

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

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| STUDENT, ¹ |) | |
| through the PARENT, |) | Hearing Officer: NaKeisha Sylver Blount |
| <i>Petitioner,</i> |) | |
| |) | Case No: 2015-0108 |
| v. |) | |
| |) | Date Issued: June 10, 2015 |
| 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 March 27, 2015 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On April 3, 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”) on April 10, 2015. The parties did not reach an agreement during the RSM, but agreed to keep the resolution process open for the entire 30-day resolution period. Accordingly, the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on April 27, 2015, and the Hearing Officer Determination (“HOD”) in this matter is due date on June 10, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on April 15, 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 11, 2015 and that the DPH would be held on May 18, 2015. The PHC

was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on April 15, 2015.

The DPH was held on May 18, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Room 2006. Petitioner elected for the hearing to be closed. Petitioner was represented by Donovan Anderson, 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-4 through P-9 were admitted without objection. Respondent’s exhibits R-1 through R-26 were admitted without objection.

Petitioner called the following witnesses at the DPH:

- (a) Petitioner/Parent
- (b) Special Education Teacher, District Elementary School (“Special Education Teacher”)
- (c) Special Education Coordinator/LEA Representative (“Special Education Coordinator”)
- (d) Nonpublic Director
- (e) Community Support Worker

Respondent called the following witness at the DPH:

- (a) Early Learning Support Coordinator, DCPS Office of Specialized Instruction (“Early Learning Support Coordinator”)
- (b) DCPS Office of Specialized Instruction Program Manager, BES Classrooms (“DCPS Program Manager”)

Petitioner and Respondent gave oral closing arguments.

ISSUE

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

- (a) Whether DCPS failed to develop an appropriate IEP for Student as of Student’s IEPs dated December 22, 2014 and March 12, 2015. The IEPs contain no behavioral support goals or OT goals, contain insufficient cognitive goals, and/or contain no math, reading or written instruction goals.
- (b) Whether DCPS failed to identify an appropriate location of services (“LOS”) for Student as of January 2015 through the present time, in that Student is not able to receive the level of academic and behavioral support he needs in his current LOS and the staff is unable to manage his behavior.

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) an Order that DCPS place the student in a small, structured therapeutic setting, namely Nonpublic School.

FINDINGS OF FACT

1. Student is a ■ year old Kindergarten student, and resides with his mother (“Parent”/“Petitioner”) in Washington, D.C.²
2. DCPS had previously found Student ineligible for special education and related services September 25, 2012 when he was ■ years old.³ Student subsequently attended City Charter School, a DCPS public charter school, and on December 22, 2014 City Charter School determined Student to be eligible for special education and related services under the disability classification “Emotional Disturbance.”⁴
3. City Charter School developed Student’s initial IEP on December 22, 2014,⁵ calling for Student to receive 26 hours per week of specialized instruction, outside the general education setting; and 1.5 hours per week of behavioral support services, outside the general education setting.
4. In early January 2015, Student began attending District Elementary School, where he is assigned to a full-time, self-contained classroom, with students of varying disabilities, requiring various levels of support.⁶
5. The composition of Student’s class is not appropriate for Student’s strengths and needs. There students in the classroom functioning on an 18 month old level. There are nonverbal students in the class with toilet training goals. Student, on the other hand is academically above grade level.⁷
6. District Elementary School is not appropriate for Student.⁸

Student’s Behaviors

7. When his behaviors are under control, Student is a sweet and compliant child. However, when negative behaviors are triggered, he has tremendous difficulty in the classroom.⁹
8. Student has had significant behavioral problems since he was a toddler. He was twice expelled from daycare,¹⁰ and he had to repeat pre-Kindergarten due to his behavior.¹¹
9. At City Charter School, Student would have frequent, explosive behavioral episodes in the classroom, including tantrums up to 3-4 times a day, lasting approximately 30

² Testimony of Parent; P-1-1.

³ September 25, 2012

⁴ R-20-1.

⁵ P-1-1; P-1-9.

⁶ Testimony of Parent; testimony of Special Education Teacher.

⁷ Testimony of Special Education Teacher.

⁸ Testimony of Special Education Teacher.

⁹ Testimony of Special Education Teacher.

¹⁰ R-4-1.

¹¹ P-4-3.

minutes, aggressive behaviors, urinating on his classmates' clothing on one occasion, kicking objects off walls and knocking down bookshelves. Other students in his classroom frequently had to be evacuated from the classroom for their safety.¹² A psychiatrist prescribed medication to help manage Student's behaviors. Student also received community-based supports to help manage his behaviors.¹³

10. Shortly after Student began attending District Elementary School, Special Education Teacher told Parent that the classroom to which Student was assigned was not appropriate for him, because they could not meet Student's needs or manage his behaviors. Special Education Teacher also told Parent that Student's IEP (which came with him from City Charter School) was not appropriate, because it contained no academic goals and instead focused solely on Student's behaviors.¹⁴

11. Student's time at District Elementary School has been an overall negative experience, and he has been experiencing severe behaviors and behavior meltdowns on a regular basis, such as throwing items and causing destruction in the classroom, having altercations with peers, demonstrating aggression toward teachers and peers and eloping from the school building.¹⁵ Until shortly before the date of the DPH, these behaviors had been occurring on a daily or nearly daily basis.¹⁶

12. Student has eloped from the school building and gone out onto the street on at least three occasions since coming to District Elementary School in January 2015.¹⁷ On one occasion when Student eloped from the building, Student was found wandering the streets, and the police had to be called to help manage the situation.¹⁸

13. Student is not permitted to hug women at school, because he has a propensity for grabbing women's breasts.¹⁹

14. Until shortly before the date of the DPH, District Elementary School had to call Parent on a daily or nearly daily basis to help de-escalate Student.²⁰ Prior to calling Parent, the teacher, aides, Special Education Coordinator and various other staff would attempt to manage Student's behaviors, but were unable to do so.²¹

15. In January 2015 before Student transitioned from City Elementary School to District Elementary School, Parent took Student to a community services organization outside of

¹² P-4-2.

¹³ Testimony of Parent.

¹⁴ Testimony of Parent.

¹⁵ Testimony of Special Education Coordinator.

¹⁶ Testimony of Special Education Coordinator.

¹⁷ Testimony of Special Education Teacher.

¹⁸ Testimony of Parent.

¹⁹ Testimony of Special Education Teacher.

²⁰ Testimony of Parent; testimony of Special Education Coordinator.

²¹ Testimony of Special Education Coordinator.

school for support, and Student was placed on Community Support Worker's caseload. Community Support Worker is a mental health worker. Community Support Worker consults and coordinates with Student's ongoing psychologist, and supports Student in managing his behaviors at home, school and in the community.²²

16. Community Support Worker has gone to District Elementary School multiple times to support Student, and has observed him in behavior crisis mode on several occasions. Community Support Worker has observed Student being aggressive toward his peers, acting destructively and eloping from the school building.²³

17. In an effort to manage Student's behaviors, District Elementary School has attempted various interventions including speaking to him about his behavior. When Student's behaviors are mild, the school will speak to Student to verbally redirect his behaviors, and/or use positive rewards such as playground time. During his aggressive moments, the school has had to physically restrain Student, evacuate other students from the classroom for their safety, call security, and on one occasion call the police.²⁴

18. Due to his frequent out of control behaviors, Student's presence in the classroom has had an adverse impact on the class. The other students feed into and try to join in with Student's disruptive behaviors.²⁵

Student's Cognitive/Academic Performance

19. Student's cognitive assessments from approximately June 2014 show Student's cognitive abilities in the average range,²⁶ but by other measures, Student is exceptionally bright. He has been able to read and spell since he was two years old.²⁷

20. Presently, Student is writing between a first and second grade level. He can spell, and he can read at least 100 sight words. Student can count to 100, and he can count by "5s" and "10s." He can add and subtract.

21. Particularly due to his high level of intelligence, Student would benefit from being in an inclusion setting. Student could also benefit from positive peer role models in an inclusion setting.²⁸ However, Student's behaviors must first be stabilized.

Therapist Recommendations

22. Student received an independent confidential comprehensive psychological evaluation on June 8, 2014.²⁹

²² Testimony of Community Support Worker.

²³ Testimony of Community Support Worker.

²⁴ Testimony of Community Support Worker; testimony of Special Education Teacher.

²⁵ Testimony of Special Education Teacher.

²⁶ R-10-25 through R-10-29.

²⁷ Testimony from Parent.

²⁸ Testimony of Special Education Teacher.

²⁹ R-10.

23. Among the recommendations from the June 8, 2014 psychological evaluation is the following: “[Student] could benefit from a highly therapeutic environment where his emotional needs can be addressed.”³⁰

Classroom Staffing

24. Special Education Teacher was the teacher assigned to Student’s District Elementary School classroom (which he joined in January 2015) from the beginning of the school year until approximately mid-April 2015.³¹

25. Early Learning Support Coordinator is an early learning coach whose job is to coach teachers assigned to the type of non-categorical elementary school special education program to which Student is assigned. Throughout the 2014-2015 school year, Early Learning Support Coordinator was assigned to work with/train Special Education Teacher, prior to Special Education Teacher leaving District Elementary School.³²

26. After Special Education Teacher’s departure from District Elementary School, Early Learning Support Coordinator took over Student’s class for a short period of time. Early Learning Support Coordinator has a different teaching and discipline approach than Special Education Coordinator.³³

27. After Early Learning Coordinator left the classroom, a substitute teacher who is Student’s basketball coach through a recreational league Student participates with outside of school was temporarily assigned to Student’s class. The substitute teacher is not a certified special education teacher, nor is he is a certified teacher generally.

28. Combined, Early Learning Coordinator and the substitute teacher were in charge of the class for approximately three weeks prior to the date of the DPH. During this three week period of time, Student’s behavior improved.³⁴ During this this time period, there was also a change in Student’s medication, to which he has responded positively.³⁵

December 22, 2014 IEP

Behavioral Support Goals

29. Student’s December 22, 2014 IEP contains four socio-emotional/behavioral goals.³⁶

Occupational Therapy Goals

30. Student’s December 22, 2014 IEP contains three occupational therapy goals.³⁷

³⁰ R-10-33.

³¹ Testimony of Early Learning Support Coordinator.

³² Testimony of Early Learning Support Coordinator.

³³ Testimony of Early Learning Support Coordinator.

³⁴ Testimony of Early Learning Support Coordinator; testimony of Special Education Coordinator.

³⁵ Testimony of Parent; testimony of Special Education Coordinator.

³⁶ P-1-3.

³⁷ P-1-5, P-1-6.

Cognitive Goals

31. Student's December 22, 2014 IEP contains three cognitive goals.³⁸

Academic Goals:

32. Student's December 22, 2014 IEP contains no academic goals, including in mathematics, reading and written instruction.³⁹

March 12, 2015 IEP

Behavioral Support Goals

33. Student's March 12, 2015 IEP contains no behavioral support goals.⁴⁰

Occupational Therapy Goals

34. Student's March 12, 2015 IEP contains no occupational therapy goals.⁴¹

Cognitive Goals

35. Student's March 12, 2015 IEP contains three cognitive goals.⁴²

Academic Goals:

36. Student's March 12, 2015 IEP contains no academic goals, including in mathematics, reading and written instruction.⁴³ While recognizing the need for academic goals, District Elementary School did not add academic goals because, due to the way the DCPS IEP database is designed, adding academic goals to his previous IEP, which did not have them, would require re-opening the eligibility process.⁴⁴

DCPS BES Program

37. In some of its schools, DCPS has a type of classroom called a "BES classroom." BES classrooms provide behavior and education supports for students with extreme behaviors that impact their ability to perform. BES classrooms are full-time, outside of the general education setting classrooms.⁴⁵

38. The BES program has behavior technicians on staff that are all safety trained.⁴⁶

39. BES classrooms have de-escalation rooms.⁴⁷

³⁸ P-1-2.

³⁹ Testimony of Special Education Teacher; P-2.

⁴⁰ P-2.

⁴¹ P-2.

⁴² P-2-3.

⁴³ Testimony of Special Education Teacher; P-2.

⁴⁴ Testimony of Special Education Teacher.

⁴⁵ Testimony of DCPS Program Manager.

⁴⁶ *Id.*

⁴⁷ *Id.*

40. BES classrooms from grades 1-3 have one teacher, one paraprofessional and one behavior technician assigned to the room, with a maximum total of ten students.⁴⁸

41. All the BES classrooms from grades 1-3 are likely at capacity, though it is possible that there are one or two seats available in one of the classrooms, and that there is availability for next school year.⁴⁹

42. DCPS has not formally assigned Student to a BES program.

Nonpublic School

43. Nonpublic School is a treatment/special education day school for emotionally troubled students from age five through the twelfth grade.⁵⁰

44. Nonpublic School is therapeutic program with a strong focus on behavior support and on assisting students with modifying aggressive/negative behaviors to positive behaviors.⁵¹

45. Nonpublic School provides full-time special education services for its students, in addition to therapeutic services throughout the school day such individual and group therapy, music therapy and anger management classes.⁵²

46. Nonpublic School has a team of behavioral specialists and behavioral support staff skilled at to help students deescalate and work through moments of crisis that may occur during the school day, and to help students stabilize their behavior to the point where they can return to the classroom.⁵³

47. Nonpublic School has a de-escalation room.⁵⁴

48. Nonpublic School has a medication management staff.⁵⁵

49. Student has been accepted to Nonpublic School,⁵⁶ it could implement his IEP and meet his needs.⁵⁷

50. At Nonpublic School, Student would be assigned to a class of between 3 and 5 students similar to him in age, behavior and background.⁵⁸

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Testimony of Nonpublic Director.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Testimony of Nonpublic Director; P-6.

⁵⁷ Testimony of Nonpublic Director.

⁵⁸ *Id.*

51. The school year at Nonpublic School goes through July.⁵⁹

52. Nonpublic School's costs have been approved by the Office of State Superintendent of Education ("OSSE").⁶⁰

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 failed to develop an appropriate IEP for Student as of Student's IEPs dated December 22, 2014 and March 12, 2015. The IEPs contain no behavioral support goals or OT goals, contain insufficient cognitive goals, and/or contain no math, reading or written instruction goals.

In order for a student's IEP/educational program 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.") Petitioners do not assert that DCPS failed to comply with the administrative procedures attendant to developing Student's IEP. Rather, Petitioners claim that the relevant IEPs for Student are not reasonably calculated to provide Student educational benefit in that they contain no behavioral support goals

⁵⁹ *Id.*

⁶⁰ *Id.*

or OT goals, contain insufficient cognitive goals, and/or contain no math, reading or written instruction goals.

As stated in the findings of fact above, Student's December 22, 2014 IEP contains socio-emotional/behavioral goals, occupational therapy goals and cognitive goals, but no academic goals, including in mathematics, reading and written instruction. As Special Education Teacher testified, an IEP lacking academic goals is not typical. However, the record does not reflect evidence of academic deficits for Student. Rather, the evidence is that Student's behavior is so extremely problematic that it consistently distracts him from, and/or causes him to have to be removed from, the academic setting, which is the basis on which Student was determined eligible. Therefore, in this particular instance, a lack of academic goals on Student's IEP is at most a procedural violation of the IDEA, and does not constitute a denial of FAPE because it neither (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.

Similarly, Student's March 12, 2015 IEP contains no behavioral support, occupational therapy or academic goals, though it does contain cognitive goals. Behavioral concerns are the reason Student was determined eligible for special education and related services, and Student's behavior has been a consistent impediment for his ability to remain present and focused in the classroom in order to access his education. The lack of behavioral goals on Student's March 12, 2015 IEP impeded Student's right to a FAPE and caused a deprivation of educational benefit; therefore, it constitutes a denial of FAPE. Petitioner meets the burden of proving that the March 12, 2015 IEP was not reasonably calculated to provide Student educational benefit, and denied Student a FAPE.

(b) Whether DCPS failed to identify an appropriate location of services ("LOS") for Student as of January 2015 through the present time, in that Student is not able to receive the level of academic and behavioral support he needs in his current LOS and the staff is unable to manage his behavior.

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, however, while District Middle School could and did implement the number of service hours called for on Student's IEP, as stated in the Findings of Fact above, it was not able to implement the behavioral goals included on Student's December 22, 2014, and Student's March 12, 2015 IEP was inappropriate because it did not even contain behavioral goals. Additionally, District Elementary School has been largely unable to manage Student's behavior. Though Student's behavior improved during the few weeks prior to the DPH when Early Learning Support Coordinator and an uncertified substitute teacher Student knows from outside of school led the class, this short period of relative improvement does not counter the lengthy pattern of out of control behaviors Student has exhibited, which many different types of adults have unsuccessfully tried to curb. Likewise, the fact that Student's medication appears to have helped him during this time does not necessarily indicate that the change will be a long term

improvement without significant behavioral therapy. District Elementary School has not been an inappropriate LOS, and has denied Student a FAPE. Petitioner meets the 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, and his difficulty dates back to his toddler years. At City Charter School, Student would have frequent, explosive behavioral episodes in the classroom, including tantrums up to 3-4 times a day, lasting approximately 30 minutes, aggressive behaviors, urinating on his classmates’ clothing on one occasion, kicking objects off walls and knocking down bookshelves. Other students in his classroom frequently had to be evacuated from the classroom for their safety. Likewise, at District Elementary School, Student has been experiencing severe behaviors and behavioral meltdowns on a regular basis, such as throwing items and causing destruction in the classroom, having altercations with peers, demonstrating aggression toward teachers and peers and eloping from the school building. Student is highly intelligent; however, his behaviors in the academic setting are of such a nature, degree, severity and duration at this point that a therapeutic school environment such as Nonpublic School is necessary for a time, in order to try and stabilize his behaviors.

b. Student’s Specialized Educational Needs

Student does not present with academic deficits. Rather, his eligibility for special education and related services is based on the fact that his extreme behaviors prevent him from being present and ready to learn in the school environment. Nonpublic School offers a therapeutic environment that can meet his needs.

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

Student’s most urgent need at this juncture is behavior stabilization, behavior modification and coping skills, so that he can proceed appropriately with his education. The services Nonpublic School offers can help Student achieve this level of behavioral progress. Moreover, the extremely small class size (3-5 students) of Nonpublic School will benefit Student during his period of behavioral stabilization at Nonpublic School.

d. Cost of Placement at Private School

Nonpublic School's costs have been approved by OSSE, and the hearing officer deems them to be reasonable.

e. Extent to Which Private School Represents Least Restrictive Environment

As soon as possible, Student needs to be mainstreamed into an academically rigorous environment that can help him develop and build upon his natural intelligence, and that will provide him with positive peer role models that can help him normalize socially appropriate behaviors. However, in the short term, a full-time, therapeutic, special education day school such as Nonpublic School represents Student's LRE, because until Student's behavior stabilizes to some degree, his ability to receive classroom instruction is impeded.

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 five school days of this decision, DCPS shall fund Student's placement at Nonpublic School for the remainder of the 2014-2015 school year, including transportation;
- B.** DCPS shall fund Student's placement at Nonpublic School for the 2015-2016 school year,⁶¹ including transportation. Student may be placed at another appropriate placement prior to the end of the 2015-2016 school year, by mutual agreement of the parties.
- C.** Within 30 business days of this decision, Student's IEP team shall meet to revise his IEP as appropriate.

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

IT IS SO ORDERED.

Date: June 10, 2015

/s/ NaKeisha Sylvester Blount
Impartial Hearing Officer

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

⁶¹ "First semester of the 2015-2016 school year" is defined as through the last day of class in December 2015.

2014-0108
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).