

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
February 24, 2016

STUDENT, ¹)	
through the PARENTS,)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>)	
)	Case No: 2015-0382
v.)	
)	Date Issued: February 23, 2016
District of Columbia Public Schools,)	
<i>Respondent.</i>)	

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 November 30, 2015 by Petitioners (Student’s parents), residents of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On December 10, 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 December 16, 2015. The parties did not reach a full agreement during the RSM; however, they agreed to keep the resolution process open for the entire 30-day resolution period. On December 9, 2015, a consent motion for continuance was granted, with an amended version of the order issued on December 10, 2015. Accordingly, the timeline for the Hearing Officer’s Determination (“HOD”) in this matter, originally set to conclude on February 13, 2016, concludes on February 23, 2016.

¹ Personal identification information is provided in Appendix A.

The undersigned Impartial Hearing Officer (“Hearing Officer”) held a Pre-hearing Conference (“PHC”) on January 4, 2016, 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 January 28, 2016 and that the DPH would be held on February 4, 2016 and February 5, 2016. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on January 4, 2016.

The DPH was held on February 4, 2016 and February 5, 2016 at the Office of Dispute Resolution, 810 First Street, NE, Room 2006. Petitioners elected for the hearing to be closed. Petitioners were represented by [PETITIONERS’ COUNSEL A and PETITIONERS’ COUNSEL B], and DCPS was represented by [RESPONDENT’S COUNSEL].

Petitioner’s and Respondent’s disclosures were timely filed. At the DPH, Petitioner’s exhibits P-1 through P-39 were admitted without objection. Respondent’s exhibits R-1 through R-3 and R-5 through R-7; R-9 through R-12 were admitted without objection. Respondent’s exhibits R-4 and R-8 were admitted over Petitioners’ objection.

Petitioners called the following witnesses at the DPH:

- (a) Parent²
- (b) Nonpublic Administrator, Nonpublic School B (“Nonpublic Administrator”)³
- (c) Speech and Language Pathologist (Parent)⁴
- (d) Educational Consultant⁵
- (e) Learning Specialist, Nonpublic School A (“Learning Specialist”)⁶

Respondent called the following witnesses at the DPH:

- (a) Special Education Teacher⁷
- (b) Assistant Principal⁸
- (c) Resolution Specialist⁹

Petitioners and Respondent gave oral closing arguments.

² “Parent” refers to Student’s father, who testified at the DPH. “Parents” refers to Student’s mother and father, the petitioners in this matter.

³ Qualified as an expert in special education, specifically with respect to the programming and instruction of learning disabled and other health impaired students, over Respondent’s objection.

⁴ Qualified as an expert in speech and language pathology, without objection.

⁵ Qualified as an expert in special education, specifically in the areas of evaluation, identification, programming and instruction, over Respondent’s objection.

⁶ Qualified as an expert in special education, specifically with respect to the programming and instruction of students with learning disabilities and other health impairment, over Respondent’s objection.

⁷ Qualified as an expert in special education programming and placement (meaning service hours) with an emphasis on duties with respect to unilaterally placed students, over Petitioners’ objection.

⁸ Qualified as an expert in special education programming and placement, over Respondent’s objection.

⁹ Qualified as an expert in special education programming and placement, with an emphasis on student unilaterally placed in nonpublic schools, over Petitioners’ objection.

ISSUES

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

- (a) Whether DCPS denied Student a FAPE by failing to propose an appropriate program for the 2014-2015 school year, including proposing an IEP that lacks appropriate goals in reading, lacks social-emotional supports and provides an insufficient amount and type of both speech and language therapy and specialized instruction.
- (b) Whether DCPS denied Student a FAPE by failing to propose an appropriate placement for the 2014-2015 school year through the assigned physical location and through the IEP.
- (c) Whether DCPS denied Student a FAPE by refusing to allow her educational consultant to observe her proposed placement in February and/or March 2015.

RELIEF REQUESTED

Petitioners requested the following relief:

- (a) an Order that DCPS reimburse the cost of Student's attendance at Nonpublic School B for the 2014-2015 school year with all related services and costs, including speech and language therapy;
- (b) an Order that DCPS reimburse and fund Student's placement at Nonpublic School B for the 2015-2016 school year with all related services and costs, including speech and language therapy;
- (c) an Order that DCPS reimburse the cost of tutoring services.

FINDINGS OF FACT

1. Student is [AGE] years old, a [GRADE] grade student and attends Nonpublic School B. Student resides with her parents ("Petitioners"/"Parents") in Washington, D.C.¹⁰

2. Student has had a few seizures since birth, and in March of 2013 she was diagnosed with epilepsy, which is currently controlled by medication.¹¹

Student's Educational History/Interventions at Nonpublic School A & Nonpublic School B

3. The first school Student attended was a local preschool that referred her for speech therapy services, due to concerns about her articulation and drooling.¹²

4. From the 2008-2009 to the 2013-2014 school years, Student attended Nonpublic School A,¹³ a nonpublic, general education school. Its classes have approximately 24 students, and each class splits into two clusters of 12 students for core academic classes.¹⁴

¹⁰ Testimony of Parent; P-32.

¹¹ Testimony of Parent; P-2; R-4-10.

¹² Testimony of Parent.

¹³ Testimony of Parent; testimony of Learning Specialist.

¹⁴ Testimony of Learning Specialist.

5. Beginning in the 2011-2012 school year Student began to fall behind in mathematics, and Learning Specialist recommended that Parents obtain independent tutoring for Student.¹⁵ Student had always had some academic struggles at Nonpublic School A, but this is was the first year Student began receiving learning interventions.¹⁶

6. By the 2012-2013 school year Student began to have difficulty in reading, which also had adverse impacts on Student's progress in social studies and science. Learning Specialist began working with Student in a small reading group approximately twice per week, and Student continued to receive mathematics support.¹⁷

7. By the 2013-2014 school year Student continued to struggle academically, particularly with reading. While she could decode words, Student's comprehension, stamina, language, and ability to synthesize information were weak. Nonpublic School A removed Spanish instruction from Student's schedule, and Parents hired a reading specialist to work one-on-one with Student three times per week, for 45 minutes per session, during the Spanish class block. Nonpublic School A modified, simplified, and shortened the writing assignments assigned to Student. There were three teachers assigned to Student's classroom that year; therefore, there was almost always someone sitting and working with Student during independent work. Student also continued to receive mathematics support once or twice per week.¹⁸

8. During the 2013-2014 school year, Nonpublic School A began recommending to Parents that they move Student to a different type of school that could accommodate her special learning needs.¹⁹

9. On August 12, 2014, Parents' submitted a packet of information to the DCPS Private and Religious Officer requesting special education for Student.²⁰

10. From the 2014-2015 school year through the present time, Student has attended Nonpublic School B. Nonpublic School B is a nonpublic school for students with learning disabilities, including OHI. It has approximately 300 students, is OSSE certified, is monitored by DCPS, and addresses the DCPS learning standards.²¹ Its tuition is approximately \$55,000 per year, including tutoring and speech and language services.²²

11. Nonpublic School B prepared its own version of an IEP for Student on October 16, 2014, which provided 35 hours of specialized instruction and integrated occupational and

¹⁵ Testimony of Learning Specialist.

¹⁶ Testimony of Parent.

¹⁷ Testimony of Learning Specialist.

¹⁸ Testimony of Parent; testimony of Learning Specialist.

¹⁹ Testimony of Learning Specialist.

²⁰ P-10.

²¹ Testimony of Nonpublic Administrator.

²² Testimony of Parent.

speech-language services in the classroom.²³ The integrated speech-language services are common to all or most of students at Nonpublic School B, and are provided in the classroom for approximately 45 minutes, one time per week.²⁴

12. DCPS determined Student to be eligible for special education and related services on December 2, 2014, with the disability classifications “Multiple Disabilities,” “Specific Learning Disabilities,” and “Other Health Impairment.”²⁵ DCPS proposed an IEP for Student dated January 14, 2015 (“DCPS proposed IEP” or “proposed IEP”),²⁶ which Parents ultimately deemed inappropriate to meet Student’s needs.

13. Student began receiving some direct speech language services at Nonpublic School B in January 2015.²⁷ Though the contract for the direct speech language services had been signed prior to the DCPS IEP meeting, Student did not actually begin receiving the direct speech language services until after the January 2015 IEP meeting. However, DCPS had been informed as of the time of the proposed IEP that that direct speech language services for Student were imminent.²⁸

14. During the summer of 2015, Student received tutoring at the recommendation of Nonpublic School B. Student had one tutoring session per week for 10-12 weeks, at a cost of \$100 per session.²⁹

15. On August 5, 2015, Parents submitted a letter notifying DCPS of their intention to unilaterally place Student at Nonpublic School B for the 2015-2016 school year.³⁰ By return letter dated August 12, 2015, DCPS expressed disagreement with the unilateral placement and indicated that it would not be responsible for the costs.³¹

16. Student has received educational benefit from Nonpublic School B.³²

Student’s Learning Abilities and Needs

17. Student generally earned good report card grades at Nonpublic School A. Nonpublic School A has a “4” point grading scale, and Student generally earned “3s” during the 2013-2014 school year. Student’s grades were an average of Student’s work habits and academic performance, and reflected the fact that she was generally able to meet the modified standard that had been created for her, with the significant amount of support she was

²³ P-11-1

²⁴ Testimony of Speech Language Pathologist.

²⁵ P-18.

²⁶ R-5.

²⁷ P-25-2.

²⁸ Testimony of Parent.

²⁹ Testimony of Parent.

³⁰ P-30.

³¹ P-31.

³² Testimony of Educational Consultant; P-29; P-33.

receiving.³³ Student would not have been able to achieve “3s” in core content areas without the support she received.³⁴

18. Educational Consultant prepared a neurodevelopmental evaluation report for Student on October 23, 2013, diagnosing Student with Attention Deficit Hyperactive Disorder, Predominately Inattentive Type (moderate) (“ADHD”); Specific Learning Disorder with Impairment in Written Expression (moderate) (“SLD-written expression”); Specific Learning Disorder with Impairment in Reading (moderate) (“SLD-reading”); Provisional (Borderline/Suspected) Impairment in Mathematics (mild); Provisional (Borderline/Suspected) Anxiety Disorder-Unspecified (mild to moderate).³⁵

19. When tested in the areas of memory and learning, Student generally performed at or above the expected levels, however, Student demonstrates weakness in a few areas related to memory and learning (borderline level in the area of List Memory Learning Effect, below the expected levels in List Memory and List Memory Delayed Effect and Narrative Memory – Free and Cued Total and well below the expected level in Narrative Memory Recognition),³⁶ as well as in processing speed (low average range), which relates to the efficiency with which a person can take and process information.³⁷ Without significant support, these memory and processing speed weaknesses can manifest for Student in difficulty keeping pace and processing information for core academic areas, including those involving reading, such as social studies, science.³⁸

20. In general, students with memory and processing speed weaknesses like Student’s “may present difficulty with timed activities, when material is presented fast, and when it is necessary to recall multistep directions while carrying out a task.” There are a number of favored classroom strategies that can help such students minimize memory-related failures.³⁹ Additionally, as a result of fluctuating attention, teachers should be aware that “[Student] may be lacking permanence or transference of skill (e.g. she may appear to know something one day but not the next, or can do it in one subject but not another). Based on such difficulties, frequent drill and repetition are needed.”⁴⁰

21. During the summer after Student left the general education setting of Nonpublic School A and before she began attending the special education setting of Nonpublic School B, Student’s reading and mathematics skill levels were assessed and her reading decoding skills were considered to be strong, and her reading comprehension was identified as an area for intervention. In mathematics, Student was able to compute correctly, but did so very slowly.⁴¹

³³ Testimony of Speech Language Pathologist; P-8.

³⁴ R-4-26.

³⁵ Testimony of Learning Specialist; P-4-27.

³⁶ P-4-37.

³⁷ Testimony of Educational Consultant; P-4-35.

³⁸ R-4-20.

³⁹ R-4-29.

⁴⁰ R-4-28.

⁴¹ R-4-19.

22. By some measures, Student is on grade level in reading and mathematics. For example, when a DCPS school psychologist observed Student at special education focused Nonpublic School B in September 2014, Student appeared on par with her peers in literacy class, and more advanced than her peers in mathematics class.⁴² Additionally, Student's current levels of functioning, as listed in her October 2014 IEP from Nonpublic School B, was on grade level in reading.⁴³

23. Student's reading is functional. Her grammar is at the sentence level, and her spelling is not perfect but largely phonetically accurate, so she can use spell check.⁴⁴ However, she has weaknesses in her ability to process language she hears spoken and that she reads, and in her ability to formulate language orally and in writing. These language weaknesses inhibit her ability to decode longer words when reading, and compromise her reading comprehension.⁴⁵

24. Student needs a lot of repetition and review. She has anxiety that manifests in a desire to do very well and when she perceives she is not doing well, she needs frequent check ins from the teacher.⁴⁶ Student's struggles with fatigue and attention impact her ability to complete lengthy tasks without assistance.⁴⁷

25. Student's profile does not indicate that she can have absolutely no interaction with nondisabled peers;⁴⁸ however, she needs at least some of her instruction in a small, outside of the general education setting at this time.

Social-Emotional Needs/Behavioral Support

26. Overall, Student is a compliant child.⁴⁹ She is motivated; sensitive; hardworking; responsive to adult input, correction and feedback; and desires to please school authority figures and do well.⁵⁰

27. Notwithstanding Student's overall compliant nature, over time at Nonpublic School A, Student became more fatigued by school, more withdrawn, and exhibited school anxiety, including through somatic complaints.⁵¹ As a result, Student began receiving social-emotional support in the form of psychotherapy in November 2013.⁵² At Nonpublic School B, Student's disposition improved, and the social-emotional support was discontinued in December 2014.⁵³

⁴² R-4-22.

⁴³ Testimony of Learning Specialist; P-11-2.

⁴⁴ Testimony of Speech Language Pathologist.

⁴⁵ Testimony of Speech Language Pathologist.

⁴⁶ Testimony of Nonpublic Administrator.

⁴⁷ R-4-29.

⁴⁸ Testimony of Learning Specialist; testimony of Educational Consultant.

⁴⁹ Testimony of Learning Specialist.

⁵⁰ Testimony of Parent; testimony of Speech Language Pathologist; P-4-27.

⁵¹ Testimony of Learning Specialist.

⁵² P-12-9.

⁵³ Testimony of Parent.

28. Student can at times become overwhelmed by academic and societal demands, and she tends to cope with these feelings by retreating into an “internal fantasy world where all problems are magically resolved.”⁵⁴

The DCPS Proposed IEP for the 2014-2015 School Year

29. The January 14, 2015 DCPS proposed IEP provides for Student to receive 5 hours per week of specialized instruction inside the general education setting, 120 minutes per month of occupational therapy services outside the general education setting, 60 minutes per month of speech-language pathology outside the general education setting, and 30 minutes per month of occupational therapy services on a consultative basis.⁵⁵

30. The proposed IEP does not provide any specialized instruction outside of the general education setting, or any social-emotional support.

31. The DCPS proposed IEP includes goals in the areas of academic-written expression, communication/speech and language, and motor skills/physical development.⁵⁶

32. The communication/speech and language goals in the DCPS proposed IEP are as follows: (1) Given minimal verbal cues, Student will utilize compensatory comprehension strategies (reauditorization, request for repetition/clarification, visualization and/or referring back to a text/graphic organizer/picture support, highlighting, color coding, etc.) to facilitate improved classroom performance on written and oral language-based tasks 80% of the time as observed by the speech-language pathologist and/or classroom teachers across 6 consecutive sessions; (2) Student will answer inferential questions based on single and multi-paragraph-level material, in 80% of opportunities across three out of four trials; Student will identify the presence of and/or explain the meaning of multiple-meaning words and ambiguous phrases in sentences and paragraphs, in 80% of opportunities, across three out of four trials; (4) Student will identify and use oral language formulation and organization strategies (taking additional time to plan, “wh-” question template, jotting key words, story boards, Story Grammar Marker icons/manipulatives) in a structured therapeutic setting, with fading cues, in 80% of opportunities, across three out of four trials.⁵⁷

33. The DCPS proposed IEP does not include reading goals. The DCPS members of Student’s IEP team intended communication/speech and language goal number 2 regarding inferences to address Student’s needs in reading as well, though Parents did not believe that the DCPS proposed IEP adequately addressed Student’s reading needs.⁵⁸

34. The DCPS members of Student’s IEP team did not determine that extended school year (“ESY”) services were appropriate for Student, because they did not find any

⁵⁴ R-4-23.

⁵⁵ P-20-10.

⁵⁶ P-20-6 through P-20-8.

⁵⁷ P-20-7 and P-20-8.

⁵⁸ Testimony of Parent; testimony of Special Education Teacher.

significant evidence of regression for her.⁵⁹ Parents requested reimbursement for cost of Student's summer 2015 tutoring.⁶⁰

Proposed Location of Services and Parental Observation

35. District School was the location of services DCPS selected for Student. Its general education classes have approximately 22-23 students.⁶¹

36. Parent toured District School, and wanted Educational Consultant to do so as well. Parent made this request on February 28, 2015. DCPS denied the request on March 9, 2015.⁶² Subsequently DCPS indicated that Educational Consultant would be permitted to observe.⁶³ Educational Consultant is familiar with District School, and has visited it on behalf of other clients.⁶⁴

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).

- (a) Whether DCPS denied Student a FAPE by failing to propose an appropriate program for the 2014-2015 school year, including proposing an IEP that lacks appropriate goals in reading, lacks social-emotional supports and provides an insufficient amount and type of both speech and language therapy and specialized instruction.**

At a minimum, an IEP must “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*

⁵⁹ R-5-13.

⁶⁰ Testimony of Parent.

⁶¹ Testimony of Assistant Principal.

⁶² P-24.

⁶³ Testimony Parent; testimony of Educational Consultant.

⁶⁴ Testimony of Educational Consultant.

Hudson Cent. Sch. Dist., Westchester County v. Rowley, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). While an LEA is not required to maximize a student's educational potential, it also cannot "discharge its duty under the 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). In this instance, DCPS' proposed IEP does not meet the minimum standards of appropriateness for Student. For one thing, it does not include any reading goals. While Student was reading on grade level at the time the DCPS proposed IEP was drafted, she was only doing so due to the significant support she had received and was receiving. While at the general education Nonpublic School A, Student struggled with reading starting in 2012-2013, prior to receiving interventions. In 2013-2014, while still at Nonpublic School A and with significant interventions, Student continued to struggle with reading. In 2013, Student was diagnosed with Specific Learning Disorder with Impairment in Reading (moderate). While Student has a number of strengths in the area of memory, the weaknesses she has with memory as well as processing speed impact her in academic areas such as science and social studies that rely heavily on reading, without consistent supports. Though there is evidence that Student was reading on grade level at the time DCPS's proposed IEP was drafted, at that time Student was attending a special education school – Nonpublic School B. Student had a similar history of struggles in mathematics, and while she was performing well in the subject at the time the proposed IEP was created, it was also with significant supports, and she still computed slowly. Student may be lacking permanence or transference of skill (e.g. she may appear to know something one day but not the next, or can perform a skill in one subject but not another). Based on such difficulties, Student needs frequent drill and repetition. For these reasons, the DCPS proposed IEP that would have placed her in larger, general education classes with no specialized reading or mathematics instruction was not reasonably calculated to provide her with educational benefit at the time it was created.

Likewise, the DCPS proposed IEP should have included social-emotional supports. While Student was not receiving such supports at the time the proposed IEP was drafted, her history was clear that she needed the supports in the previous general education setting of Nonpublic School A, and she had them when she first transitioned to Nonpublic School B. The proposed IEP that would transition Student to a new and larger school without any specialized instruction, yet omits social-emotional supports was not reasonably calculated to provide educational benefit to Student who, while compliant, can at times become overwhelmed by academic and societal demands, and tends to cope with these feelings by retreating into an infernal fantasy world where all problems are magically resolved.

Further, Student has a history of speech and language needs in the educational setting. At the time the proposed IEP was drafted, she was not receiving any direct speech and language services, but she was scheduled to begin receiving them imminently, and she had been receiving integrated speech and language services while at Nonpublic School B. While integrated speech and language services are common to all students at Nonpublic School B, the Hearing Officer credits the testimony of Speech Language Pathologist that Student in particular has a need for continued speech and language support at this time, and that approximately 15 minutes per week (60 minutes per month) of speech and language support would be insufficient to enable Student to make progress on the speech and language goals DCPS delineated for her in its proposed IEP. In crediting the testimony of Speech Language Pathologist over the DCPS witnesses on this

point, the Hearing Officer considers that Speech Language Pathologist is more informed about Student and her needs, having supervised her treating clinician and observed her in the classroom at least 14-15 times.

The DCPS proposed IEP provided all of Student's specialized instruction inside the general education setting. Student received passing grades in her previous general education setting of Nonpublic School A, but only with a modified standard and significant supports. At Nonpublic School A, the classes were approximately 24 students, but core academic subjects were taught in groups of 12 students, and Student still struggled. Student did well, including socially-emotionally, in the special education setting of Nonpublic School B. The Hearing Officer does not conclude based on the evidence that Student can have absolutely no contact with her nondisabled peers; however, based on her history, even though this was her first IEP, placing her completely in in the general education setting, at least with respect to her academic courses was not reasonably calculated to provide her educational benefit. The proposed IEP impeded Student's right to a FAPE and would have caused a deprivation of educational benefit to Student. Petitioners met the burden of proving that DCPS denied Student a FAPE by failing to propose an appropriate program for the 2014-2015 school year.

(b) Whether DCPS denied Student a FAPE by failing to propose an appropriate placement for the 2014-2015 school year through the assigned physical location and through the IEP.

To the extent that a student's IEP is appropriate, her educational placement (location of services) 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.) Limited evidence was offered regarding the proposed location of services, District School. There would have been insufficient evidence for the Hearing Officer to make an assessment of whether any classroom at District School could have implemented an appropriate IEP for Student. However, as discussed above, the proposed IEP was not reasonably calculated to provide Student educational benefit, and the proposal to locate Student in all general education classes (with the exception of related services) at District School was likewise inappropriate, given her need for smaller classes, at least for her academic courses. The proposed location of services impeded Student's right to a FAPE and would have caused a deprivation of educational benefit to Student. Petitioners met the burden of proving that DCPS denied Student a FAPE by failing to propose an appropriate placement for the 2014-2015 school year through the assigned physical location and through the IEP.

(c) Whether DCPS denied Student a FAPE by refusing to allow her educational consultant to observe her proposed placement in February and/or March 2015.

D.C. Code § 38-2571.03(5), which went into effect in March 2015, indicates that "[u]pon request, an LEA shall provide timely access" to observe "a current or proposed special education program" to certain individuals including parents of a child with a disability, or a designee appointed by the parent of a child with a disability who professional expertise in the area of

special education being observed. DCPS did not allow Parents' expert to observe Student's proposed placement as of March 9, 2015. DCPS subsequently informed Parents that the expert could in fact observe the proposed placement. The date of DCPS' change in position is not clear from the record. However, based on the information available, the Hearing Officer concludes that it is more likely than not that the change in position came after Parents had concluded that District School would not be appropriate for Student. For these reasons, the Hearing Officer concludes that DCPS violated D.C. Code § 38-2571.03(5). However, a finding of a denial of FAPE must be based on substantive grounds. Nothing in the record leads the Hearing Officer to the conclusion that Educational Consultant would have counseled Parents to reach a different conclusion than they ultimately reached concerning the lack of appropriateness of District School. Additionally, the IEP that was to be implemented at District School was already inappropriate for Student's needs, as Parents had already correctly concluded. Parents themselves were permitted to observe District School, and had the opportunity to discuss it with Educational Consultant, who was familiar with the school through other clients. Therefore, in this instance, the Hearing Officer does not conclude that the lack of opportunity for Educational Consultant to observe District School at Parents' request impeded Student's right to a FAPE; significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student; or caused a deprivation of educational benefit. Petitioners did not meet the burden of proof on this issue.

REQUESTS FOR REIMBURSEMENT

Petitioners seek reimbursement for Student's tuition at Nonpublic School B during the 2014-2015 and 2015-2016 school years. Under the IDEA, parents who unilaterally decide to place their disabled child in a private school, without obtaining the consent of local school officials, "do so at their own financial risk." *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993) (quoting *Sch. Comm. of the Town of Burlington v. Dep't of Educ.*, 471 U.S. 359, 374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)). Parents may receive tuition reimbursement only upon a finding that the LEA "violated the IDEA, that the private school placement was an appropriate placement, and that [the] cost of the private education was reasonable[.]" *Holland v. District of Columbia*, 71 F.3d 417, 425 (D.C.Cir.1995) (citing *Florence County School District Four v. Carter*, 510 U.S. at 15, 114 S.Ct. 361).

As discussed above, the Hearing Officer has found that DCPS denied Student a FAPE in through its proposed IEP and location of services. Parents requested a FAPE through the DCPS Private and Religious Office in August 2014. Student was determined eligible for special education and related services in December 2014, and by the start of the 2015-2016 school year, Student had still not been provided an appropriate IEP or location of services. While finding that Student requires a small class setting for at least her academic classes, the Hearing Officer has not found that Student can have absolutely no contact with her nondisabled peers during the school day. By extension, the Hearing Officer does not find that Nonpublic School B necessarily represents Student's least restrictive environment.⁶⁵ However, Respondent did not offer Parents

⁶⁵ "Least restrictive environment" is one of the factors the court in *Branham v. Gov't of the District of Columbia*, 427 F.3d 7, 8, 11 (D.C. Cir. 2005) provided to inform the individualized assessment of whether a particular placement is appropriate for a particular student. The other factors include: the nature and severity of the student's disability, the student's specialized educational needs, the link between those

an IEP or location of services that could meet Student's needs and provide her a FAPE. Nonpublic School B, on the other hand, provided Student with educational benefit. Under these circumstances, reimbursement for Parents' costs for Student to attend Nonpublic School B during the 2014-2015 and through the end of the 2015-2016 school years is appropriate, especially given that the end of the 2015-2016 school year is only a few months away. *See Leggett v. District of Columbia*, 793 F.3d 59 (D.C. Cir. 2015); *Q.C-C v. District of Columbia*, 116 LRP 5749 (D.D.C. 2016); *Holmes v. District of Columbia*, 1988 WL 21696, 1 (D.D.C.1988).

Parents also requested reimbursement of the costs of summer tutoring services; however, while Student likely benefited from these services, there was not sufficient evidence that the services were necessary to prevent regression for Student during the summer recess, which would have been the basis for the public school special education corollary – ESY. Student was not found eligible for ESY, and that decision is not challenged in this action. Therefore, the request for tutoring services reimbursement will not be granted.

ORDER

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

- A. DCPS shall reimburse the cost of Student's attendance at Nonpublic School B for the 2014-2015 school year with all related services and costs, including speech and language therapy;
- B. DCPS shall reimburse and fund Student's placement at Nonpublic School B for the 2015-2016 school year with all related services and costs;
- C. Within 30 calendar days of this Order, DCPS shall reconvene Student's IEP team to revise Student's DCPS proposed IEP, as appropriate.

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

IT IS SO ORDERED.

Date: February 23, 2016

/s/ NaKeisha Sylver Blount
Impartial Hearing Officer

Copies to:

Petitioners (by U.S. mail)

Petitioners' Attorneys (electronically)

DCPS' Attorney (electronically)

Chief Hearing Officer Virginia Dietrich, Esq. (electronically)

OSSE-SPED (electronically)

ODR (electronically)

needs and the services offered by the private school, and the placement's cost. *Branham* at 12. While the nature of Student's disability and specialized educational are well linked with the services Nonpublic School B offers, and the OSSE approved costs of the school are reasonable, the Hearing Officer is not able to conclude from the record that Student's needs are sufficiently severe that a nonpublic school is her least restrictive environment.

2015-0382

Hearing Officer Determination

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).