per week of one to one independent tutoring services in reading, writing and mathematics for 40 weeks, 2 hours per week of one to one independent mentoring services per week for 30 weeks and a laptop computer and/or an iPad with educational software.<sup>22</sup>

19. The student was accepted at non-public school for the 2013-2014 school year.<sup>23</sup> The Petitioner visited non-public school. She liked the non-public school because the staff are trained for student with Attention Deficit Hyperactivity Disorder and are “hands on”. The school has a timeout room and one to one student teacher ratio.<sup>24</sup>

### **Conclusions of Law**

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

“Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

Free appropriate public education or FAPE means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)...

Placement decisions can be made only after the development of an IEP and in accordance with its terms. Only after the IEP has been developed does a district have a basis for determining where the student's needs can be served. If that process is reversed, then there is a danger of denying the student FAPE by developing an IEP to meet a predetermined setting. *Spielberg v. Henrico County Pub. Sch.*, 441 IDELR 178 (4th Cir. 1988).

Pursuant to 34 C.F.R. § 300.115(a), DCPS “must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.” The comments to the regulations clarify that

The Act does not require that every child with a disability be placed in the regular classroom regardless of individual abilities and needs. This recognition that regular class placement may not be appropriate for every child with a disability is reflected in the requirement that LEAs make available a range of placement options, known as a continuum of alternative placements, to meet the unique

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<sup>22</sup> P-27, Special Education Tutor

<sup>23</sup> P-30

<sup>24</sup> Petitioner

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educational needs of children with disabilities. This requirement for the continuum reinforces the importance of the individualized inquiry, not a "one size fits all" approach, in determining what placement is the LRE for each child with a disability. The options on this continuum must include the alternative placements listed in the definition of special education under Sec. 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). These options must be available to the extent necessary to implement the IEP of each child with a disability.

See 71 Fed. Reg. 46,587 (2006). As stated above, the continuum, in general, ranges from the least restrictive to the most restrictive: instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. § 300.115(b)(1) and *H.H. v. Indiana Bd. of Special Educ. Appeals*, 50 IDELR 131 (N.D. Ind. 2008).

In this case, the student was placed by DCPS in a special class located in a school with general education student. The teacher implemented a behavior tracking system with incentives to increase positive behaviors. However, the student's disruptive behavior is harmful to other students. His behaviors is also preventing him from accessing the general education curriculum.<sup>25</sup> The Hearing Officer finds the student is not receiving a FAPE in his current educational placement.

Each public agency must ensure to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114.

Many factors may be considered in making a placement determination, the most important of which are the conformity with the LRE considerations of 34 C.F.R. § 300.114 through 34 CFR 300.118. What is pertinent in making the placement decision will vary, at least to some extent, based upon the child's unique and individual needs. *Letter to Anonymous*, 21 IDELR 674 (OSEP 1994). See *Board of Educ. of the Williamsville Cent. Sch. Dist.*, 37 IDELR 79 (SEA NY 2001) (finding that a school 2,000 miles from the student's home was the LRE). The IDEA states that the educational placement of a student with a disability shall be "as close as possible to the child's home" and that "unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school he or she would attend if nondisabled." 34 C.F.R. § 300.116.<sup>26</sup>

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<sup>25</sup> Finding of Fact 9

<sup>26</sup> In determining the educational placement of a child with a disability...[DCPS] must ensure that--

(a) The placement decision-- (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Is made in conformity with the LRE provisions...;

(b) The child's placement-- (1) Is determined at least annually; (2) Is based on the child's IEP; and (3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled

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The most suitable placement may not always be the school closest to the student's home. In determining the most suitable placement, districts have the discretion to consider a variety of factors including the advantages of the proposed program, distance from the student's home, and the cost involved in making the neighborhood school equally suitable. *See Schuldt v. Mankato Indep. Sch. Dist. No. 77*, 18 IDELR 16 (8th Cir. 1991); and *Flour Bluff Indep. Sch. Dist. v. Katherine M.*, 24 IDELR 673 (5th Cir. 1996), cert. denied, 112 LRP 26083 , 519 U.S. 1111 (1997).

In this case, the student's WJ-III scores indicate a significant decline in his scores from December 24, 2008 to February 27, 2014; especially in Reading Comprehension and Math Calculation Skills. The student will be able to access the curriculum in a therapeutic setting where he will be able to work out issues regarding his mother's death and focus on his school work. The Hearing Officer finds that the student should be placed in a separate day school program where he can be in a therapeutic milieu for other student with emotional disturbances. The Petitioner met her burden of proof on this allegation.

### **Compensatory Education**

Under the theory of compensatory education, "courts and hearing officers may award educational services ... to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

The Special Education Tutor recommended the student receive 6 hours per week of one to one independent tutoring services in reading, writing and mathematics for 40 weeks and 2 hours per week of one to one independent mentoring services per week for 30 weeks to redress the fact the student's academic achievement declined by two years as a result of not being placed in a separate day school. Thus, the Hearing Officer grants what he considers to be a reasonable amount of compensatory services for the loss of two years of educational achievement.

### **Conclusion**

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education,

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(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

34 C.F.R. § 300.116.

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employment, and independent living. 34 C.F.R. 300.1. Free appropriate public education or FAPE means special education and related services that...include an appropriate school and are provided in conformity with an IEP that meets the requirements of the IDEA. 34 C.F.R. 300.17.

The student requires a separate day school program for the 2014-2015 school year. However, the program proposed by the Petitioner accepted the student for the 2013-2014 school year. Additionally, the Petitioner did not provide a witness to testify about the proposed program. Therefore, the Hearing Officer will order the IEP team to determine the location of services.

In the District of Columbia, special education placements shall be made in the following order or priority, provided, that the placement is appropriate for the student and made in accordance with IDEA: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school; (2) private or residential District of Columbia facilities; and (3) facilities outside of the District of Columbia. D.C. Code § 38-2561.02.<sup>27</sup>

The IEP team shall follow this protocol in determining an appropriate program for the student. The Petitioner shall have an opportunity to visit any proposed program prior to the IEP team meeting in order for the Petitioner to have a meaningful opportunity to participate in the IEP team meeting.

D.C. Code § 38-2800.2 requires the OSSE to certify all nonpublic educational programs. If the team is not able to find a separate day school program with no nondisabled students in the building, the team must make sure that the program has been approved by OSSE.

The 2014-2015 school year begins on August 2, 2014. The Petitioner must make every reasonable effort to visit any school program proposed by DCPS prior to the IEP team meeting.

### **ORDER**

- (1) DCPS shall place the student in a separate special education school for the 2014-2015 school year. The program shall, at a minimum have a licensed social worker, licensed psychiatrist and licensed psychologist on staff;
- (2) DCPS shall provide the Petitioner a list of proposed schools that meet this criteria and are compliant with § 38-2561.02 and § 38-2800.2 within 5 business days;
- (3) DCPS shall convene an IEP team meeting within 10 business days to discuss and determine the student's location of services for the 2014-2015 school year;
- (4) For every day of delay by the Petitioner, DCPS shall have one day to convene the meeting;
- (5) If the program is a nonpublic school, DCPS shall fund the program and transportation;

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<sup>27</sup> 38 D.C. Code 2561.02 prescribes the priority of special education placements, stating that Student shall be placed first in a DCPS public or charter school and next in a private or residential District of Columbia facility, provided that the placement is appropriate for the student.

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- (6) DCPS shall fund 6 hours per week of one to one independent tutoring services in reading, writing and mathematics for 40 weeks, 2 hours per week of one to one independent mentoring services per week for 30 weeks.

**SO ORDERED.**

**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).

Date: August 9, 2014

*/s/ John Straus*  
Hearing Officer