

**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

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STUDENT, <sup>1</sup>	)	
through the PARENT,	)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>	)	
	)	Case No: 2015-0216
v.	)	
	)	<b>Date Issued: September 7, 2015</b>
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 June 25, 2015 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On July 2, 2015, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties convened a Resolution Session Meeting (“RSM”) in this matter on July 10, 2015. The parties did not reach an agreement during the RSM; however, they agreed to keep the resolution process open for the entire 30-day resolution period. Accordingly, the parties agree that the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on July 26, 2015, and 45 day period concludes on September 8, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on July 13, 2015, during which the parties discussed and clarified

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

the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by August 5, 2015 and that the DPH would be held on August 12, 2015. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the "PHO") issued on July 13, 2015.

The DPH was held on August 12, 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 Kimberly Glassman, Esq. and DCPS was represented by Steven Rubenstein, Esq.

Petitioner's and Respondent's disclosures were timely filed. At the DPH, Petitioner's exhibits P-1 through P-29 were admitted without objection. Respondent's exhibits R-1 through R-8 were admitted without objection. Respondent's exhibits R-9 and R-10 were admitted into evidence over Petitioner's objection.

Petitioner called the following witnesses at the DPH:

- (a) Parent
- (b) Independent Psychologist<sup>2</sup>
- (c) Nonpublic Administrator

Respondent called the following witness at the DPH:

- (a) Principal of District Middle School ("Principal")

Petitioner and Respondent gave oral closing arguments.

### ISSUES

As discussed at the PHC and reflected in the PHO, the following issues<sup>3</sup> were presented for determination at the DPH.

- (a) Whether DCPS denied Student a FAPE by failing to develop appropriate IEPs that were not reasonably calculated to provide meaningful educational benefit for Student in the following ways:
  1. by failing to provide an individualized BIP from June 25, 2013 through the February 2014 IEP;
  2. by failing to include updated present levels of performance, and an individualized BIP, and by failing to address that Student's goals were being carried over from the previous IEP by increasing the hours of services outside the general education setting in February 2014;

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<sup>2</sup> By stipulation of the parties, qualified as an expert in clinical and educational psychology, including conducting and interpreting psychological evaluations of children with disabilities. Additionally, over Respondent's objection, Independent Psychologist was qualified as an expert in recommendations for IEP development, recommendations for educational programming, and recommendations for placements for students with disabilities.

<sup>3</sup> Petitioner withdrew some portions of certain issues on August 5, 2015, without prejudice, without objection from Respondent. The issues included in this HOD are the issues as Petitioner amended them.

3. by updating present levels of performance, removing IEP goals without indicating mastery, and by failing to address the goals that had been carried over from past IEPs, and by failing to include an individualized BIP in April 2014;
  4. by failing to include updated present levels of performance, failing to include measurable goals, failing to include goals to address all areas of need, by failing to address goals that had been carried over for several IEPs, by failing to include an individualized BIP in April 2015;
  5. by failing to include updated present levels of performance, failing to include measurable goals or appropriate goals based on present ability levels, failing to include an individualized BIP, failing to address goals that had been in place and carried over for several IEPs, failing to include an appropriate LRE reflecting full-time standalone special education setting in June 2015.
- (b) Whether DCPS denied Student a FAPE by inappropriately changing his placement from one grade at City Elementary School to a different grade at District Middle School without an IEP team meeting, parental participation and considering Student's special needs.
- (c) Whether DCPS denied Student a FAPE by failing to provide an appropriate educational placement in a setting that could address the full scope of Student's special needs in fully self-contained special education setting.

#### **RELIEF REQUESTED**

Petitioner requested the following relief:

- (a) a finding in Petitioner's favor on all issues;
- (b) an Order that DCPS place and fund Student at Nonpublic School (a standalone therapeutic special education day school for students with severe emotional and mental health needs), including transportation;
- (c) an Order that DCPS revise Student's IEP to include appropriate and current present levels of performance, measurable goals, and goals that are aligned to Student's present levels of ability.

#### **FINDINGS OF FACT**

1. Student is [AGE] years old, resides in Washington, D.C., and is eligible for special education and related services under the disability classification "emotional disturbance"<sup>4</sup>
2. In February 2014, DCPS promoted Student from one grade to a different grade, which resulted in DCPS transferring him from City Elementary School to District Middle School.<sup>5</sup>
3. Student is a rising [GRADE] grade student assigned to attend the Behavior & Education Support Program ("BES Program") at District Middle School for the 2015-2016 school year, who also was assigned to the BES Program for the 2014-2015 school year.<sup>6</sup>

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<sup>4</sup> Testimony of Parent; P-18.

<sup>5</sup> Stipulation of the parties.

<sup>6</sup> Stipulation of the parties.

**Mental Health:**

4. Student has experienced trauma and upheaval in his lifetime and in recent years, and suffers from severe mental health challenges. He has been diagnosed with Disruptive Mood Dysregulation Disorder and Attention-Deficit/Hyperactivity Disorder. He has also been diagnosed with Unspecified Schizophrenia Spectrum and other Psychotic Disorder which manifests, among other ways, through Student experiencing hallucinations, making strange verbalizations, expressing suicidal ideations, and conversing with an imaginary person, whom Student has named.<sup>7</sup>

**Classroom/School Behavior and Behavior Intervention Plan:**

5. In part due to his psychotic disorder and mood dysregulation, Student is easily triggered into adverse behaviors, and he perceives the imaginary person he interacts with to be directing him to negative behaviors.<sup>8</sup>

6. Student has internalizing and externalizing problems, and behavioral problems both at home and at school.<sup>9</sup> At school, Student is often ready to fight, and in class he is “aggressive, talkative, disruptive, and verbally violent,” and he has trouble staying focused, which is a factor in his being below grade level.<sup>10</sup> He has a particularly poor rapport with his female teachers.<sup>11</sup>

7. Student does not have a history of suspension/expulsion,<sup>12</sup> however, he “has progressed inconsistently,” is a “very disruptive student” and “is in need of additional support because he has difficulty . . . expressing his feelings.”<sup>13</sup>

8. Student received a functional behavior analysis in February 2013.<sup>14</sup>

9. Student received a behavioral intervention plan for the first time in February 2013.<sup>15</sup>

**Cognitive Ability Level/Progress:**

10. Student has low range intellectual ability, low average verbal ability, low average thinking ability, and very low average cognitive functioning.<sup>16</sup>

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<sup>7</sup> Testimony of Independent Psychologist; testimony of Parent.

<sup>8</sup> Testimony of Independent Psychologist.

<sup>9</sup> P-4-11; P-5; testimony of Independent Psychologist.

<sup>10</sup> P-5-1. In reaching this finding, the Hearing Officer credits the Teacher Rating Scale, testimony of Independent Psychologist, and testimony of Parent rather than the testimony of Principal. The teacher has had a great deal more classroom contact with Student than any other witness, and Independent Psychologist and Parent’s testimony was consistent with teacher.

<sup>11</sup> P-4-3.

<sup>12</sup> Testimony of Principal.

<sup>13</sup> P-3-5.

<sup>14</sup> P-8.

<sup>15</sup> Testimony of Principal; R-6.

<sup>16</sup> P-4-5 and P-4-6.

11. Student was assessed with the Woodcock Johnson III in 2011 and in 2015. He demonstrated little to no growth in the four year period.<sup>17</sup>

12. Student's reading skills are low, and he is still working to master the fundamentals of reading, "[w]hile in comparison, his same aged/grade level peers are reading to learn; thereby, expanding the achievement gap between them."<sup>18</sup>

**IEPs:**

13. Student's February 2013 IEP included 11 hours of specialized instruction weekly outside general education: 3 hours of math, 5 hours of reading, and 3 hours for written expression.<sup>19</sup>

14. Student's February 2014 IEP included 11 hours of specialized instruction weekly outside general education: 3 hours of math, 5 hours of reading, and 3 hours for written expression.<sup>20</sup>

15. Student's April 2014 IEP included 26.5 hours of specialized instruction outside general education.<sup>21</sup>

16. Student's June 19, 2015 IEP describes his least restrictive environment ("LRE") as 26.5 hours per week of specialized instruction outside the general education setting; 120 minutes per month of behavioral support services outside the general education setting to address his self-regulation/control, aggressive behavior, and impulsive tendencies; and 240 minutes per month of speech-language pathology.<sup>22</sup>

17. The present levels for Student's February 2014, April 2014, April 2015 and June 2015 are substantially similar and do not reflect meaningful progress.<sup>23</sup>

18. The goals in Student's February 2014, April 2014, April 2015 and June 2015 IEPs were not sufficiently tailored to Student's ability levels, needs and/or level of mastery, carried over goals from previous IEPs without sufficiently modifying them to increase Student's likelihood of mastery or appropriately increasing his hours of specialized instruction in February 2014,<sup>24</sup> and/or failed to accurately reflect the appropriate least restrictive environment for Student.<sup>25</sup>

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<sup>17</sup> Testimony of Independent Psychologist; P-4-15, P-4-16; P-10-3.

<sup>18</sup> P-3-7.

<sup>19</sup> P-14-8.

<sup>20</sup> Stipulation of the parties.

<sup>21</sup> Stipulation of the parties.

<sup>22</sup> P-18-13.

<sup>23</sup> P-15; P-16; P-17; P-18. *See also*, R-8 (Student earned mostly "Ds" and a couple of "Cs" on his most recent report card); P-1 (Student's Scholastic Reading Inventory scores fluctuated, but dropped overall from September 2014 through May 2015).

<sup>24</sup> There were instances when the level of proficiency was changed, though the goal remained the same.

<sup>25</sup> Testimony of Independent Psychologist; P-14; P-15; P-16; P-17; P-18.

**Change from City Elementary School to District Middle School:**

19. In February 2014, DCPS moved Student from City Elementary School to District Middle School, informing Parent that Student was too big and too old to be at City Elementary School. Though DCPS referred to this as a “successful promotion,” Student had not demonstrated sufficient academic or behavioral readiness to move from elementary school to middle school in the middle of the school year.<sup>26</sup>

**BES Program at District Middle School for 2015-2016:**

20. The BES classroom is a self-contained environment for students with emotional disturbance.<sup>27</sup>

21. As of the date of the DPH, there were six students slated for the BES classroom to which Student would be assigned for 2015-2016, with at least three adults assigned to the classroom, who could call for other adults in the building to assist with behavioral disruption if necessary, such as when a student goes into crisis or leaves the classroom.<sup>28</sup>

**Nonpublic School**

22. Nonpublic School provides a multi-disciplinary approach for each area of instruction, and all of its teachers are certified special education teachers.<sup>29</sup>

23. In addition to working to address the skills in the IEP and the state standards, Nonpublic School tries to fill in gaps in foundational skills through shorter intervals of instruction, with mental and movement breaks between intervals, and using smart boards and other technology.<sup>30</sup>

24. Each class has a teacher, an assistant teacher and approximately nine students. The teacher and assistant teacher do coaching support throughout the day, and students receive regular counseling – group counseling on a weekly basis, and individual counseling as needed.<sup>31</sup>

25. Nonpublic School has a certificate of approval from the Office of State Superintendent of Education (“OSSE”), and its rates are consistent with the OSSE approved rates.<sup>32</sup>

26. Student has been offered a placement at Nonpublic School, and has a profile similar to many of the school’s students. Nonpublic School has had a history of providing appropriate therapeutic supports for students with Student’s level of need.<sup>33</sup>

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<sup>26</sup> Testimony of Parent; testimony of Independent Psychologist; P-20.

<sup>27</sup> Testimony of Principal.

<sup>28</sup> Testimony of Principal.

<sup>29</sup> Testimony of Nonpublic Administrator.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

27. At Nonpublic School, Student would be assigned to a classroom with all male students, as well as a male teacher and assistant teacher, with lots of hands on learning, which is helpful for students with difficulty focusing.<sup>34</sup>

28. Nonpublic School would provide Student with a small classroom size, repetition in instruction, differentiated modalities of instruction (based on his needs) and minimal transitions during the day, which would help Student manage his impulsivity challenges. Nonpublic School could implement Student's IEP.<sup>35</sup>

29. Nonpublic School has a team of trained behavioral specialists on-site, staff trained in trauma, a school wide behavioral system, and individual behavioral plans as needed.<sup>36</sup>

**Recommended Educational Setting:**

30. A May 2015 independent comprehensive psychological evaluation ("IEE") recommended "full-time, special education supports in a therapeutic, separate school" for Student,<sup>37</sup> and that he receive "support in his school in the form of individual counseling (240 minutes per month; 1:1)."

31. The June 16, 2015 DCPS review of the May 2015 IEE indicates that Student "will continue to need specialized instruction, combined with a therapeutic environment, much like the Behavioral Education Support classroom he has participated in this year."<sup>38</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 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>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> P-4-12.

<sup>38</sup> P-3-7.

**(a) Whether DCPS denied Student a FAPE by failing to develop appropriate IEPs that were not reasonably calculated to provide meaningful educational benefit for Student in the following ways:**

1. by failing to provide an individualized BIP from June 25, 2013 through the February 2014 IEP;
2. by failing to include updated present levels of performance and an individualized BIP, and by failing to address that Student's goals were being carried over from the previous IEP by increasing the hours of services outside the general education setting in February 2014;
3. by updating present levels of performance, removing IEP goals without indicating mastery, and by failing to address the goals that had been carried over from past IEPs, and by failing to include an individualized BIP in April 2014;
4. by failing to include updated present levels of performance, failing to include measurable goals, failing to include goals to address all areas of need, by failing to address goals that had been carried over for several IEPs, by failing to include an individualized BIP in April 2015;
5. by failing to include updated present levels of performance, failing to include measurable goals or appropriate goals based on present ability levels, failing to include an individualized BIP, failing to address goals that had been in place and carried over for several IEPs, failing to include an appropriate LRE reflecting full-time standalone special education setting in June 2015.

In order to provide a FAPE to a student an, "IEP must, at a minimum, 'provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.'" *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005), quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). To determine whether a FAPE has been provided, courts must determine whether: (1) the school complied with the IDEA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits. *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). Petitioner has not asserted a procedural violation, but rather that Student's IEPs were not reasonably calculated to enable Student to receive educational benefit. As stated above, the Hearing Officer has found that the present levels for Student's February 2014, April 2014, April 2015 and June 2015 are substantially similar, notwithstanding the fact that they do not reflect that Student was making meaningful progress. Additionally, the goals in Student's February 2014, April 2014, April 2015 and June 2015 IEPs were not sufficiently tailored to Student's ability levels, needs and/or level of mastery, carried over goals from previous IEPs without sufficiently modifying them to increase Student's likelihood of mastery, and/or failed to accurately reflect the appropriate least restrictive environment for Student. Additionally, given Student's lack of progress to that point, Student's hours of specialized instruction should have been increased in February 2014.

Student has needed a BIP since prior to the two-year statute of limitations period applicable to this action;<sup>39</sup> however, he has had one since February 2013, and the testimony of Independent Psychologist and Parent that they have not seen or been aware of the BIP being implemented in the classroom does not meet the preponderance of the evidence standard, in light of Principal's testimony that the BIP has been utilized, since Principal is in the school building on a regular basis and would have more direct knowledge of what happens in the classroom.

The violations of the IDEA discussed in this section constitute a substantive denial of FAPE, in that they impeded Student's right to a FAPE and caused a deprivation of educational benefit. Therefore, Petitioner meets the burden of proof on this issue, except as to the allegation that Student did not have an individualized IEP from June 2013 through the present time.

**(b) Whether DCPS denied Student a FAPE by inappropriately changing his placement from one grade at City Elementary School to a different grade at District Middle School without an IEP team meeting, parental participation and considering Student's special needs.**

The IDEA requires LEAs to "ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." *See* 20 U.S.C. § 1414(e); 34 C.F.R. § 300.327. As stated above, the Hearing Offer has found that in February 2014, DCPS moved Student from City Elementary School to District Middle School, and that DCPS merely informed Parent of this move – in other words, Parent was not a part of the team that actually made this decision. The February 18, 2014 MDT meeting notes<sup>40</sup> are not inconsistent with Parent's account of events, because while the notes reflect some discussion of Student's goals and mention Student's move to District Middle School, the notes do not appear to reflect that the change in schools was something Parent was consulted about, but rather that she was merely informed.

Respondent asserts that the decision to move Student from City Elementary School to District Middle School was a promotion decisions within the sole purview of the LEA, rather than a placement decision. While the IDEA requires a student's parents to be part of the team that creates the IEP and determines the educational placement of the child, it does not explicitly require parental participation in mere site selection. *See, e.g., James v. District of Columbia*, 2013 WL 2650091, 3 (D.D.C. Jun. 9, 2013). An LEA does have discretion over promotion decisions. *See, e.g., Letter to Davis-Wellington*, 40 IDELR 182 (August 19, 2003). However, singling out Student for a move to a different school mid-school year is different from deciding at the end of the school year whether Student (and other students) have met the LEA's criteria to move to the next grade for the following school year. In the instant case, Student arrived a new school in January (a move the LEA did not precipitate), and by February DCPS was sending Student to a different school – a middle school rather than an elementary school. The Hearing Officer credits Parent's testimony that the reason she given for why Student was being moved

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<sup>39</sup> "In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 34 C.F.R. § 324(a)(2)(i).

<sup>40</sup> R-3.

was that he was too big and too old to be at City Elementary School. The difference in type of setting (elementary school versus middle school), the dramatic increase in Student's hours of specialized instruction close in time to the change in schools (from 11 hours to 26.5 hours), as well as the timing of the move from one grade and one school to another combine to bring the Hearing Officer to the conclusion that this was a placement change. Student had not demonstrated sufficient academic or behavioral readiness to move from elementary school to middle school in the middle of the school year.

This procedural violation of the IDEA constitutes a substantive denial of FAPE, in that it impeded Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and caused a deprivation of educational benefit. Therefore, Petitioner meets the preponderance of the evidence standard on this issue.

**(c) Whether DCPS denied Student a FAPE by failing to provide an appropriate educational placement in a setting that could address the full scope of Student's special needs in fully self-contained special education setting.**

"The minimum standard set out by the Supreme Court in determining whether a child is receiving a FAPE, or the 'basic floor of opportunity,' is whether the child has 'access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.'" *A.I. ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 167 (D.D.C.2005), quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201 (1982). Congress, however, "did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir.1985)." Over the past several years, Student has had flashes of academic and behavioral progress, but these have not been consistent, and overall Student has not evidenced meaningful progress. The academic gap between Student and his peers has widened, despite the fact that Student's cognitive ability is generally in the low average range. Student's May 2015 IEE recommended a therapeutic, standalone special education day school for him. The June 2015 review of the IEE recommended that he his needs could continue to be met in the BES program. Based on the record, the Hearing Officer finds Independent Psychologist's recommendation to be more credible on this score, and more consistent with Student's demonstrated level of need as of the time of the June 2015 IEP meeting.

At least as of Student's June 19, 2015 IEP, Student needed to be at the next most restrictive point on the continuum of alternative placements (special school). Student also needed more therapeutic support during the school day (as reflected Independent Psychologist's recommendation for 240 minutes per month of individual counseling) than the 120 minutes per month of behavioral support services outside the general education setting his June 2015 IEP calls for. This procedural violation rises to the level of a substantive denial of FAPE, in that it impeded Student's right to a FAPE and caused a deprivation of educational benefit. Even though Student's most recent IEP was not finalized until the end of the 2014-2015 school year, it is the IEP that remains in effect at the beginning of the 2015-2016 school year. Petitioner meets the burden of proving that, at least as of June 2015, DCPS denied Student a FAPE by failing to

provide an appropriate educational placement in a setting that could address the full scope of Student's special needs in a fully self-contained special education setting.

### **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. He has experienced trauma and upheaval in his lifetime and in recent years, and suffers from severe mental health challenges. He has been diagnosed with Disruptive Mood Dysregulation Disorder and Attention-Deficit/Hyperactivity Disorder. He has also been diagnosed with Unspecified Schizophrenia Spectrum and other Psychotic Disorder which manifests, among other ways, through Student experiencing hallucinations, making strange verbalizations, expressing suicidal ideations, conversing with an imaginary person, whom Student has named. In part due to his psychotic disorder and mood dysregulation, Student is easily triggered into adverse behaviors, and he perceives the imaginary person he interacts with to be directing him to negative behaviors.

Student has internalizing and externalizing problems, and behavioral problems both at home and at school. At school, Student is often ready to fight, and in class he is "aggressive, talkative, disruptive, and verbally violent," and he has trouble staying focused, which is a factor in his being below grade level. He has a particularly poor rapport with his female teachers.

#### *b. Student's Specialized Educational Needs*

Despite generally low-average cognitive ability, Student's reading skills are low, and he is still working to master the fundamentals of reading, "[w]hile in comparison, his same aged/grade level peers are reading to learn; thereby, expanding the achievement gap between them." Student has not made consistent, meaningful academic or behavioral progress in the past several years, including during his time in the BES program.

#### *c. Link between Students' Needs and the Services Offered by Private School*

Nonpublic School provides a multi-disciplinary approach for each area of instruction. All of its teachers are certified special education teachers, and work to fill in gaps in foundational skills through shorter intervals of instruction, with mental and movement breaks between intervals, and using smart boards and other technology. At Nonpublic School, Student would be

assigned to a classroom with all male students, as well as a male teacher and assistant teacher, with lots of hands on learning, which is helpful for students with difficulty focusing. Nonpublic School would provide Student with a small classroom size, repetition in instruction, differentiated modalities of instruction (based on his needs) and minimal transitions during the day, which would help Student manage his impulsivity challenges. Nonpublic School has a team trained behavioral specialists on-site, staff trained in trauma, a school wide behavioral system, and individual behavioral plans as needed. Its students receive regular counseling – individually as needed, and weekly in groups. Student has been accepted into Nonpublic School, could implement Student’s IEP, and it is well-suited to meet his academic and behavioral needs.

*d. Cost of Placement at Private School*

Nonpublic School has a certificate of approval from the OSSE, its rates are consistent with the OSSE approved rates, and the Hearing Officer deems them to be reasonable.

*e. Extent to Which Private School Represents Least Restrictive Environment*

At least as of his June 2015 IEP, Student needs a special school with significant therapeutic supports. While the BES program has behavior and some therapeutic supports, it does not have the level of therapeutic intensity Nonpublic School has, and which Student needs. Nonpublic School represents Student’s LRE 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.

**ORDER**

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

- (a) within seven business days of this Order, DCPS shall fund Student at Nonpublic School, including transportation;
- (b) within twenty school days<sup>41</sup> of this Order, DCPS shall convene a meeting of Student’s IEP team to revise Student’s IEP to include appropriate and current present levels of performance and measurable goals aligned to Student’s present levels of ability.

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

**IT IS SO ORDERED.**

Date: September 7, 2015

*/s/ NaKeisha Sylvester Blount*  
Impartial Hearing Officer

Copies to:  
Petitioner (by U.S. mail)  
Petitioner’s Attorney: Kimberly Glassman, Esq. (electronically)

<sup>41</sup> Any delay in convening the IEP meeting which is attributable to Parent, Student and/or their advocates shall not be held against DCPS.

2015-0216

Hearing Officer Determination

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