

**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  
January 06, 2015

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STUDENT, <sup>1</sup>	)	
An adult on his own behalf,	)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>	)	
	)	
v.	)	
	)	<b>Date Issued:</b> January 6, 2015
District of Columbia Public Schools,	)	
<i>Respondent.</i>	)	

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**Hearing Officer Determination**

**SUBJECT MATTER JURISDICTION**

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; Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R."); and D.C. Code 38-2561.02(a).

**PROCEDURAL BACKGROUND**

This is a due process complaint ("DPC") proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*

The DPC was filed on October 23, 2014 by Petitioner (Student, who is an adult), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools ("DCPS"), the local education agency ("LEA"). On November 3, 2014,<sup>2</sup> Respondent filed its Response, denying that Respondent denied Student a free appropriate public education ("FAPE"). The Hearing Officer Determination ("HOD") in this matter is due January 6, 2015.

The undersigned Impartial Hearing Officer ("IHO" or "Hearing Officer") held a Pre-hearing Conference ("PHC") by telephone on November 18, 2014, during which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by November 28, 2014 and that the DPH would be held on December 5, 2014 and December 12, 2014. The PHC was summarized in the Pre-Hearing Conference Summary and Order ("PHO") issued November 18, 2014.

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

<sup>2</sup> The Response had been due on November 2, 2014, which fell on a Sunday. During the Pre-Hearing Conference, opposing counsel indicated that she did not object that the Response was filed on the next business day.

## Hearing Officer Determination

On November 1, 2014, Petitioner filed a motion for an Order granting Petitioner “stay-put” protection at Nonpublic School during the pendency of the litigation, pursuant to 20 U.S.C. § 1415(j) and 34 C.F.R. §300.518(a) (“the stay-put provisions”). Respondent filed an opposition on November 3, 2014. On November 5, 2014, Petitioner filed a motion for a more definite written response from Respondent to Petitioner’s DPC, to which Respondent did not file an opposition. Both parties argued their positions on each motion during the November 18, 2014 PHC. The motion for a more definite statement was granted on November 19, 2014. The motion for stay-put protection was granted on November 20, 2014.

Petitioner’s and Respondent’s disclosures were timely filed. At the DPH, Petitioner’s exhibits P-1 through P-25 were admitted without objection. Respondent’s exhibits R-1 through R-9 were admitted without objection.

Petitioner called the following witnesses at the DPH:

- (a) Petitioner/Adult Student;
- (b) Paralegal;
- (c) Nonpublic Special Education Coordinator;
- (d) Nonpublic Admissions Director;
- (e) Petitioner’s Clinical Psychologist.

Respondent called the following witnesses at the DPH:

- (a) LEA’s Current Student Progress Monitor for Nonpublic School (“Current Progress Monitor”);
- (b) LEA’s Former Student Progress Monitor for Nonpublic School (“Former Progress Monitor”);
- (c) District High Special Education Coordinator;
- (d) District High Transition Coordinator (“Transition Coordinator”).

Petitioner and Respondent gave oral closing arguments.

## ISSUES

As discussed at the PHC and reflected in the PHO, the following issues were presented for determination at the DPH.

- (a) Whether DCPS denied Student a FAPE by failing to create an appropriate IEP for Student at the IEP meetings held on June 25, 2014 and July 29, 2014 and through the present time:
  - (1) whether DCPS failed to discuss, determine, and indicate on the IEP what the appropriate least restrictive environment (“LRE”) was for Student and the type of placement Student needed along the continuum of alternative placements;

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- (2) whether DCPS denied Student a FAPE by failing to discuss and determine Student's placement at the IEP meetings held on June 25, 2014 and July 29, 2014, and instead delegating the placement decision to a team that did not include the adult student or individuals knowledgeable about Student;
  - (3) whether DCPS denied Student a FAPE by failing to attend to new data presented to the Agency following the meetings on June 25, 2014 and July 29, 2014 regarding Student's needs following a severe injury from a shooting, and by failing to hold a meeting to discuss these new needs and update his present levels of performance, despite requests from Student's representatives;
- (b) Whether DCPS denied Student a FAPE when it placed Student at District High School on October 22, 2014.
  - (1) whether DCPS denied Student a FAPE by failing to offer Student a placement/program/school capable of providing him a FAPE, given his needs at the current time;
  - (2) whether DCPS failed to issue a prior written notice, or otherwise place Student in a particular educational program/placement within District High School, depriving the adult student of the ability to make meaningful educational decisions for himself;
  - (3) whether DCPS inappropriately changed Student's educational placement from a full time special education day school to a less restrictive environment.<sup>3</sup>

### RELIEF REQUESTED

Petitioner requested the following relief:

- (a) a finding in Petitioner's favor on all issues in the DPC;
- (b) an Order that, within ten calendar days of a decision in this matter, DCPS issue a PWN for Student to attend Nonpublic School for a minimum of the 2014-2015 school year;
- (c) an Order that within fifteen school days of a decision in this matter, DCPS convene an IEP meeting to discuss Student's recent injury and the physical and emotional effects of the recent incident where Student was shot, and to update Student's IEP to incorporate new data, including (a) updating present levels of performance, (b) updating the LRE section of the IEP to indicate that Student requires a full time separate day school at this time, (c) updating any goals that

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<sup>3</sup> Petitioner's DPC complaint contains two sub-issues to sub-issue (b)(3) ("sub-sub issues"). As indicated to the parties during the PHC, the Hearing Officer deems these sub-sub issues to be incorporated in sub-issue (b)(3), as a part of Petitioner's argument in support of sub-issue (b)(3); therefore, the sub-sub issues need not be delineated and treated separately. As reflected in the DPC, sub-sub issue (b)(3)(A) reads: "DCPS had no justification that [Student] required a[n] LRE or anything less than a full time separate day school." As reflected in the DPC, sub-sub issue (b)(3)(B) reads: "DCPS blamed the student for truancy issues that were related to his disability, and used this as a basis for changing his placement, without adhering to their affirmative obligation to address the disability-related truancy issues through educational programming."

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- may need to be revised based on recent events, and (d) to discuss and determine whether Student may need any related services such as PT, OT, or increased behavioral support, based on recent incidents and their effects;
- (d) an Order that, if Student's IEP team determines that additional information is needed in order to assess Student's needs for additional related services, DCPS be required to administer evaluations to gather necessary information, including but not limited to a psychological evaluation to address student's new emotional needs, a physical therapy evaluation and/or an occupational therapy evaluation to assess any new physical needs resulting from the recent shooting, or any other assessment that may shed light on Student's new needs;
- (e) an Order that DCPS fund tuition and transportation to Nonpublic School for the 2014-2015 school year and until an IEP team determines that another placement is required in order to provide FAPE to Student.

### FINDINGS OF FACT

1. Student is an adult, the Petitioner in this action.<sup>4</sup> Student resides with his grandmother in Washington, D.C., at least temporarily,<sup>6</sup> and at times with his mother<sup>7</sup> in Washington, D.C.
2. Student was determined eligible for special education and related services on June 26, 2014 under the classification of Specific Learning Disability ("SLD").<sup>8</sup>
3. As of June 2014, Student had repeated the ninth grade four times. He did not have sufficient credits to advance to the tenth grade, and he currently remains a ninth grader for the fifth time.<sup>9</sup>

### 2013 HOD

4. An HOD issued on December 2, 2013 by Hearing Officer Melanie Chisholm ("2013 HOD") found that Student had been denied a FAPE due to DCPS' failure to timely identify, locate and evaluate Student for special education and related services.<sup>10</sup>
5. The 2013 HOD ordered DCPS to complete specified assessments and a classroom observation of Student within thirty calendar days of the order (by January 1, 2014). DCPS was ordered to gather input from Student's current teachers, and to authorize an independent functional behavioral assessment and psychiatric assessment.

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<sup>4</sup> Testimony of Student.

<sup>5</sup> Testimony of Nonpublic Admissions Director; testimony of Petitioner's Clinical Psychologist; P-15-3.

<sup>6</sup> P-2-2.

<sup>7</sup> Testimony of Nonpublic Admissions Director.

<sup>8</sup> R-6-1.

<sup>9</sup> P-18-7; R-1-7; testimony of Petitioner's Clinical Psychologist; testimony of Paralegal.

<sup>10</sup> P-13.

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6. Pursuant to the 2013 HOD, once all the ordered assessments were completed, the parties were to convene a multidisciplinary team (“MDT”) meeting to determine Student’s eligibility for special education and related services. If Student were determined eligible, an IEP and, if necessary, a behavioral intervention plan, were to be prepared for Student, as well as a vocational assessment and a postsecondary transition plan.

### **Student’s Recent Schools**

7. Student began attending Nonpublic School at the start of the 2013-2014 school year by way of a unilateral placement, due to Petitioner’s position that DCPS had failed to locate, identify and find Student eligible for special education and related services when Student attended Former City High School.

8. In finding for Petitioner, the 2013 HOD ordered DCPS to fund tuition, fees and transportation for Student to attend Nonpublic School until an MDT met to determine Student’s eligibility.

9. After a period of hospitalization and rehabilitation following an August 2014 shooting injury, Student returned to Nonpublic School on October 21, 2014. On November 20, 2014, the undersigned IHO granted Petitioner’s motion for stay-put protection, ordering that Nonpublic School was Student’s “then-current educational placement”/“current educational placement” pursuant to 20 U.S.C. § f(j) and 34 C.F.R. §300.518(a) (“the stay-put provisions”), such that Petitioner was entitled to maintain the status quo by remaining at Nonpublic School until the substantive allegations in the underlying DPC could be heard and decided on the merits.

### **Student’s Attendance History**

10. Student missed school, was tardy and/or left school early for a significant number of days throughout the school year.<sup>11</sup> There was a delay in arranging for the transportation assistance ordered in the 2013 HOD; however, the transportation issue was resolved by 2014.<sup>12</sup> Additionally, Student was also experiencing stress from a traumatic personal/home life event. Student has difficulty waking up on time for school.<sup>14</sup> Student also has had a diagnosed cannabis dependency.<sup>15</sup> To varying extents, these factors impacted Student’s attendance and motivation to attend school.

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<sup>11</sup> Testimony of Former Progress Monitor; testimony of Nonpublic Special Education Coordinator; P-20-3. For example, due to his inconsistent school attendance, Nonpublic Admissions Director did not place Student at a job Nonpublic Admissions Director had lined up for Student during the 2013-2014 school year, due to concerns that Student would not show up for work, which could reduce the likelihood of the prospective employer hiring other students from Nonpublic School in the future. R-1-6.

<sup>12</sup> P-1-43.

<sup>14</sup> P-20-3.

<sup>15</sup> R-1-5.

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11. Student has missed school, been tardy and/or left school early for a significant number of days throughout the 2014-2015 school year, since returning to school on October 21, 2014 after he was shot and injured in August 2014.<sup>16</sup> Student has not always had transportation to school since returning to school. Staff at Nonpublic School have transported him on some occasions. On at least one occasion prior to the DPH, a DCPS school bus came to transport Student to school; however, he did not get on the school bus, because it was not wheelchair accessible.<sup>17</sup> Student has had doctors appointments related to his shooting injury, which account for some of his absences; however, Student has attended Nonpublic School somewhat more regularly since he was shot and returned on October 21, 2014 than he did during the 2013-2014 school year.<sup>18</sup>

12. Student's school attendance has long been problematic, dating back at least to when he first started high school, as student at Former City High School. That was the point when his mother was no longer walking him to school, and he became responsible for getting himself to and from school. At that point, his attendance dropped off dramatically.<sup>19</sup>

13. Student's attendance challenges have impeded his academic progress,<sup>20</sup> which does not equate to a finding that Student's attendance challenges are caused by his disability.

### **Student's Behavior**

14. Student has not generally exhibited in-school behavior that is disruptive to other students or teachers.<sup>21</sup> His in-school behavior challenges generally are in the form of missing school/tardiness/leaving early.<sup>22</sup>

### **Summer 2014 Shooting**

15. Student was shot multiple times on or around August 7, 2014.<sup>23</sup> The shooting severely injured Student, resulting in multiple surgeries, Student's hospitalization for several weeks, followed by Student's treatment in a rehabilitation facility for several weeks.<sup>24</sup>

16. Student's mobility is not yet restored to where it was prior to the shooting; but, it has improved from where it was immediately after the shooting.<sup>25</sup> Student continues to receive medical treatment.<sup>26</sup>

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<sup>16</sup> Testimony of Nonpublic Special Education Coordinator; P-20-3.

<sup>17</sup> Testimony of Nonpublic Special Education Coordinator.

<sup>18</sup> P-15-3; testimony of Petitioner's Clinical Psychologist.

<sup>19</sup> P-20-3.

<sup>20</sup> P-20-5; R-1-6.

<sup>21</sup> Testimony of Nonpublic Admissions Director; testimony of Paralegal; testimony of Petitioner's Clinical Psychologist.

<sup>22</sup> P-20.

<sup>23</sup> Testimony of Paralegal.

<sup>24</sup> Testimony of Nonpublic Admissions Director.

<sup>25</sup> Testimony of Nonpublic Admissions Director; testimony of Student.

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### **MDT & IEP Meetings**

17. A number of the evaluators had difficulty completing the evaluations ordered in the 2013 HOD due to Student's frequent absences from school, and the fact that he sometimes left class/school while evaluators were attempting to observe/assess him.<sup>27</sup> The delay in completing the HOD-ordered evaluations delayed the convening of the ordered MDT meeting.<sup>28</sup>

18. On June 26, 2014, Student's MDT met and determined Student eligible for special education and related services under the disability classification of Specific Learning Disability ("SLD"). Student participated in this meeting.<sup>29</sup>

19. On July 29, 2014, Student's IEP team met and developed Student's initial IEP. Student did not attend the meeting in person, and the team was not able to reach him by phone. Student's attorney and Paralegal ("Student's Advocates") participated in the meeting.<sup>30</sup>

20. There was a discussion during the July 29, 2014 IEP meeting of the types of services and educational programming that would be available to Student if he were to attend District High School.<sup>31</sup> In the context of discussing examples of neighborhood schooling, there was some discussion of the ways in which programming at District High School differed from that at Former City High School.<sup>32</sup>

21. A school setting/location of services was not determined for Student during the July 29, 2014 IEP meeting. DCPS indicated that its location of services ("LOS") team would review Student's IEP and select an appropriate school for him.<sup>33</sup> The LOS team could not select a school setting for Student until Student provided a signed consent for initial provision of services form. DCPS began requesting the signed initial provision of services form on July 29, 2014<sup>34</sup> and received it on August 26, 2014.<sup>35</sup> The form with Student's signature is dated August 14, 2014.<sup>36</sup>

22. Paralegal informed DCPS that Student had been injured.<sup>37</sup>  
(the same day as DCPS received the signed consent for initial provision of services form) Student's counsel informed DCPS that Student had been shot,<sup>38</sup> stated that the shooting was even more reason why Student needed a therapeutic setting, and requested to know

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<sup>26</sup> Testimony of Nonpublic Special Education Coordinator.

<sup>27</sup> P-20-6; R-2-7.

<sup>28</sup> P-1-31; P-1-32; P-1-35; P-1-42; P-1-44.

<sup>29</sup> P-8-1; testimony of Paralegal.

<sup>30</sup> P-7-1; R-6-2; testimony of Paralegal; testimony of Transition Coordinator.

<sup>31</sup> P-7-2 and P-7-3.

<sup>32</sup> Testimony of Former Progress Monitor.

<sup>33</sup> P-7-4 through P-7-5.

<sup>34</sup> P-1-26.

<sup>35</sup> P-1-16.

<sup>36</sup> P-4; R-5.

<sup>37</sup> P-1-23.

<sup>38</sup> P-1-22.

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where DCPS would be assigning Student to attend school.<sup>39</sup> On August 17, 2014 and August 26, 2014, Student's Advocates requested a prior written notice document from DCPS explaining why the school setting ultimately chosen was selected.<sup>40</sup> In these and future correspondence, Student's Advocates also asserted their position that Student had never received a placement or an LOS from DCPS, and that Student remained a student of Nonpublic School until a LOS was selected for Student.<sup>41</sup>

### **Student's IEP**

23. The draft IEP DCPS had proposed at the start of the July 29, 2014 IEP meeting called for Student to receive 10 hours per week of specialized instruction inside the general education setting, and 10 hours per week of specialized instruction outside the general education setting, as well as 120 minutes per month of behavioral support outside the general education setting.<sup>42</sup> After some discussion among the team, and at the request of Student's Advocates, Student's service hours were increased to the current levels.<sup>43</sup>

24. Student's (initial and only) IEP calls for Student to receive 26 hours per week of specialized instruction outside the general education setting, and 120 minutes per month of behavioral support outside the general education setting. These service hours were included on the page of the IEP titled "Least Restrictive Environment (LRE)."<sup>44</sup> Student's Advocates agreed at the IEP team meeting with the number of service hours,<sup>45</sup> though Student's Advocates advocated at the meeting for a discussion of what Student's school setting would be, and advocated that he remain at a separate day school.<sup>46</sup>

25. Student's current IEP was finalized on August 26, 2014, when DCPS received a signed consent for initial provision of services form from Student.<sup>47</sup>

### **Student's Availability After His June 2014 Eligibility Determination**

26. In July 2014 (prior to the July 29, 2014 IEP team meeting), District High Transition Coordinator made attempts to complete a vocational assessment for Student to be reviewed at the July 29, 2014 meeting. Transition Coordinator arranged transportation for Student from his home to the DCPS Headquarters offices where the assessment would be completed. Transportation services went to Student's home on two separate days to pick him up, with the driver knocking on his door each time, and Student refused to go both times. When Student did not come to Headquarters, District High Transition Coordinator offered to meet

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<sup>39</sup> P-1-20.

<sup>40</sup> P-1-23; P-1-16; R-4-4.

<sup>41</sup> P-1-14.

<sup>42</sup> P-6-1; P-6-8.

<sup>43</sup> P-7-2 and P-7-3.

<sup>44</sup> P-5-10; P-5-11; R-6-11.

<sup>45</sup> P-7-3; testimony of Former Progress Monitor.

<sup>46</sup> P-7-2.

<sup>47</sup> P-1-13.



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Student at District High School (his neighborhood school) to complete the assessment, if that would be more convenient for him. He did not respond to that offer.<sup>48</sup>

27. On August 26, 2014, when providing DCPS Student's signed initial consent for services form, Student's counsel informed DCPS that Student had been shot and was hospitalized, and requested that DCPS communicate with counsel's office directly regarding Student, noting that counsel's office would either relay information to Student or ask Nonpublic Admissions Director to do so.<sup>49</sup>

28. During his hospitalization and rehabilitation following the August 2014 shooting, Student was essentially unavailable to DCPS due to his physical condition, his stress and anxiety over the trauma he had suffered,<sup>50</sup> and due to the fact that his physical location was not made known to the LEA. DCPS communicated with counsel's office several times in September and October 2014, requesting signed documents from Student that would be necessary in order to provide Student with educational services during his hospitalization, and requesting the name of the facility where Student was being treated so that DCPS could arrange for Student's vocational assessment to be completed and his transition plan to be updated. Counsel informed the LEA that she did not know the name of the treatment facility, but that Nonpublic Director did, and suggested that DCPS request the name of the facility from him.<sup>51</sup> DCPS did request the name of the facility from Nonpublic Admissions Director,<sup>52</sup> and still did not receive the specific location.

29. Current Progress Monitor has attempted to meet with Student and observe him in class several times at Nonpublic School since November 2014, and Student has not been in school either time.<sup>53</sup>

30. On or around Monday, November 24, 2014, Current Progress Monitor contacted Nonpublic Special Education Coordinator to request an IEP meeting to revise Student's IEP and update Student's needs prior to the DPH. Nonpublic Special Education Coordinator forwarded the request to counsel for Petitioner on or around Tuesday November 25, 2014, who indicated to Current Progress Monitor that Student and his attorney would not be available for such a meeting prior to the DPH, interpreting the request as an effort by DCPS to hedge against its defense that Student's IEP was appropriate by attempting to update the IEP prior to the DPH. Given that the Hearing Officer had issued a stay-put order on Friday, November 21, 2014 stating, in part, that DCPS was to provide transportation for Student "appropriate to accommodate Student's physical disability, and . . . wheelchair accessible so long as Student is wheelchair bound/reliant," the Hearing Officer credits the testimony of Current Progress Monitor that her purpose in requesting the meeting was to assess Student's transportation needs, and that the IEP team would also be able to discuss any other relevant matters of concern regarding Student.

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<sup>48</sup> Testimony of Transition Coordinator.

<sup>49</sup> R-4-4.

<sup>50</sup> Testimony of Student.

<sup>51</sup> R-4-1 through R-4-4.

<sup>52</sup> P-1-8.

<sup>53</sup> Testimony of Current Progress Monitor.

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### **Student's Evaluations**

31. Since 2012, Student has had a number of court ordered, DCPS conducted and independent evaluations.

32. Two of the 2014 independent evaluations/assessments – a May 18, 2014 Confidential Psychiatric Evaluation, and a November 23, 2014 Expert Report from Petitioner's Clinical Psychologist – recommend a separate day school for Student; however, this recommendation is not found in any of the other evaluations included within the DPH record.<sup>54</sup>

33. Overall, the evaluations reflect a Student who is functioning academically below age/grade level but who is capable of learning; who has a quiet in-school demeanor, but with a tendency to disengage; who is chronically absent and tardy from school, at least in part by choice and/or due to low motivation, as well as due to frustration over having repeated the same grade multiple times, transportation challenges, and recent doctors appointments; who has experienced significant personal trauma and stressors; who has engaged in socially maladaptive behaviors, including long term cannabis use and some involvement with the juvenile justice system; yet, who has significant potential, notwithstanding his challenges.<sup>55</sup>

### **Nonpublic School**

34. Nonpublic School averages a total enrollment of 20-25 students, with a capacity of up to 60 students.<sup>56</sup> Nonpublic School is a full time special education day school, has full time social work staff, and has a strong vocational emphasis.<sup>57</sup>

35. Nonpublic School can implement the service hours on Student's IEP.

36. By way of its single floor design, small building, and small student body, Nonpublic School is physically accessible to Student, in light of his physical needs following the August 2014 shooting.<sup>58</sup>

37. Nonpublic School has a certificate of approval from OSSE.<sup>59</sup>

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<sup>54</sup> Pages are missing from several of the evaluations Petitioner offered into evidence, which counsel explained during the DPH was due to an equipment glitch at counsel's office. With respect to the May 18, 2014 psychiatric evaluation and the April 28, 2014 independent functional behavioral assessment, Respondent offered into evidence a complete version of the same documents and the Hearing Officer was able to accord the documents due weight. However, where this was not the case (such as with the court ordered psycho-educational evaluation from February 24, 2012 and the court ordered psychological evaluation from December 19, 2013, limited, if any, weight was given to the evaluation. However, nothing within the included pages of the incomplete evaluations would have altered the Hearing Officer's analysis.

<sup>55</sup> P-15-4; P-18-6; P-18-7; P-18-8; R-3-6; P-19-3.

<sup>56</sup> Testimony of Nonpublic Admissions Director.

<sup>57</sup> Testimony of Nonpublic Admissions Director.

<sup>58</sup> Testimony of Student; testimony of Nonpublic Admissions Director.

<sup>59</sup> Testimony of Nonpublic Admissions Director.

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### **District High School**

38. District High School is a public school, with general and special education students. District High School has self-contained special education classrooms, including one for students with behavioral problems and one for student with learning disabilities. District High School has full time social work staff and a strong vocational program available.<sup>60</sup>

39. District High School can implement the service hours on Student's IEP.

40. By way of an elevator that can transport Student from floor to floor so that would not have to climb the stairs, instructional space at District High School is accessible to Student, in light of his physical needs following the August 2014 shooting.<sup>61</sup>

41. Student has indicated that, if assigned to District High School, he would not attend the school.<sup>62</sup> In part, Student would not want to attend District High School due to fear, because the school is located in the same community as where he was shot.<sup>63</sup> Student also has concerns about navigating the larger building and larger Student body at District High School, in light of his injury.<sup>64</sup> Student also would not want to attend District High School because he believes it would be no more effective for him than was Former City High School, and because he believes that everything he needs is at Nonpublic School.<sup>65</sup>

### **CONCLUSIONS OF LAW**

“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*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the impartial hearing officer by a preponderance of the evidence. DCMR 5-E3022.16; *see also*, *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 17 n.3 (D.D.C. 2008).

A hearing officer's determination of whether a child<sup>66</sup> received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the student's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

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<sup>60</sup> Testimony of Transition Coordinator.

<sup>61</sup> Testimony of Student; testimony of Nonpublic Admissions Director.

<sup>62</sup> Testimony of Student.

<sup>63</sup> Nonpublic Special Education Coordinator.

<sup>64</sup> Testimony of Student.

<sup>65</sup> Testimony of Student.

<sup>66</sup> District of Columbia Municipal Regulations define “child” as “an individual between the ages of three and twenty-two,” which includes Student, though he is an adult. 5-E D.C.M.R. 3001.1.

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### **A. Whether DCPS denied Student a FAPE by failing to create an appropriate IEP for Student at the IEP meetings held on June 25, 2014 and July 29, 2014 and through the present.**

1. *Whether DCPS failed to discuss, determine, and indicate on the IEP what the appropriate least restrictive environment (“LRE”) was for Student and the type of placement Student needed along the continuum of alternative placements.*

The IDEA requires every LEA to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities eligible for special education and related services. *See* 34 CFR § 300.115. Consistent with the IDEA’s least restrictive environment (“LRE”) mandate, removal of children with disabilities from the regular educational environment may occur 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. *See* 34 CFR § 300.114(a). Student’s IEP team described his LRE on the LRE page of his IEP, which notes the types and hours of services he was to receive. Though Student’s IEP team did not conduct an in-depth discussion of each type of placement along the continuum of placements, Student’s Advocates expressed their view during the IEP team meeting that Student required a full time day school, and DCPS team members expressed their view that there was no evidence to show that a separate day school had been, or would be, the best fit for Student. DCPS team members were not initially proposing that Student receive as many hours of services as his IEP ultimately included; but the team increased Student’s service hours to the current levels at the request of Student’s Advocates.

Additionally, while the team did not select an LOS during the IEP meeting, it discussed possible school settings for Student in the context of two public school examples, and indicated that it would defer to the LOS team for the ultimate school selection. The IEP team did not include on the LRE page of Student’s IEP any recommendation or indication that Student’s disability was of the nature or severity that would necessitate a full time separate day school. Student’s Advocates and the LEA did not agree in this regard. Student’s Advocates took the position that, since Student had spent the entire previous school year at a separate day school, placing him at a public school would be a reduction in his services. However, the entirety of Student’s time to date at Nonpublic School has been for procedural reasons, not because it has ever been determined that a separate day school is Student’s LRE. Student’s current IEP is the first IEP he has ever had, and it in no way indicates that a separate day school is Student’s LRE. The IDEA states that “[u]nless 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.”

Petitioner did not meet the burden of proving that DCPS denied Student a FAPE by failing to discuss, determine, and indicate on the IEP what the appropriate LRE was for Student and the type of placement Student needed along the continuum of alternative placements.

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2. *Whether DCPS denied Student a FAPE by failing to discuss and determine Student's placement at the IEP meetings held on June 25, 2014 and July 29, 2014, and instead delegating the placement decision to a team that did not include the adult student or individuals knowledgeable about Student.*

Petitioner argues that the July 29, 2014 IEP team did not make a “placement” decision for Student. Rather, Petitioner argues, the LOS made Student’s placement determination, and the LOS team was comprised of people who did not have much, if any, direct familiarity with Student. In response, the LEA argues that Student’s “placement” decision was in fact made at the July 29, 2014 IEP team meeting in the form of the IEP itself, and that the LOS team was tasked with merely selecting a location of services for Student, not a placement. At its core, this issue centers around the differing definitions each party has of the word “placement.”

“Placement” as used in the IDEA is context-reliant and fact-specific. The focus of the terms “then-current educational placement”/“placement” as used in the stay-put provisions is on maintaining the status quo for a student while an underlying due process complaint is being litigated. *District of Columbia v. Oliver*, 62 IDELR 114 (D.D.C. 2013) (Stay-put statutory language expresses Congress’ “intention to preserve the status quo by referring to the placement in which the child is actually receiving educational services at the time the dispute first arises”). Stay-put functions as an automatic injunction, and is not a decision on the merits of the underlying case. *Id.*, citing *Susquenita Sch. Dist. v. Raelee S. by and through Heidi S.*, 96 F.3d 78, 83 (3d Cir. 1996) (The court holding that its decision functioned to carry out “the express Congressional policy embodied by the stay-put provision that “all handicapped children, regardless of whether their case is meritorious or not, are to remain in their current educational placement until the dispute with regard to their placement is ultimately resolved.”) With respect to Petitioner’s stay-put motion, the Hearing Officer determined that Nonpublic School was Student’s “then-current educational placement” (stay-put placement). The undersigned turns now to consideration of “placement” in the context of the merits of the case.

Pursuant to 34 C.F.R. § 501(b)(1)(i)&(ii), the educational decision maker must be afforded an opportunity to participate in meetings regarding Student’s identification, evaluation, and educational placement, and the provision of FAPE to Student. Additionally, 34 C.F.R. § 501(c)(1) provides that an LEA must ensure that the educational decision maker is a member of any group that makes decisions on the educational placement of Student. However, 34 C.F.R. § 501(c)(4)<sup>67</sup> states that a “placement decision may be made by a group without the involvement of [the educational decision maker], if the public agency is unable to obtain the [educational decision maker’s] participation in the decision.”

With respect to “placement” in the forward-looking sense of determining where a student will receive future educational services, “[w]hile the IDEA requires [the person holding a student’s educational decision-making rights] to be part of the team that creates the IEP and determines the educational placement of the child, it does not ‘explicitly require [an adult student’s] participation in site selection.’” *James v. District of Columbia* 2013 WL 2650091, 3

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<sup>67</sup> This HOD will refer to 34 C.F.R. § 501(b)(1)(i)&(ii), 34 C.F.R. § 501(c)(1), and 34 C.F.R. § 501(c)(4) collectively as “the 34 C.F.R. § 501 provisions.”

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(D.D.C. Jun. 9, 2013), quoting *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 379 (5th Cir.2003); *See, also, Roher v. District of Columbia*, Civ. A. Nos. 89–2425, 89–2503, 1989 WL 330800, at 3 (D.D.C. Oct.11, 1989) (“‘[P]lacement’ refers to the overall educational program offered, not the mere location of the program.”). DCPS must match each child with a disability with a school capable of fulfilling the child’s IEP needs. *See Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991). Here, Student’s IEP requiring 26 hours per week of specialized instruction outside the general education setting and 120 minutes per month of behavioral support outside the general education setting is his “placement” in the forward-looking sense contemplated by the 34 C.F.R. § 501 provisions.

While Student has been attending Nonpublic School since August 2013, Student’s attendance at Nonpublic School has been due to procedural reasons – initially due to a unilateral placement, next due to the 2013 HOD ordering that Student remain at Nonpublic School until his eligibility could be determined, and currently due to a stay-put order pending the resolution of the instant due process complaint. There has never been a determination that Student requires the level of restrictiveness of a full time separate day school in order to access his education. Petitioner argues that the July 29, 2014 IEP team failed to discuss the continuum of available placements at Student’s July 29, 2014 IEP meeting, and that the lack of this discussion constituted a denial of FAPE. However, while 34 C.F.R. §115 requires LEAs to ensure that a continuum of alternative placements is available to eligible students, it does not mandate that a discussion of each option along the continuum occur at each IEP team meeting. Given 20 U.S. Code § 1412(5)(A)’s requirement that students with disabilities are educated in their least restrictive environments, and in light of 34 C.F.R. §300.116(c)’s requirement that “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,” the LOS team was allowed, and even obligated, to attempt to identify a public school for Student, unless Student’s IEP reflected services/needs that could not be met by a DCPS school.

The Hearing Officer recognizes that Student’s Advocates strongly believe Student should remain at Nonpublic School. However, as notes from the July 29, 2014 IEP meeting reflect, Student’s Advocates were able to make the case for their position on this score during the meeting. The DCPS members of the IEP team did not agree as of July 29, 2014 that the evidence pointed to any reason why Student would require the level of restrictiveness of a full time day school, and based on DPH record and the IDEA, the Hearing Officer does not find this to be an unreasonable conclusion.

Petitioner also argues that the June 26, 2014 MDT meeting and July 29, 2014 IEP meeting were led by the DCPS summer staff members, rather than staff from the regular school year and/or team members who knew Student well. The Hearing Officer did not find this fact to be significant. The meetings could have occurred prior to summer recess, had Student made himself available earlier for the assessments that needed to be completed prior to the meetings. Additionally, Student had not attended a DCPS school throughout the entire 2013-2014 school year; therefore, there is no reason to believe the summer staff was less equipped to participate in Student’s IEP team than the DCPS staff members who worked during the regular school year. Additionally, several members of the teams did know Student, such as Student’s two Educational Advocates and Former Student Progress Monitor. Further, Student himself participated in the

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June 26, 2014 MDT/eligibility meeting, and no reason was offered at the DPH as to why he could not/did not participate in the July 29, 2014 IEP team meeting.<sup>68</sup> Consistent with 34 C.F.R. § 501(c)(4), it was reasonable for the LEA to proceed with the July 29, 2014 IEP team meeting in Student's absence. The meeting was already occurring far outside the timeline contemplated in the 2013 HOD, due to the delay in the completion of assessments. District High Transition Coordinator testified to several unsuccessful attempts to connect with and engage Student to complete his vocational assessment shortly before, and in preparation for, the July 29, 2014 IEP meeting. With the summer drawing to a close and the school year a few short weeks away, the LEA acted reasonably when it proceeded with the IEP team meeting on July 29, 2014 when Student did not attend in person and the team was unable to reach him by phone.

Petitioner did not meet the burden of proving that DCPS denied Student a FAPE by failing to discuss and determine Student's placement at the IEP meetings held on June 25, 2014 and July 29, 2014, and instead delegating the placement decision to a team that did not include the adult student or individuals knowledgeable about Student.

3. *Whether DCPS denied Student a FAPE by failing to attend to new data presented to the Agency following the meetings on June 25, 2014 and July 29, 2014 regarding Student's needs following a severe injury from a shooting, and by failing to hold a meeting to discuss these new needs and update his present levels of performance, despite requests from Student's representatives.*

A student's IEP must take into account, and be designed to meet, the unique needs of the student, and it must be "regularly revised in response to new information regarding the child's performance, behavior, and disabilities." *Suggs v. District of Columbia*, 679 F. Supp. 2d 43 (D.D.C. 2010). See 34 C.F.R. § 300.324(b)(ii). In this case, DCPS had been requesting a signed consent for initial provision of services form from Petitioner since the July 29, 2014 meeting, so that Student's first ever IEP could be finalized. The signed form, dated approximately one week after Student was shot, was not provided to DCPS until August 26, 2014. In the same electronic message transmitting the signed form to DCPS, Petitioner's counsel informed DCPS that Student had been shot multiple times, indicated Student may need hospital and/or home instruction, and indicated that the shooting was all the more reason why Petitioner believed DCPS should assign Student to Nonpublic School. Upon receiving the signed form and the information about Student having been shot, DCPS attempted to meet the needs that had been specified in the correspondence by getting the process started for home/hospital instruction. DCPS followed up a number of times requesting a completed home/hospital instruction packet so that they could begin providing out of school instruction. DCPS also followed up several times with Petitioner's counsel to inquire about Student's condition, and to request Student's location. At the suggestion of Petitioner's counsel, DCPS also requested from Nonpublic School the exact location where Student was being treated. Though representatives from Nonpublic School were visiting Student, and though Petitioner's counsel requested in the August 26, 2014

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<sup>68</sup> There was testimony that Student's cell phone service is often interrupted due to his limited financial means. However, there was no evidence that Student could not have attended the meeting in person, used another phone to call into the meeting, or that Student desired the meeting to be rescheduled due to his unavailability.

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correspondence to DCPS that DCPS communicate with Student through counsel, neither counsel nor Nonpublic School provided Student's location to DCPS.

Petitioner has emphasized that the DPC does not allege DCPS denied Student a FAPE by failing to provide home/hospital instruction. The Hearing Officer is clear about this fact. What the undersigned finds significant about the succession of events, however, is that DCPS did not have access to Student during his hospitalization and rehabilitation. Petitioner concedes that during much of this time, Student was not in a position to receive educational services or to engage with the LEA. DCPS was also not provided many details about Petitioner's condition, and was not provided with his anticipated discharge date or timeline for returning to school until a few school days before he returned to Nonpublic School. Without any indication that Student's return to school was imminent, and considering that no one from the LEA had been able to meet with Student, or otherwise been provided with the detailed information necessary to assess his needs (which were in flux as he worked to heal physically and emotionally from the August 2014 shooting), the Hearing Officer finds no denial of FAPE in the fact that the LEA had not convened an IEP team meeting prior to Student's discharge from rehabilitation. Further, there were only a few school days between the time the LEA was notified that Student was ready to return to school and the time he actually returned to school. This was not a reasonable timeframe in which to convene an IEP meeting. A DPC was filed two days after Student returned to school. As a result of the DPC, the parties met by way of an RSM. Once this Hearing Officer issued a stay-put Order, ordering among other things that the LEA provide wheelchair accessible transportation so long as Student was wheelchair bound or reliant, the LEA promptly attempted to convene an IEP team meeting to assess Student's transportation and other needs.

The facts do not point the Hearing Officer to a conclusion that the LEA was inattentive or unresponsive to Student's needs. Rather, the record indicates that DCPS attempted to gather information about Student's needs, but was provided with scant details and no reasonable opportunity to independently gather data about Student's condition prior to Student's return to Nonpublic School. As a result, Petitioner did not meet the burden of proving that DCPS denied Student a FAPE by failing to attend to new data presented to the Agency following the meetings on June 25, 2014 and July 29, 2014 regarding Student's needs following a severe injury from a shooting, and by failing to hold a meeting to discuss these new needs and update his present levels of performance, despite requests from Student's representatives.

### **B. Whether DCPS denied Student a FAPE when it placed Student at District High School on October 22, 2014.**

#### *1. Whether DCPS denied Student a FAPE by failing to offer Student a placement/program/school capable of providing him a FAPE, given his needs at the current time.*

As stated above, DCPS offered Student a placement on July 29, 2014 via the services included in his IEP. DCPS also had the right to delegate the location of services decision to the LOS team. As of October 22, 2014, the LEA had made the administrative decision to assign Student to District High School. District High School can meet the physical needs of Student, as described; can offer the number of services hours included on Student's IEP; and can offer



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Student appropriate vocational services, based on what is known at this time about Student's vocational needs. District High School offers behavioral/counseling support services through the social workers on its staff. Petitioner raised concerns about Student's feelings of safety in the community where he was shot, as well as concerns regarding whether at least one of the several full time special education classrooms that would be available to Student at District High School would be an appropriate fit with Student's level of reading comprehension, as the classroom relies on a computerized program. However, the Hearing Officer does not have enough information to make a finding that Student would be unsafe at District High School, or that he cannot learn there, or that District High School is not a location of services consistent with his IEP. To the extent that Student's needs have changed since his IEP was prepared and/or finalized, Student's IEP team is responsible for updating his IEP. However, as discussed above, the LEA had not denied Student a FAPE by not convening an IEP team meeting prior to the filing of the DPC. Petitioner did not meet the burden of proving that DCPS denied Student a FAPE by failing to offer Student a placement/program/school capable of providing him a FAPE, given his needs at the current time

2. *Whether DCPS failed to issue a Prior Written Notice, or otherwise place Student in a particular educational program/placement within District High School, depriving the adult student of the ability to make meaningful educational decisions for himself.*

### Prior Written Notice

Pursuant to 34 CFR § 300.503(a), the LEA must give prior written notice ("PWN") before it proposes to initiate or change the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child, or refuses to initiate or change the identification, evaluation, or educational placement of child with a disability or the provision of FAPE to the child. Student's initial IEP was developed on July 29, 2014. As discussed above, Student's placement/educational program is contained within his IEP. Petitioner is not arguing that DCPS had to issue a PWN before finalizing Student's IEP. Rather, Petitioner argues that DCPS had to issue a PWN before assigning Student to District High School. This Hearing Officer has found that, under these facts, the selection of District High School was a selection of an LOS and not a placement pursuant to the 34 C.F.R. § 501 provisions. Even if the school assignment to District High School had been a "placement" in the forward-looking sense of where Student would receive future educational services, assigning him there would not be a change in placement or a refusal to change a placement, because his time at Nonpublic School has not been due to a "placement" as contemplated by the 34 C.F.R. § 501 provisions. Petitioner has argued that in ordering that Nonpublic School was Student's stay-put "then current educational placement," the Hearing Officer has already completed the analysis to find for Petitioner on this issue. As discussed above, the stay-put provisions of IDEA are centered around preserving the status quo during litigation, and a stay-put analysis is not the same as a merit-based analysis or an analysis under the 34 C.F.R. § 501 provisions. Petitioner has not met the burden of proving that DCPS denied Student a FAPE by failing to issue a PWN when assigning Student to District High School.

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### Assignment to an Educational Setting within District High School

Petitioner has argued that in not informing Student ahead of time which of the several different types of self-contained classrooms at District High School to which he would be assigned, DCPS failed to give Student a “placement.” Petitioner’s argument is based in part on Respondent’s position that District High School itself is not a “placement,” but rather a “location of services;” therefore, Petitioner argues that the actual classroom setting to which Student would be assigned within District High School would be the placement. However, as stated above, Student’s placement is his IEP. As discussed above, the LEA has the right to select an LOS (such as District High School), including an LOS within an LOS (such as one of the several types of self-contained classrooms within District High School).

#### 3. *Whether DCPS inappropriately changed Student’s educational placement from a full time special education day school to a less restrictive environment.*

As discussed above, assigning Student to District High School did not constitute a change in placement, both because Student’s placement is his IEP, and because Student’s IEP is his first 34 C.F.R. § 501 provision placement. Petitioner has argued that DCPS had no justification that Student required an LRE or anything less than a full time separate day school. However, the statute would require a showing in the opposite direction – that Student needed a setting as restrictive as a full time separate day school.

Student was not determined eligible until June 2014, and his time as a student at Nonpublic School to date has been for procedural reasons, not because it has ever been determined that a full time separate day school is his LRE. This is not a situation where there had been a determination that Student required a full time separate day school at one point, and the LEA subsequently moved him to a less restrictive environment. Rather, Student’s LRE was determined for the first time on July 29, 2014 and, after some negotiation and at the request of Student’s Advocates, the IEP team decided that Student’s LRE was 26 hours per week of specialized instruction outside the general education setting, and 120 minutes per month of behavioral support outside the general education setting. The IEP team did not indicate that Student’s disability was such that he required a full time separate day school. In fact, two public schools options were discussed during the meeting as examples of schools that may be able to meet Student’s needs.

During the meeting, Student’s Educational Advocates argued in favor of a determination that Student required a full time separate day school; however, those arguments did not resonate with the other members of the IEP team. This Hearing Officer does not find it unreasonable that the remainder of the team was not persuaded that Student needed a full time separate day school. District High School is able to offer Student a self-contained setting with counseling and vocational support, as does Nonpublic School. District High School can also implement the services listed on Student’s IEP.

Included in the DPH record is a report from Petitioner’s Clinical Psychologist recommending that Student remain at Nonpublic School. However, this report was prepared after the filing of the DPC and provided to the LEA the week prior to the DPH. The LEA had

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not had an opportunity to formally review or consider the report or the recommendations contained therein prior to the filing of the DPC, or much prior to the DPH, and the Hearing Officer cannot hold the LEA accountable for information it did not have when it made the decision this action challenges.<sup>69</sup> A May 18, 2014 confidential psychiatric evaluation states that “[Student] needs a placement in a structured, therapeutic, school program where consequences of behavioral difficulty is not school suspension but an opportunity to teach him skills of emotional flexibility and frustration tolerance using collaborative problem solving techniques.” However, the testimony at the DPH was that Student’s in-school behavioral challenges are not externalized, such that there would be a significant risk of chronic suspension. The evidence also indicates that District High School would be able to provide Student counseling/therapeutic/behavioral supports. The Hearing Officer finds no basis for concluding that District High School is inappropriate for Student.

Petitioner further argues that DCPS blamed Student for truancy issues that were related to his disability, and used this as a basis for changing his placement, without adhering to their affirmative obligation to address the disability-related truancy issues through educational programming. The Hearing Officer has not found that there is a nexus between Student’s attendance problems and his disability. Other factors, such as personal stresses and cannabis use are also likely to have contributed to Student’s attendance problems, which have persisted even at Nonpublic School. While lack of transportation from the LEA may account for some of Student’s missed days, that factor would not account for most of Student’s missed days. Further, Student had not been determined eligible for special education and related services until June 26, 2014, he did not have a finalized IEP in place until August 26, 2014, and he returned to Nonpublic School following a lengthy hospitalization and rehabilitation period two days prior to the filing of the DPC. Therefore, there had only been two days prior to the filing of the DPC when Student was both in school and was a student who had been determined eligible and had an IEP.

During the DPH, Student testified that if attending District High School is his only available option, he simply will not attend school. Such a decision could have grave and undesirable implications for Student’s future and the process of realizing his potential. However, to the extent that an adult student were to choose not attend school, DCPS would not be able to force him to do so. *See Cf. Garcia v. Board of Educ. of Albuquerque*, 2007 WL 5023652, (D.N.M. 2007) (IDEA does not provide a remedy for this kind of case – chronic truancy – where the access to a free and appropriate public education is wide open, but the student refuses to attend school and refuses the numerous and extensive educational opportunities afforded to [him].)

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<sup>69</sup> Even if the Hearing Officer were to consider the substance of the recommendations in the report, they would not lead the Hearing Officer to a conclusion at this juncture that, if given the chance, District High School would not be able to achieve most of what Petitioner’s Clinical Psychologist recommends about Nonpublic School, such as small class sizes and vocational and therapeutic supports, in a physical setting that Student can traverse given the impact of Student’s injury on his mobility.

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Petitioner has not met the burden of proving that DCPS denied Student a FAPE by inappropriately changing Student's educational placement from a full time special education day school to a less restrictive environment.

### Oral Motion

At the close of Petitioner's case-in-chief, Respondent orally moved for a directed finding as to each issue, arguing that Petitioner had failed to meet her burden. Petitioner orally opposed the motion, and the Hearing Officer took the motion and response under advisement.

A corollary to the directed finding Respondent seeks is found in Fed. R. Civ. P. 50 – "Judgment as a Matter of Law" – which is proper when "the court finds that reasonable jury would not have a legally sufficient evidentiary basis to find for the nonmoving party." *Kapche v. Holder*, 677 F.3d 454 (D.D.C. 2012). citing *Breeden v. Novartis Pharms. Corp.*, 646 F.3d 43, 53, 396 U.S. App. D.C. 170 (D.C. Cir. 2011) (quoting Fed. R. Civ. P. 50 (a)(1)).

A detailed discussion of the Hearing Officer's decision on the merits as to each issue in the complaint is provided above; therefore, Respondent's motion for a directed finding is **DENIED** as moot.

### ORDER

All relief Petitioner requested in the complaint is **DENIED**. This complaint is **DISMISSED** with prejudice

**IT IS SO ORDERED.**

Date: January 6, 2015

/s/ NaKeisha Sylver Blount  
Impartial Hearing Officer

### NOTICE OF RIGHT TO APPEAL

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