

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
June 8, 2015

STUDENT, ¹)	
through PARENT,)	Hearing Officer: NaKeisha Sylver Blount
Petitioner,)	
)	Case No: 2015-0098
v.)	
)	Date Issued: June 6, 2015
District of Columbia Public Schools,)	
Respondent.)	

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 March 23, 2015 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On April 2, 2015, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”). The Hearing Officer’s Determination (“HOD”) in this matter is due date on June 6, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on April 8, 2015, 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 May 7, 2015 and that the DPH would be held on May 14, 2015 and May 21, 2015. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on April 8, 2015.

The DPH was held on May 15, 2015 and May 21, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Room 2004. Petitioner elected for the hearing to be closed.

Petitioner was represented by Carolyn Houck, Esq. and DCPS was represented by Tanya Chor, Esq.

Petitioner's and Respondent's disclosures were timely filed. At the DPH, Petitioner's exhibits P-2 through P-10; P-12 through P-21; P-24 through P-27 and P-31 were admitted without objection. Petitioner's exhibits P-1, P-11, P-22, P-23, P-28 and P-30 were admitted over Respondent's objection. Petitioner's exhibit P-29 was withdrawn and not admitted into evidence. Respondent's exhibits R-1, R-11, R-12, R-15 through R-48, R-50 through R-52 were admitted without objection. Respondent's exhibits R-2 through R-10, R-13, R-14, and R-49 were admitted over Petitioner's objection.

Petitioner called the following witnesses at the DPH:

- (a) Petitioner/Parent
- (b) Nonpublic Director
- (c) Literacy Expert²
- (d) Educational Advocate³

Respondent called the following witness at the DPH:

- (a) Special Education Teacher, District High School⁴
- (b) Case Manager/Special Education Teacher ("Case Manager"), District High School

Petitioner and Respondent gave oral closing arguments.

ISSUES

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

- (a) Whether DCPS denied Student a FAPE by failing to develop appropriate IEPs for Student in the 2013-2014 and 2014-2015 school years. Specifically, the DPC alleges that the specified IEPs failed to develop appropriate goals for Student, failed to include related services and failed to develop an appropriate transition plan.
- (b) Whether DCPS failed to implement Student's IEPs in the 2013-2014 and 2014-2015 school years by failing to provide related services and specialized instruction to Student, due to his rarely being in class.
- (c) Whether DCPS denied Student a FAPE by failing to provide appropriate school placements for Student in the 2013-2014 and 2014-2015 school years.

² Qualified, without objection, as an expert in literacy, literacy programming, and developing compensatory education plans.

³ Qualified, without objection, as an expert in IEP development, specifically in the area of transition planning.

⁴ Qualified as an expert in appropriate special education programming and behavioral interventions, without objection, except that Petitioner objected to the portion of the designation related to behavioral interventions.

RELIEF REQUESTED

Petitioner requested the following relief:⁵

- (a) a finding in Petitioner's favor as to each issue raised in the DPC;
- (b) an Order that DCPS convene a meeting to revise Student's IEP as appropriate;
- (c) an Order that DCPS fund Student's placement at Nonpublic School;
- (d) an Order awarding compensatory education in the form of 200 hours of tutoring to remediate Student's reading, writing and mathematics deficits; 250 hours of a dedicated instructor for Student in the classroom to serve as a reader, scribe or conduit for Student to better understand information; and a laptop computer equipped with text-to-speech software (Kurweil 3000) and speech-to-text software (Dragon Naturally Speaking).

FINDINGS OF FACT

1. Student is ■ years old and resides with his mother ("Parent"/"Petitioner"⁶) in Washington, D.C.⁷
2. Student is in the tenth grade at District High School, and has been determined eligible for special education and related services under the disability classification "Specific Learning Disability" ("SLD").⁸
3. Student wears prescription glasses and prescription contact lens. On most days, he wears his contacts rather than his glasses, because he does not think the glasses are cool.⁹

IEPs

4. Student's April 9, 2013 IEP (in effect during part of the 2012-2013 and 2013-2014 school years) calls for him to receive 26 hours per week of specialized instruction outside the general education setting, 120 minutes per month of speech language pathology, and 60 minutes per month of behavioral support services.¹⁰
5. Student's March 24, 2014 IEP (in effect during part of the 2013-2014 and 2014-2015 school years) called for him to receive 26 hours per week of specialized instruction outside the general education setting and 90 minutes per month of behavioral support services outside the general education setting.¹¹

⁵ During the DPH, Petitioner withdrew an earlier request for relief for an Order that DCPS fund independent language processing, psychological, occupational therapy and functional behavioral evaluations, and an Order that DCPS revise Student's IEP to include related services.

⁶ Though Student has attained the age of majority and holds his own educational rights, Student executed an educational power of attorney designating his mother as his educational decision maker; thus, Parent is the Petitioner in this action.

⁷ Testimony of Parent.

⁸ P-9; R-13-9; P-14.

⁹ Testimony of Parent; testimony of Educational Advocate.

¹⁰ P-10-11.

¹¹ P-12-9.

6. Student's January 27, 2015 IEP (in effect during part of the 2014-2015 school year and currently) calls for him to receive 26 hours per week of specialized instruction outside the general education setting and 50 minutes per month of behavioral support services outside the general education setting.¹²

7. The graduation planning sections of Student's April 9, 2013 IEP, March 24, 2014 IEP and January 27, 2015 IEPs (the "relevant IEPs") have him on the high school diploma track, rather than the less academically intensive high school certificate of completion track. Student's current (January 27, 2015) IEP lists his anticipated graduation date as June 14, 2017.¹³

8. Student's March 24, 2014 and January 27, 2015 IEPs contain reading and mathematics goals that are not appropriate to Student's present level of performance¹⁴ and that are not basic enough to be meaningful to Student's intense level of need.¹⁵ The goals remained substantially the same from the March 24, 2014 to the January 27, 2015 IEPs.

9. The relevant IEPs call for Student to meet quarterly with the transition coordinator to receive transition supports and services for 240 minutes per year (approximately 1 hour per quarter).

10. The transition plan incorporated in each of the relevant IEPs contain post-secondary goals that are important for Student to be able to eventually attain. However, they fail to account for the numerous interim steps Student must be taught in order to make progress on them. Student needs training in basic concepts most students his age have long ago mastered but he has not, such as learning the names of the coins and how much each coin is worth. Student also needs to learn other concepts that could also be taken for granted for most students his age, such as how to read and interpret work schedule and a paystub.¹⁶

Performance and Abilities

11. Student's verbal comprehension, working memory, processing speed and full scale IQ are all in the extremely low range.¹⁷

12. Student's listening comprehension and nonverbal intelligence are relative strengths for him. He has the cognitive ability to make educational progress; however, only with intensive academic supports and interventions.¹⁸

¹² P-14-11.

¹³ P-14-20.

¹⁴ Testimony of Literacy Expert; testimony of Special Education Teacher; testimony of Nonpublic Director; P-14-5; P-14-8

¹⁵ Testimony of Literacy Expert.

¹⁶ Testimony of Educational Advocate; testimony of Parent; P-14-15 through P-14-19.

¹⁷ R-29-5.

¹⁸ Testimony of Literacy Expert; testimony of Nonpublic Director.

13. Student has received mostly “Ds” and “Fs” in the 2013-2014 and 2014-2015 school years.¹⁹

14. Student’s reading ability is extremely limited, at between a Kindergarten and first grade level. Student reads fluently only at a Kindergarten level.²⁰ Student is still working on letter recognition and understanding what sound each letter makes.²¹ He cannot read a menu, basic street signs, a Metro bus or train schedules or common abbreviations, such as for the days of the week. He does not know how to count money, use a calculator, tell time, or fill out a basic application, such as for store discount card.²² When materials are read aloud to Student, he can understand them.²³

15. In general, functional literacy – the level of literacy at which an adult can comfortably navigate society at a basic level – is fifth grade reading level.²⁴

16. Quality reading instruction is the number one educational priority for Student at this point.²⁵

17. Student is a gifted hockey player. He is interested in, and perhaps athletically capable of, pursuing a professional-level hockey career. However, Student’s academic limitations are so severe that they would even hinder him in such a sports career, if they are not addressed.²⁶

18. Given the complexity of his needs, Student needs a full time, therapeutic, highly structured specialized education program that will address his pervasive learning issues.²⁷

Attendance and Interventions

19. District High School has been aware, including during the 2013-2014 and 2014-2015 school years, that Student is frequently in the school building but not attending class.²⁸

20. Other than not going into class, Student does not generally exhibit troublesome behaviors at school.²⁹

¹⁹ Testimony of Parent. P-13; P-17.

²⁰ Testimony of Educational Advocate; testimony of Case Manager.

²¹ Testimony of Case Manager.

²² Testimony of Parent; testimony of Educational Advocate; testimony of Case Manager.

²³ Testimony of Educational Advocate; testimony of Case Manager.

²⁴ Testimony of Literacy Expert.

²⁵ Testimony of Case Manager; testimony of Literacy Expert.

²⁶ Testimony of Parent; testimony of Special Education Teacher.

²⁷ R-29-15.

²⁸ Testimony of Case Manager; testimony of Special Education Teacher; P-20.

²⁹ Testimony of Educational Advocate; testimony of Special Education Teacher.

21. Student shows up at the school building nearly every day; however, he often does not go into his classes because his inability to read causes him deep frustration and embarrassment.³⁰

22. Student received a functional behavioral assessment (“FBA”) and a Behavior Intervention Plan (“BIP”) on or around March 24, 2014 to address Student’s hall walking, skipping class and low frustration tolerance.³¹ Interventions to address Student’s attendance deriving from neither the FBA nor the BIP are reflected in any IEP for Student, including the March 24, 2014 and the January 27, 2015 IEPs, though those IEPs address behaviors such as anger, frustration, and verbal and physical aggression for when Student is actually in the classroom.³²

23. Student’s lack of regular class attendance has impeded his progress in reading and otherwise.³³ His skipping class and walking the halls is related to his disability in that they signify that he has hit peak frustration level, and finds comfort in every place other than the classroom.³⁴

24. Though he is in denial about the extent of his educational deficits and frustrated by his lack of progress, Student remains highly motivated to learn, which is why he shows up at the school building each day. It is particularly important to him to learn to read.³⁵

Technological Support

25. Student has an iPad provided to him by DCPS; however, he rarely utilizes it.³⁶

26. Student’s March 24, 2014 and January 27, 2015 IEPs both contain the following language: “The iPad with apps were recommended. [Assistive Technology Specialist] will research the appropriate apps that are needed. [Assistive Technology Specialist] will email [staff member] to discuss this matter.”³⁷

27. Student would benefit from technological applications such as text-to-speech and speech-to-text.³⁸

District High School

28. When drafting IEPs for its students, some District High School personnel (including those who have worked with Student) take the approach of writing goals based on

³⁰ Testimony of Parent; testimony of Educational Advocate

³¹ P-20; R-30; R-31.

³² P-14.

³³ Testimony of Case Manager.

³⁴ Testimony of Special Education Teacher; P-20; P-21; R-30.

³⁵ Testimony of Educational Advocate.

³⁶ Testimony of Case Manager.

³⁷ P-12-5; P-14-11.

³⁸ Testimony of Literacy Expert.

where the student is, and also trying to give the student some of the general education skills other students are getting. Student's IEP was written in this vein.³⁹

29. The ratio for Student's classes at District High School is approximately 10:1.⁴⁰

30. Other students in Student's class at District High School have severe academic deficits, but no other student's reading level is as low as Student's (reading fluently only at the Kindergarten level).⁴¹

Nonpublic School

31. Nonpublic School is a full time special education day school from second to twelfth grades. The school is extremely small, and Student's class sizes at Nonpublic School would be significantly smaller than at District High School.⁴²

32. Most of Nonpublic School's students are learning disabled, and all are on the high school diploma track. Nonpublic School would place Student in its Tier 3 group, which is its highest level of intervention, for students with extremely severe deficits, such as Student has.⁴³

33. Student has made two visits to Nonpublic School, and while he was initially reluctant to contemplate leaving District High School, he responded positively to Nonpublic School and is excited about potentially attending school there, particularly if they can help him learn to read.⁴⁴

34. Nonpublic School's tuition costs have been approved for reimbursement by the Office of State Superintendent of Education ("OSSE").⁴⁵

35. Nonpublic School could implement Student's IEP as it currently is; however, it would make changes to Student's IEP such as adjusting his goals to his present levels of performance.⁴⁶

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

³⁹ Testimony of Case Manager.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Testimony of Nonpublic Director.

⁴³ *Id.*

⁴⁴ Testimony of Parent; testimony of Educational Advocate; testimony of Nonpublic Director.

⁴⁵ Testimony of Nonpublic Director.

⁴⁶ *Id.*

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 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).

(a) Whether DCPS denied Student a FAPE by failing to develop appropriate IEPs for Student in the 2013-2014 and 2014-2015 school years. Specifically, the DPC alleges that the specified IEPs failed to develop appropriate goals for Student, failed to include related services and failed to develop an appropriate transition plan.

In order for an IEP to be appropriate, (1) the LEA must have complied with IDEA's administrative procedures and (2) the IEP must reasonably calculated to provide some educational benefit to Student. *See N.T. v. District of Columbia* 839 F.Supp.2d 29, 33 (D.D.C.2012), quoting *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir.2003); *J.N. v. District of Columbia*, 677 F.Supp.2d 314, 322 (D.D.C. 2010). The appropriateness of an IEP must be assessed as of the time the IEP was developed. *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008), quoting *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir.2008) ("Because the question . . . is not whether the IEP will guarantee some educational benefit, but whether it is reasonably calculated to do so, . . . the measure and adequacy of an IEP can only be determined as of the time it is offered to the student. . . . Neither the [IDEA] nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement.") Petitioner does not assert that DCPS failed to comply with the administrative procedures attendant to developing Student's IEP. Rather, Petitioner claims that the relevant IEPs for Student are not reasonably calculated to provide Student educational benefit in that they failed to develop appropriate goals for Student, failed to include related services, and failed to develop an appropriate transition plan.

As stated in the findings of fact above, Student's March 24, 2014 and January 27, 2015 IEPs contain reading and mathematics goals not appropriate to Student's present level of performance and not basic enough to be meaningful to Student's intense level of need. The goals remained substantially the same from the March 24, 2014 to the January 27, 2015 IEPs. Additionally as stated in the findings of fact, Student received an FBA and a BIP on or around March 24, 2014 to address Student's lack of class attendance due to his hall walking, skipping class and low frustration tolerance. Interventions to address Student's attendance deriving from neither the FBA nor the BIP are reflected in an IEP for Student, including the March 24, 2014 IEP and the January 27, 2015 IEP. Further, the transition plan incorporated in Student's April 9, 2013, March 24, 2014 and January 27, 2015 IEPs contain post-secondary goals that are important for Student to be able to eventually attain. However, they fail to account for the numerous interim steps Student must be taught in order to make progress on them. For these

reasons, the hearing officer does not conclude that the Student's April 9, 2013, March 24, 2014, or January 27, 2015 IEPs were reasonably calculated to provide Student educational benefit and, thus, Student was denied a FAPE from at least April 9, 2013 through the present time. Petitioner met her burden of proof on this issue.

(b) Whether DCPS failed to implement Student's IEPs in the 2013-2014 and 2014-2015 school years by failing to provide related services and specialized instruction to Student, due to his being in class.

In reviewing failure-to-implement claims, a hearing officer must ascertain whether the aspects of the IEP that were not followed were "substantial or significant," or, in other words, whether the deviations from the IEP's stated requirements were "material." *See Catalan ex rel. E.C. v. District of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007), *aff'd sub nom. E.C. v. District of Columbia*, No. 07-7070 (D.C.Cir. Sept. 11, 2007). Where an LEA's failure to implement is material (not merely *de minimus*), courts have held that the standard for determining whether there has been a denial of FAPE is not tied to whether the student has suffered educational harm. *See Wilson v. District of Columbia*, 770 F. Supp. 2d 270 (D.D.C. 2011) (finding a student had been denied a FAPE, even where the student made academic progress despite the LEA's material failure to implement part of the student's IEP). Rather, "it is the proportion of services mandated to those provided that is the crucial measure for determining whether there has been a material failure to implement." *Turner v. District of Columbia*, 952 F. Supp. 2d 31 (D.D.C. 2013).

In this instance, Student has a documented problem of class avoidance tied to his disability. Respondent argued that Student avoids class because he does not want to wear his eyeglasses and, thus, cannot see well. However, the hearing officer credits Parent's and Educational Advocate's testimony that Student has contact lenses in addition to eyeglasses, and wears his contact lenses nearly every day. According to the March 24, 2014 FBA and BIP DCPS conducted, these behaviors impact him all throughout each school day, are related to his academic deficits, cause him to avoid assignments and classwork, and impede his educational progress. In light of these specific findings DCPS made regarding the correlation between Student's class avoidance and his academic deficits, failure to address these impediments in either the March 24, 2014, or January 27, 2015 (or to create any other IEP for Student after March 24, 2014 to address these issues) means, in the hearing officer's judgment, that Student likely missed substantially more classroom instruction than he would have had appropriate interventions been in place to address his class avoidance. Student was not receiving his IEP services during his periods of unremediated class avoidance, and these were substantial, significant and material deviations from his IEP. While the question of whether there was a denial of FAPE is not tied to whether a student suffered educational harm, the hearing officer does conclude that Student suffered educational harm due to this particular failure to implement. For these reasons, the hearing officer concludes that Petitioner met the burden of proving that Student was denied a FAPE due to the failure to implement his IEP from at least March 24, 2014 through the present time.

(c) **Whether DCPS denied Student a FAPE by failing to provide appropriate school placements for Student in the 2013-2014 and 2014-2015 school years.**

To the extent that a student's IEP is appropriate, his educational placement is also appropriate, if it is able to implement the terms and conditions of the IEP. *O.O. ex rel. Pabo v. District of Columbia*, 573 F.Supp.2d 41, 55 (D.D.C.2008) (Where a student's IEP was adequate, a school capable of implementing the IEP was an appropriate placement.) In this instance, the hearing officer has found that Student's April 9, 2013, March 24, 2014, or January 27, 2015 IEPs were inappropriate in that their academic and transition goals are so attenuated from Student's present levels of performance as to render the goals meaningless for Student's needs, and not reasonably calculated to provide Student with academic benefit. Moreover, the hearing officer has found that District High School did not implement Student's IEP from at least March 24, 2014 to the present time, in that it did not put in place interventions to address his primary behavioral issue – class/assignment avoidance tied to his disability – which greatly contributed to Student's substantial missed class time, even when he was present in the school building. Student is an 18 year old tenth grade Student who reads fluently at only the Kindergarten level. Student is on the high school diploma track, and is in class with other students on the high school diploma track where he is the lowest or among the very lowest performers, particularly in reading. As documented in his FBA and BIP, he is so far behind his peers that the shame and frustration he feels drives him to avoid the classroom setting, even when he is in the school building. While Student's programming would have been appropriate for many students his age, it was/is not appropriate for his particular set of complex needs. For these reasons, the hearing officer does not find that Student had an appropriate placement from at least April 9, 2013 through the present time. Petitioner met her burden of proof on this issue.

Request for Placement at Non-Public School

An order for DCPS to fund a placement at Nonpublic School is part of the relief Petitioner seeks for those issues on which a denial of FAPE was found. Yet a denial of FAPE does not necessarily entitle a Student to private school placement at public expense. "An inadequate IEP is a necessary but insufficient condition for private school placement and reimbursement." *N.T. v. District of Columbia*, 839 F.Supp.2d 29, 34 (D.D.C.2012); *Branham v. Gov't of the District of Columbia*, 427 F.3d 7, 8, 11 (D.C. Cir. 2005). Placement awards, must be tailored to meet the child's specific needs. *Id.* To inform this individualized assessment, courts have identified a set of considerations relevant to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment. *Branham* at 12. Following is a discussion of each of the *Branham* factors as they relate to the facts of this case.

a. Nature and Severity of Student's Disability

Student's disability is severe. His verbal comprehension, working memory, processing speed and full scale IQ are all in the extremely low range. At ■ years of age, tenth grade Student's reading ability is extremely limited, at between a Kindergarten and first grade level. Student reads fluently only at a Kindergarten level. Student is still working on letter recognition and understanding what sound each letter makes. He cannot read a menu, basic street signs, a

Metro bus or train schedules or common abbreviations, such as for the days of the week. He does not know how to count money, use a calculator, tell time, or fill out a basic application, such as for store discount card. When materials are read aloud to Student, he can understand them.

Student's lack of regular class attendance has impeded his progress in reading and otherwise. His skipping class and walking the halls is related to his disability in that it signifies that he has hit peak frustration level, and finds comfort in every place other than the classroom.

b. Student's Specialized Educational Needs

Quality reading instruction is the number one educational priority for Student at this juncture. Given the complexity of his needs, he needs a full time, therapeutic, highly structured specialized education program that will address his pervasive learning issues.

c. Link between Student's Needs and the Services Offered by Private School

Nonpublic School is a full time special education day school that is extremely small, and where Student's class sizes would be significantly smaller than at District High School. Most of Nonpublic School's students are learning disabled and on the high school diploma track, like Student. Nonpublic School would place Student in its Tier 3 group which is its highest level of intervention for students with extremely severe deficits such as Student has. Nonpublic School could implement Student's IEP as it currently is; however, it would also make and implement changes to Student's IEP such as adjusting his goals to his present levels.

d. Cost of Placement at Private School

Nonpublic School's tuition costs have been approved for reimbursement by OSSE.

e. Extent to Which Private School Represents Least Restrictive Environment

Student is already a legal adult, yet he can barely read at all, and cannot decipher basic street signs or words that are important to navigating everyday life. While his cognitive abilities are extremely low, he does have the cognitive capacity to make academic progress with intensive academic support. Student has not made educational progress since at least April 2013, and he has not had an academic program appropriate to his extreme level of need during this time. While his IEP goals would be appropriate for many learning disabled adult high school students, and far too basic for some, they are too advanced for Student's very basic present levels of performance. At this time, having spent years at District High School with no progress and with few remaining years of special education eligibility remaining, Student's needs are so intense that it is necessary to place him at least for a time in a specialized separate day school capable of meeting his needs. For these reasons, the hearing officer concludes that Nonpublic School represents Student's least restrictive environment as of this time.

Based on the *Branham* factors discussed above, the program at Nonpublic School is reasonably calculated to address Student's disabilities and educational needs. Accordingly, Nonpublic School is an appropriate placement for Student.

Compensatory Education

IDEA gives hearing officers “broad discretion” to award compensatory education as an “equitable remedy” for students who have been denied a FAPE. *See Reid, supra*, 401 F.3d at 522-23. The award must “provide the educational benefits that likely would have accrued from special education services” that the school district “should have supplied in the first place.” *Id.* at 524. A compensatory education award must “rely on individualized assessments” after a “fact specific” inquiry. *Id.* “In formulating a new compensatory education award, the hearing officer must determine ‘what services [the student] needs to elevate him to the position he would have occupied absent the school district’s failures.’” *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010), quoting *Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid*, 401 F.3d at 527. *See also, e.g., Turner v. District of Columbia*, 2013 WL 3324358, 10-11 (D.D.C. July 2, 2013).

Here, Petitioner claims Student was harmed by DCPS’ failure to provide appropriate IEPs, implement Student’s IEPs, and provide an appropriate placement for Student. Petitioner requests 200 hours of tutoring to remediate Student’s reading, writing and mathematics deficits; 250 hours of a dedicated instructor for Student in the classroom to serve as a reader, scribe or conduit for Student to better understand information; and a laptop computer equipped with text to speech software (Kurweil 3000) and speech to text software (Dragon Naturally Speaking). The hearing officer assigned some weight to Literacy Expert’s recommendations and testimony; however, the weight was limited in that Literacy Expert’s recommendations appear to be based on a three year time period, rather than the two years that would fall within the statute of limitations,⁴⁷ were based on a claim that DCPS failure to provide occupational therapy, counseling and speech language therapy,⁴⁸ and failed to address the fact that Student already has access to a school-provided iPad when recommending that a laptop be provided for Student.

Based on the evidence presented, the hearing officer concludes that Student could have made at least 1.5 to 2 grade levels of progress in reading, mathematics and written expression since April 9, 2013, had he had an appropriate IEP that was substantially implemented during that time, and had he been in an appropriate placement. This amount of progress would have potentially placed him on a path toward attaining at least a fifth grade level in reading and mathematics by the time he leaves high school, which would enable him to lead a functional life after graduation. The hearing officer concludes that an average of approximately two hours per week of tutoring in reading, mathematics and written expression over the next two years will be required to help Student close the gap between where he is and where he would have been. Therefore, the hearing officer will order 200 hours of one-on-one tutoring to be utilized within the next two years. The hearing officer does not find the evidence to be persuasive that Student will require a dedicated reader/scribe, particularly in the smaller, specialized setting of Nonpublic School, and the hearing officer will not order that relief. Additionally, the hearing

⁴⁷ While the hearing officer found a denial of FAPE for an IEP created during the 2012-2013 school year, that particular IEP was created in April 2013 (toward the end of the school year) which falls within the two-year statute of limitations.

⁴⁸ Due to developments leading up to the DPH, Petitioner’s case did not focus on these related services, and the hearing officer has not found a denial of FAPE based on the failure to provide these related services.

officer will not order a laptop, since Student already has an iPad, but will instead order that Student's team review what technology he already has, and what supports he needs to utilize that technology effectively. The hearing officer will order that Student's team ensure Student has access to an appropriate text-to-speech application, and an appropriate speech-to-text application.

ORDER

Based on the Findings of Fact and Conclusion of Law above, it is hereby **ORDERED** that:

- A. Within 20 business days⁴⁹ of this decision, DCPS shall convene an IEP team meeting to revise Student's IEP as appropriate, including revising his goals and transition plan as appropriate, and including appropriate behavioral interventions commensurate with his FBA and BIP to address Student's propensity for class avoidance. Student's IEP team shall review what technology Student has access to, discuss and determine what if any supports Student needs in order to benefit from the technology, and ensure that Student has access to an appropriate text-to-speech and speech-to-text application;
- B. DCPS shall fund Student's placement at Nonpublic School for the 2015-2016 school year, including transportation;
- C. Within 15 business days of this Order, DCPS shall begin funding compensatory education for Student in the form of 200 total hours of tutoring by a provider(s) of Parent's choice to remediate Student's deficits in reading, writing and/or mathematics. Tutoring hours shall be paid at DCPS' standard rates. Any tutoring hours not utilized by August 31, 2017 shall be forfeited.

All other relief Petitioner requested in the complaint is **DENIED**.

IT IS SO ORDERED.

Date: June 6, 2015

/s/ NaKeisha Sylver Blount
Impartial Hearing Officer

Copies to:
Petitioner (by U.S. mail)
Petitioner's Attorney: Carolyn Houck, Esq. (electronically)
DCPS' Attorney: Tanya Chor, Esq. (electronically)
Chief Hearing Officer Virginia Dietrich, Esq. (electronically)
OSSE-SPED (electronically)
ODR (electronically)

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

⁴⁹ Any delay caused by Petitioner, Student and/or their representatives/advocates shall not count against DCPS.

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controversy within ninety (90) days from the date of the Hearing Officer Determination, in accordance with 20 U.S.C. §1415(i).