

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

OSSE
Office of Dispute Resolution
June 22, 2015

STUDENT, ¹)	
through the PARENTS,)	Hearing Officer: NaKeisha Sylver Blount
)	
<i>Petitioner,</i>)	
)	Case No: 2015-0092
v.)	
)	Date Issued: June 19, 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. Sections 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. Sections 1400-1482.

The DPC was filed on March 18, 2015 by Petitioners (Student’s parents), residents of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On March 25, 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 March 26, 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. On April 21, 2015 Respondent filed a motion for continuance, which was granted on April 22, 2015, resulting in a Hearing Officer’s Determination (“HOD”) deadline of June 19, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “hearing officer”) held a Pre-hearing Conference (“PHC”) on April 6, 2015, during which the parties discussed and clarified

the issues and the requested relief. At the PHC, the parties agreed that witnesses and exhibits would be disclosed at least five business days prior to the DPH. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on April 6, 2015.

The DPH was held on May 26, 2015 and May 27, 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 Alana Hecht, Esq. and Respondent was represented by Tanya Chor, Esq.

Petitioner’s and Respondent’s disclosures of witnesses and exhibits were timely filed. At the DPH, Petitioner’s exhibits P-1 through P-6; P-7 through P-14; P-16 through P-20; P-22 through P-31 and P-33 through P-39. Petitioner’s exhibit P-10 were admitted into evidence without objection. Petitioner’s exhibits P-7, P-15, P-21 and P-32 were admitted into evidence over Respondent’s objection. Respondent’s exhibits R-5, R-8, R-22, R-29, R-42, R-44 through R-46, R-49 through R-51, R-53 through R-61 were admitted into evidence without objection. Respondent’s exhibits R-3, R-13, R-15, R-18 through R-21, R-23 through R-24, R-28, R-34, R-36, R-38, R-39 were admitted over Petitioner’s objection. Respondent’s Exhibits R-1 through R-2, R-4, R-6 through R-7, R-9 through R-12, R-14, R-16 through R-17, R-25, R-27, R-30 through R-33, R-35, R-37, R-40, R-41 through R-43, R-48, R-52 were not offered or admitted into evidence.

Petitioner called the following witnesses at the DPH:

- (a) Petitioner/Parent²
- (b) Former Paralegal
- (c) Senior Educational Advocate
- (d) Head of Nonpublic School

Respondent called the following witnesses at the DPH:

- (a) Teacher/Case Manager, District High School (“Case Manager”)
- (b) DCPS Transition Coordinator and LEA Representative, District High School (“Transition Coordinator”)

Petitioner and Respondent gave oral closing arguments.

ISSUES

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

² When “Petitioner” or “Parent” are used in the singular, they refer to Student’s mother, who testified at the DPH.

- (a) **Whether DCPS denied Student a FAPE by failing to identify an appropriate educational placement in Student's May 2014 IEP pursuant to 34 C.F.R. §300.115, in that the IEP failed to specify an educational placement for Student on the continuum of alternative placements, and in that it failed to specify anything about Student's placement at all, and specifically that it failed to indicate that Student's LRE is a very small self-contained setting with a small classroom size, little-to-no transitions between classes, and a program where Student would be placed with students with similar/compatible disability.**
- (b) **Whether DCPS denied Student a FAPE by changing Student's placement within District High School in October 2014, pursuant to 20 U.S.C. § 1401(9), 34 C.F.R. § 300.17 and 30 DCMR Sec. § 3001.1 as described in the following sub-issues:**
1. Whether DCPS denied Student a FAPE by changing her educational placement in October 2014 without convening a meeting as required by 34 C.F.R. § 300.116(a).
 2. Whether DCPS denied Student a FAPE by changing her educational placement in October 2014 without justification or data supporting such a change, pursuant to 34 C.F.R. § 116(a).
 3. Whether DCPS denied Student a FAPE by failing to include Parents and/or IEP team in the decision regarding the change in her educational placement, pursuant to 34 C.F.R. § 300.116(a).
 4. Whether DCPS denied Student a FAPE by placing Student in an inappropriate educational placement that resulted in increased behavioral issues and emotional challenges to Student because: many of the other students are older and have emotional/behavioral problems; there are more students in the new classroom; and Student now must change classes and teachers throughout the school day and interact with general education students.
- (c) **Whether DCPS denied Student a FAPE at the March 2015 IEP meeting, as described in the following sub-issues:**
1. Whether DCPS created an inappropriate IEP for Student in March 2015, pursuant to 20 U.S.C. § 1414(a)(i), by failing to identify the type of educational placement and LRE Student requires to receive a FAPE, and by failing to provide Student direct behavioral support services on a weekly basis.
 2. Whether DCPS denied Student a FAPE by failing to convene a meeting to discuss how Student's changed placement was harming Student, to move Student to a more appropriate setting, to propose appropriate interventions or accommodations, and/or to take other appropriate actions after changing Student's educational placement in October 2014, and in light of Student's resulting behavioral and emotional issues.

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) a finding in Petitioner's favor as to each issue raised in the DPC;

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- (b) an Order placing Student in a full-time special education separate day school capable of meeting Student's needs, namely Nonpublic School, within 10 days of a decision in this matter;
- (c) an Order that DCPS issue a PWN notice within 10 days of a decision in this matter, placing Student at the full-time special education separate day school, as described in request for relief "(b)."
- (d) an Order that, within 10 days of a decision in this matter, DCPS fund and provide transportation for Student to attend the full-time special education separate day school as described in request for relief "(b)."
- (e) an Order that DCPS reconvene Student's IEP team within 15 school days of a decision in this matter to revise Student's IEP to include specific information about Student's LRE, including the level of restrictiveness that she requires, the classroom size and disability classifications that should be a part of her educational program, and that the IEP team be required to include in the IEP the specific type of educational placement and program along the continuum of alternative placements that the student requires in order to receive a FAPE, consistent with the IHO's factual findings and conclusions of law.
- (g) an Order awarding compensatory education consistent with Petitioner's proposed compensatory education plan, and/or compensatory education the IHO determines appropriate after a fact-specific inquiry.

FINDINGS OF FACT

1. Student is ■ years old, resides with her parents ("Parents"/"Petitioners") in Washington, D.C., and is a 10th grader at District High School, where she has attended since she began high school.³

2. Student has been determined eligible for special education and related services under the disability classification Autism Spectrum Disorder ("Autism").⁴

Student's Disability

3. Student has a severe case of autism that renders her highly sensitive to noise and to change, and impacts her ability to communicate with others and the way others communicate with her.⁵

4. As a function of her disability, Student requires a great deal of structure in the classroom, a low student-teacher ratio, and a small class size to access the curriculum.⁶

5. Student has a hard time warming up to people, and latches on to people once she does warm up to them. She gets along with adults/teachers, whom she views as peers, better

³ Testimony of Parent; testimony of Former Paralegal; P-22-1.

⁴ P-22-1.

⁵ Testimony of Parent; testimony of Former Paralegal; testimony of Senior Educational Advocate; testimony of Case Manager; testimony of Compliance Coordinator.

⁶ Testimony of Senior Educational Advocate.

than children/other students.⁷ Because Student has a difficult time adjusting to new people and change, she performs better when testing with familiar adults.⁸ This has been true since at least August 2012.⁹

Student's District High School Classroom Setting until October 2014

6. For part of the 2012-2013 school year, all of the 2013-2014 school year, and up until October 2014 during the 2014-2015 school year (the time period "prior to October 2014"), Student was assigned to a classroom at District High School that was led by one particular teacher. During this time, with the exception of one elective class, Student received 100% of her instruction from this same teacher. There were no more than 5-6 students permanently assigned to the classroom (other students came into the classroom to take particular classes). With the exception of the one "special"/elective she took and going to lunch, Student had no transitions during the school day during this time.¹⁰

7. Prior to October 2014, Student had very little contact with general education students, with the exception of coming in and out of the school building. When Student and her classmates had to enter the hallway, they were escorted from point to point in order to minimize their exposure to general education students. Additionally, Student and her classmates were often transitioned from point to point during times when general education students were in class, in order to minimize their contact with general education students. Student and her classmates at lunch in the cafeteria with the general education students; however, they generally sat among themselves in a less populated section of the cafeteria. Student did not generally sit in the main section of the cafeteria because of her aversion to the noise and stimuli in the main section of the cafeteria, due to her disability.¹¹

8. Prior to October 2014, the classroom to which Student was assigned as classified as a self-contained, diploma-track, non-categorical classroom serving various disabilities. However, the other students assigned to Student's classroom also had autism, except for one who had multiple disabilities. All of the students in the classroom were in the same grade and around the same age as Student, and their disabilities were the same or compatible.¹²

Student's District High School Classroom Setting after October 2014

9. On or shortly before October 8, 2014, Student was moved to a different type of classroom setting within District High School.¹³ Rather than remaining with one special education teacher (Case Manager) for the majority of the day, Student now transitioned among multiple special education teachers throughout the day, in addition to maintaining the transition

⁷ Testimony of Parent;

⁸ Testimony of Former Paralegal; testimony of Case Manager; P-12-11.

⁹ Testimony of Case Manager.

¹⁰ Testimony of Former Paralegal; testimony of Senior Educational Advocate; testimony of Case Manager.

¹¹ Testimony of Parent; testimony of Former Paralegal; testimony of Case Manager; testimony of Transition Coordinator.

¹² Testimony of Case Manager; testimony of Transition Coordinator.

¹³ Testimony of Parent; P-13.

to her special class. Rather than 5-6 students being permanently assigned to Student's class, there were now at least twice as many students permanently assigned to Student's class. Rather than remaining in one classroom for most of the day, Student now had to physically move to different classrooms throughout the day. Rather than being assigned to a classroom where all the students had the same or compatible disabilities, Student was now assigned to a classroom with students older and younger than her, and with a variety of disabilities, including some with behavioral difficulties.¹⁴

10. After October 2014, Student and her classmates continued to be escorted from place to place throughout the building, and their lunchroom experienced remained the same as it had been prior to October 2014.¹⁵

11. District High School did not convene an IEP team meeting or otherwise meet or consult with Parents prior to assigning Student to the new classroom in October 2014, because District High School viewed the change a purely administrative.¹⁶

12. Through their representatives, Petitioners immediately expressed their concerns from to District High School regarding the classroom change. District High School personnel responded that the change was merely administrative.¹⁷

Student's Behavior

13. When Student was in the fifth grade (at a different school), there was a period of time when she had behavioral problems, such as aggression and fighting. She was moved from a larger to a smaller setting, with more one-on-one time with the teacher and the aide, and Student's behavior improved significantly. While her behavior did not become perfect, she did not have significant behavior problems again until after her classroom setting changed in October 2014.¹⁸

14. After Student was assigned to a different classroom in October 2014, Student's behavior deteriorated. For example, Student became more defiant with her teachers (including with her favorite teacher, Case Manager); she began having outbursts, and bullying some of classmates – in particular two 9th grade girls. On one occasion, she went into a cursing rage when going through security.¹⁹

15. While Student's behavior had not impeded her academic progress the previous school year, by April 21, 2015, "[Student]'s disability [in the areas of emotional, social and

¹⁴ Testimony of Former Paralegal; testimony of Senior Educational Advocate; Testimony of Case Manager; testimony of Transition Coordinator.

¹⁵ Testimony of Case Manager; testimony of Transition Coordinator.

¹⁶ Testimony of Former Paralegal; testimony of Transition Coordinator.

¹⁷ Testimony of Former Paralegal; P-2-1 through P-2-16.

¹⁸ Testimony of Parent; testimony of Former Paralegal; testimony of Case Manager; testimony of Transition Coordinator.P-9-11.

¹⁹ Testimony of Parent; testimony of Former Paralegal; testimony of Case Manager; testimony of Transition Coordinator; P-14.

behavioral development] affects her ability to make progress in the general education setting without behavioral support services.”²⁰

16. DCPS did not offer any other classroom assignment option for Student.²¹

Behavioral Services (Informal, Consultative, Direct)

17. As a result of the deterioration in Student’s behavior, District High School began providing some informal consultative behavioral services to Student in December 2014.²² Behavioral services were not included on Student’s IEP at that time, and Parents were not contacted about adding the services to Student’s IEP at that point.²³

18. In February 2015, District High School contacted Parent for the first time to set up a (non-IEP team) meeting with Parent regarding Student’s behavioral problems. During the February 2015 meeting, District High School requested that Parent provide written consent to add 60 minutes per month of consultative behavioral services to Student’s IEP. Because they believed direct services would be more appropriate for Student than consultative services, Parents did not consent to adding consultative behavioral services in February.

19. In March 2015, an IEP meeting was convened to discuss amending Student’s IEP to include behavioral support services. Parent again requested that direct behavioral support services be added to Student’s IEP, and District High School again proposed consultative services, until they made a formal eligibility determination regarding Student’s need for behavior services. Parent consented to consultative services pending the eligibility determination, though she did not agree that such an eligibility determination should be necessary for the related services the entire team deemed necessary.²⁴

20. On April 21, 2015, Student’s IEP was amended to include 120 minutes per month of direct behavioral services, and Student began receiving direct behavioral services.²⁵

21. As of the DPH, Student’s behavior had not significantly improve with any of the behavioral support.²⁶

May 2014 IEP

22. Student’s May 14, 2014 IEP indicates that Student is to receive 26.25 hours per week of specialized instruction outside of the general education setting; however, it does not indicate in the section title “Least Restrictive Environment” that Student requires a very small classroom setting with little to no transitions during the school day, little to no interaction with

²⁰ P-39-10.

²¹ Testimony of Senior Educational Advocate.

²² Testimony of Transition Coordinator;

²³ Testimony of Senior Educational Advocate; testimony of Transition Coordinator.

²⁴ Testimony of Senior Educational Advocate; testimony of Transition Coordinator; P-18-2; P-19-2 through P-19-3.

²⁵ P-39-12.

²⁶ Testimony of Transition Coordinator.

non-disabled students, and placement with students with similar/compatible disabilities.²⁷ Student's reading, written expression and mathematics goals do indicate that she requires a small group setting in those academic areas.²⁸

23. The IEP states that "[Student]'s educational skills are below her chronological age and therefore impact her ability to access the general education curriculum."²⁹ While Case Manager and possibly other members of the team shared an unwritten understanding that this language pointed to Student's need for intensive small group instruction,³⁰ the IEP itself lacks this language or any detailed description of the specific needs Student has exhibited with respect to her all-day classroom setting.

24. Student's behavior was not impeding her educational progress at that time, and the IEP does not include behavioral support services.³¹

March 2015 IEP Meeting

25. Student's March 17, 2015 is an amendment to the May 2014 IEP, in order to add the 120 minutes per month of behavioral support services. The services were added on a consultative, rather than a direct, basis.

ESY

26. Student attends extended school year ("ESY") during the summers. Student has not had problems adjusting during ESY.³²

Academics/Cognitive Functioning

27. Student is significantly below grade level.³³ The Woodcock Johnson III administered to Student on March 18, 2015 revealed low achievement scores, including in broad math, broad reading, broad written language. When Student was administered the Woodcock Johnson III on June 4, 2013, her scores had fallen in the in the very low range. Yet, Student is able to make earn credits toward graduation and earn good grades.³⁴ Student's grade point average dropped to some extent after the October 2014 classroom change,³⁵ however, she continued to earn good grades.³⁶

²⁷ P-12-12; P-12-15.

²⁸ P-12-5 through P-12-8.

²⁹ P-12-12.

³⁰ Testimony of Case Manager.

³¹ P-12-4.

³² Testimony of Transition Coordinator.

³³ P-12-12.

³⁴ Testimony of Senior Educational Advocate.

³⁵ Neither party's disclosures include Student's report cards; therefore, the hearing officer is crediting the undisputed testimony of Senior Educational Advocate in reaching the finding that Student's grade point average dropped to some extent, though the hearing officer is not able to make a finding about the extent of the drop.

³⁶ The hearing officer is crediting the testimony of Transition Coordinator in reaching the finding that Student continued to earn good grades, even though the hearing officer is not able to make a finding about

Nonpublic School – Special Program

28. Nonpublic School is a full-time special education day school. “Special Program” is a diploma-track special education program within Nonpublic School that focuses on students who have not been successful in the traditional special education setting.

29. Special Program has its own entrance/exit, and students in Special Program have little to no interaction with other students at Nonpublic School.

30. Special Program has 18 students total, and they serve students with varying disabilities, including specific learning disability, other health impairment, multiple disabilities, autism and traumatic brain injury.

31. Special Program is open from 8:00 a.m. through 8:00 p.m., and students make arrangements to attend during the six hours per day of their choosing.

32. Class sizes at Special Program are generally between 1 and 5 students, due to the fact that students stagger their schedules, and the program site tends to be very quiet and distraction free for the same reason.

33. Student and her family toured Special Program, Student interviewed for the program, and Student was accepted to the program.

34. Student would not have the same teacher for all her classes. She would, for example, have a different teacher for math, social studies and English.

35. Nonpublic School and Special Program share a team of 8 full-time and 2 part-time psychologists to provide behavioral support to their students who need it.

36. Special Program could implement Student’s current IEP, and would also undertake efforts to help her desensitize to noises.

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

the specific grades Student earned during the relevant time period, because neither party disclosed her report cards.

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 identify an appropriate educational placement in Student's May 2014 IEP pursuant to 34 C.F.R. §300.115, in that the IEP failed to specify an educational placement for Student on the continuum of alternative placements, and in that it failed to specify anything about Student's placement at all, and specifically that it failed to indicate that Student's LRE is a very small self-contained setting with a small classroom size, little-to-no transitions between classes, and a program where Student would be placed with students with similar/compatible disability.**

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 is not reasonably calculated to provide Student educational benefit in that it fails to adequately describe Student's least restrictive environment ("LRE").

As of the time Student's IEP team met in May 2014, Student had a demonstrated need for a small classroom setting, with minimal transitions and minimal interaction with non-disabled students, and placement with students with similar or compatible disabilities. While the team shared a common understanding of these needs, the needs were not memorialized on Student's IEP. As a result, Student was placed in a classroom setting in October 2014 that was not consistent with her demonstrated needs and did not meet her needs, because she was suddenly in a much larger classroom and having many more transitions per days with several different teachers, and because she was placed in a class with various types of disabilities and ages. Even though both the pre-October 2014 and the post-October 2014 classrooms were labeled "self-contained, non-categorical and diploma track," in ways that were significant for Student in particular, the two classrooms were vastly different experiences. For many other students, the changes would have been easy to adapt to and would have had no significant impact on their educational experience. However, Student has particular needs and sensitivities that should have been reflected on her IEP, and she was harmed through behavioral regression and missed

instructional time in an effort to address the behavioral regression as a result of her IEP not reflecting her needs. Lack of information about the specific type of classroom setting Student requires denied her a FAPE.

The IDEA requires every LEA to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities eligible for special education and related services, including instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. *See* 20 U.S. Code § 1412(5)(A); 34 CFR § 300.115. The provision does not require a student’s IEP to specify where on the continuum of alternate placements the student should be, and in Student’s particular case, the hearing officer does not find the lack of a specific indication of where on the continuum Student should fall was a denial of FAPE. As of May 2014, Student was in a classroom setting in District High School that was meeting her needs. Pursuant to 34 C.F.R. §300.116(c), “unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.” Student was being educated in such a setting as of May 2014, and it was meeting her needs. There would have been no reason at that point for the IEP team to designate a more restrictive point along the continuum, and a regular school is assumed unless the IEP says otherwise.

Petitioner met her burden of proving that DCPS denied Student by failing to adequately describe her necessary classroom setting, but not as to the failure to designate a particular point along the continuum of alternative placements.

- (b) Whether DCPS denied Student a FAPE by changing Student’s placement within District High School in October 2014, pursuant to 20 U.S.C. § 1401(9), 34 C.F.R. § 300.17 and 30 DCMR Sec. § 3001.1 as described in the following sub-issues:**
1. Whether DCPS denied Student a FAPE by changing her educational placement in October 2014 without convening a meeting as required by 34 C.F.R. § 300.116(a).
 2. Whether DCPS denied Student a FAPE by changing her educational placement in October 2014 without justification or data supporting such a change, pursuant to 34 C.F.R. § 116(a).
 3. Whether DCPS denied Student a FAPE by failing to include Parents and/or IEP team in the decision regarding the change in her educational placement, pursuant to 34 C.F.R. § 300.116(a).
 4. Whether DCPS denied Student a FAPE by placing Student in an inappropriate educational placement that resulted in increased behavioral issues and emotional challenges to Student because: many of the other students are older and have emotional/behavioral problems; there are more students in the new classroom; and Student now must change classes and teachers throughout the school day and interact with general education students.

Pursuant to 34 C.F.R. § 300.116(a), placement decisions must be made by a Student’s IEP team, including parents. “[P]lacement’ refers to the overall educational program offered, not the mere location of the program.” *Roher v. District of Columbia*, Civ. A. Nos. 89–2425, 89–

2503, 1989 WL 330800, at 3 (D.D.C. Oct.11, 1989). Placement is different from mere site selection, which is an administrative decision the LEA may make without involving the IEP team. As discussed in the “Findings of Fact” and in conclusion of law “(a)” above, moving Student from the pre-October 2014 classroom to the post-October 2014 classroom was a significant change for her particular learning experience. The fact that Student’s IEP did not include specific information about Student’s needs with respect to a classroom setting set the stage for moving Student to a significantly different type of classroom setting while calling it an administrative change, when in fact it was a significant enough difference that it amounted to a placement change. The fact that the move was within the same school building does not change the fact that it was a placement change, because the change had such a significant impact on needs her IEP team agreed she has. Respondent did not convene an IEP team meeting prior to making this change, or involve parent in the decision in any way. There was no data or justification to support the October 2014 change in placement. The change resulted in increased behavior problems for Student. Petitioner met the burden of proving that DCPS denied Student a FAPE by changing her placement in October 2014.

(c) Whether DCPS denied Student a FAPE at the March 2015 IEP meeting, as described in the following sub-issues:

1. Whether DCPS created an inappropriate IEP for Student in March 2015, pursuant to 20 U.S.C. § 1414(a)(i), by failing to identify the type of educational placement and LRE Student requires to receive a FAPE, and by failing to provide Student direct behavioral support services on a weekly basis.
2. Whether DCPS denied Student a FAPE by failing to convene a meeting to discuss how Student’s changed placement was harming Student, to move Student to a more appropriate setting, to propose appropriate interventions or accommodations, and/or to take other appropriate actions after changing Student’s educational placement in October 2014, and in light of Student’s resulting behavioral and emotional issues.

For the same reasons as stated with respect to issue “(a)” above related to the May 2014 IEP, the hearing officer finds that the failure to specify in the March 2015 IEP information about the type of classroom setting Student needs in order to access her education was a denial of FAPE. By this point, the team had even more information about the depths of Student’s needs for the type of classroom setting she had prior to October 2014, as well as the type of harm she was suffering without that type of setting. Additionally, while the LEA wanted to undergo an eligibility process prior to adding direct behavioral support services, by the March 2015 meeting, the team was in agreement that she needed the services. Particularly because so many months had passed since she had started demonstrating a need for behavioral support, and particularly because a separate eligibility meeting for the related service is not required by the IDEA, in this particular instance, due to the urgency of Student’s needs, Parents’ request to add the direct behavioral support services at the March 2015 meeting was reasonable, and granting Student only consultative services as of that point denied her a FAPE. Additionally, given the length of time Student had been in the new classroom setting without being able to adjust, DCPS should have been discussing appropriate placement options for her by the March 2015 IEP meeting. Petitioner met the burden of proving that DCPS denied Student a FAPE at the March 2015 IEP meeting.

REQUEST FOR NONPUBLIC PLACEMENT

a. Nature and Severity of Student's Disability

Student has a severe case of autism that renders her highly sensitive to noise and to change, and impacts her ability to communicate with others and the way others communicate with her.³⁷ As a function of her disability, Student requires a great deal of structure in the classroom, a low student-teacher ratio, and a small class size to access the curriculum, and made progress in such a setting at District High School prior to October 2014.³⁸

b. Student's Specialized Educational Needs

Student has low cognitive functioning, but can earn academic credits and make good grades in school. Student's grade point average dropped to some extent during the 2014-2015 school year after the October 2014 change in placement. Student needs a small classroom setting (5-7 students or less) to make academic progress.

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

Student requires a small classroom setting, few transitions and distractions, classmates with similar disabilities, familiar adults, and limited interaction with non-disabled peers. Special Program at Nonpublic school offers some of these features; however, Student would be with classmates of varying disabilities, and Student would have several teachers throughout the school day who, at least initially, would not be familiar to her.

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

Student was able to make academic progress and demonstrate appropriate behaviors at District High School prior to the placement change in October 2014. Therefore, the hearing officer does not conclude that a full-time separate day school is the least restrictive environment in which Student can make academic progress.

Based on the totality of factors discussed above, the hearing officer does not conclude that Special Program is reasonably calculated to address Student's disabilities and educational needs. Accordingly, the hearing officer does not conclude that Special Program is an appropriate placement for Student under the *Branham* analysis.

COMPENSATORY EDUCATION

IDEA gives hearing officers "broad discretion" to award compensatory education as an "equitable remedy" for students who have been denied a FAPE. *See Reid, supra*, 401 F.3d at 522-23. The award must "provide the educational benefits that likely would have accrued from

³⁷ Testimony of Parent; testimony of Former Paralegal; testimony of Senior Educational Advocate; testimony of Case Manager; testimony of Compliance Coordinator.

³⁸ Testimony of Senior Educational Advocate.

special education services” that the school district “should have supplied in the first place.” *Id.* at 524. A compensatory education award must “rely on individualized assessments” after a “fact specific” inquiry. *Id.* “In formulating a new compensatory education award, the hearing officer must determine ‘what services [the student] needs to elevate him to the position he would have occupied absent the school district’s failures.’” *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010), quoting *Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid*, 401 F.3d at 527. *See also, e.g., Turner v. District of Columbia*, 2013 WL 3324358, 10-11 (D.D.C. July 2, 2013).

Here, Petitioner claims Student was harmed by DCPS’ failure to identify an appropriate placement for Student in the May 2014 IEP, by changing Student’s placement as of October 2014, and at the March 2015 IEP meeting. The hearing officer has found a denial of FAPE on at least a portion of each issue. As compensatory education, Petitioner requests placement at Special Program at Nonpublic School. The hearing officer does not find this to be an appropriate form of compensatory education, as Special Program is not Student’s LRE, and sending her there for a short period of time as compensatory education would result in multiple transitions over a short period of time, which could be problematic for her disability, especially since she would have multiple teachers and classmates with varying disabilities at Special Program.

Student was completely without behavioral support after the October 2014 change in placement for about two months, and without full behavioral support after the October 2014 change in placement for about four months after that. Student’s behavior regressed, and she missed instructional time due to having to participate in behavioral services she previously had not needed. In addition, her grade point average dropped to some extent, but she was still earning good grades. As compensatory education, the hearing officer will order 50 hours of counseling, mentoring, and/or behavioral support of Parents’ choosing, and 20 hours of tutoring to offset the missed instruction time and drop in grade point average, factoring in that Student continued to earn good grades during the relevant time period, and Student receive some behavioral support during parts of the relevant period.

ORDER

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

- (a) Within 20 business days³⁹ of a decision in this matter, DCPS shall convene an IEP meeting to revise Student’s IEP to include specific information about Student’s LRE, including the classroom size and disability classifications that should be a part of her educational program;
- (b) Within 15 business days of this Order, DCPS shall begin funding compensatory education for Student in the form of 50 total hours of counseling, mentoring and or behavioral support by a provider(s) of Parents’ choice, and 20 hours of tutoring in subject areas of Parents’ choice. Compensatory education hours shall be paid

³⁹ Any delay caused by Petitioners, Student and/or their representatives/advocates shall not count against DCPS.

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at DCPS' standard rates. Any hours not utilized by August 31, 2016 shall be forfeited.

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

IT IS SO ORDERED.

Date: June 19, 2015

/s/ NaKeisha Sylvester Blount
Impartial Hearing Officer

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

NOTICE OF RIGHT TO APPEAL

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