

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
March 9, 2015

STUDENT, ¹)	
through the PARENT,)	Hearing Officer: NaKeisha Sylver Blount
)	
<i>Petitioner,</i>)	
)	
v.)	
)	Date Issued: March 8, 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 December 24, 2014 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On January 2, 2015, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”). The parties convened a Resolution Session Meeting (“RSM”) on January 12, 2015. The parties did not reach an agreement resolving the case during the RSM; however, they 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 January 23, 2015, and HOD in this matter is due March 9, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on January 20, 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 February 11, 2015 and that the DPH would be held on February

¹ Personal identification information is provided in Appendix A.

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19, 2015 and February 20, 2015. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the "PHO") issued January 20, 2015.

The DPH was held on February 19, 2015 at the Office of Dispute Resolution, Petitioner elected for the hearing to be closed.

Petitioner's and Respondent's disclosures were timely filed. At the DPH, Petitioner's exhibits P-1 through P-33 were admitted without objection. Respondent's exhibits R-1 through R-12 were admitted without objection.

Petitioner called the following witnesses at the DPH:

- (a) Petitioner/Parent
- (b) Paralegal
- (c) Senior Educational Advocate²
- (d) Nonpublic Supervisor/Assistant Principal

Respondent called the following witnesses at the DPH:

- (a) District Middle School LEA Representative

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.

- (a) Whether DCPS denied Student a FAPE by failing to provide an appropriate individualized education program ("IEP") from January 7, 2014 through the present, in that it failed to accurately represent Student's LRE and need for a more restrictive placement.
- (b) Whether DCPS denied Student a FAPE by failing to provide Student with an appropriate educational placement and corresponding location of services as far back as January 7, 2014, and through the present time.

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) a finding in Petitioner's favor as to each issue raised in the DPC;
- (b) an Order that, within ten days of a decision in this matter, DCPS place and fund Student at Nonpublic School;
- (c) in the alternate to request "(b)" above, an Order that DCPS place Student in a full-time self-contained program capable of meeting Student's needs, and capable of implementing Student's IEP;

² Qualified over Respondent's objection as an expert in the area of area of special education programming for students with special needs, in particular, for students with Emotional Disturbance.

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- (d) an Order that, within 15 school days of a decision in this matter, DCPS convene a meeting to revise Student's IEP, including the LRE section, to describe the placement ordered consistent with request "b" or "c" above, and specifying Student's placement along the continuum of alternative placements and the level of restrictiveness he requires, in addition to any other findings of the IHO with regards to Student's placement needs;
- (e) an Order for compensatory education in the form of 150 hours of mentoring to be provided by an independent provider of Parent's choice to address the lack of appropriate social interactions with Student's same age peers.

FINDINGS OF FACT

1. Student resides with his mother ("Parent"/"Petitioner") in Washington, D.C.³
 2. Student was most recently determined eligible for special education and related services in January 2013, under the primary disability classification of Emotional Disturbance.⁴
- Student's Current School of Attendance**
3. Student attends District Middle School, and is in the eighth grade.⁵
 4. Student has been retained twice – in third grade and sixth grade – and is two years older than the typical eighth grader.⁶
 5. Student is assigned to a self-contained classroom within District Middle School for students with emotional disturbance. The classroom is mixed grade, meaning sixth grade students through eighth grade students are all in the same classroom.⁷
 6. Student is the oldest student in the classroom, and is significantly older than most of his classmates, Student takes on the behaviors of the younger students in his class, while also negatively influencing the younger students.⁹ It is important for Student to be educated with students in his age range, and Student is uncomfortable in the class filled with significantly younger students.¹⁰

³ Testimony of Parent.

⁴ P-4-2.

⁵ Testimony of Parent.

⁶ *Id.*

⁷ Testimony of Paralegal; P-16-1.

⁸ *Id.*

⁹ *Id.*

¹⁰ Testimony of Parent; testimony of Paralegal; P-16-1.

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Student's Behavior and Attempted School Interventions

7. Student has demonstrated adverse behaviors including aggressive outbursts; vandalism/property damage; verbal aggression toward peers and teachers; and wandering the school and not attending class, even when in the school building.¹¹

8. Student received a number of suspensions during the 2013-2014 and 2014-2015 school years, including a long-term suspension beginning in or around May 2014 for possession of drug paraphernalia or a controlled substance.¹²

9. Student was determined eligible for Extended School Year (“ESY”) services for the summer of 2014 in order to prevent regression with respect to his behavior. ESY was determined necessary to provide Student a FAPE.¹³

10. Several ESY goals were developed for Student for summer 2014, including three in the area of behavior. One of Student’s behavior goals was as follows, “[Student] will develop positive social interaction skills and use them by demonstrating consideration/regard when interacting with his peers 80% of the time.”¹⁴

11. A behavioral intervention plan (“BIP”) was developed for Student on January 11, 2013 to address Student’s problems with anger, difficulty following directions, and his poor and inappropriate communication and expression.¹⁵

12. Student’s behavior in school impedes his learning,¹⁶ and has not substantially improved since at least September 2012.¹⁷

IEP

13. Student’s most recent IEP prior to the filing of the DPC is dated January 7, 2014.¹⁸ It describes Student’s least restrictive environment (“LRE”) as 27 hours of specialized instruction per week outside the general education setting, with 90 minutes per month of behavioral support outside of the general education setting.¹⁹

14. Student’s January 11, 2013 IEP had provided 360 minutes²⁰ of behavioral support services to Student; however, Student January 7, 2014 IEP reduced the level of support

¹¹ Testimony of Paralegal; testimony of District Middle School LEA Representative; R-2-1; P-7-8.

¹² P-2; testimony of Paralegal; testimony of District Middle School LEA Representative.

¹³ P-7-14; R-10-14.

¹⁴ *Id.*

¹⁵ P-22-1. Student’s behavioral plan was updated in January 2015, to address most of the same, as well as some additional, behaviors. R-11.

¹⁶ P-6-2; P-7-2; R-10-2.

¹⁷ P-5-1; P-8; P-21-4; P-22; R-11.

¹⁸ P-6. For purposes of this HOD, the January 7, 2014 IEP will be referred to as the “2014 IEP.”

¹⁹ P-6-10.

²⁰ P-3-9.

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to approximately 25% of the previous level (90 minutes per month of behavioral support services outside the general education setting).²¹ Student has received more behavioral support time than listed on his IEP, in an effort to help Student build rapport with the service provider and overcome his resistance to participating in behavioral support.²²

15. The January 7, 2014 IEP describes Student's present levels of academic achievement and functional performance in the area of emotional, social, and behavioral development as follows: "[Student] does not appear to have a sense of boundaries. His low adaptive skills are a result of his inability to pay attention and to self-regulate his behavior. He has *poor peer and adult interaction skills* which result in conflict in various school settings. He has *difficulty demonstrating the ability to implement age appropriate problem solving and coping skills*. [Student's] consistent need for redirection *interferes with his ability to access the general ed curriculum*. His *cognitive impairments are related to his social and behavioral functioning*."²³

16. In the January 7, 2014 IEP, Student's emotional, social, and behavioral development is described as affecting Student's access to the general education curriculum as follows: "[Student] needs to improve on his ability to self-monitor his behavior and he also needs to learn effective coping and problem solving skills as well as to improve on executive functioning to meet the demands of the classroom environment. He requires supports with increasing his ability to self-regulate his behavior, develop appropriate social skills and demonstrate the ability to utilize *age appropriate problem skills*."²⁴

17. In the January 7, 2014 IEP, Student's disability is described as affecting Student's progress in the general education curriculum as follows: "Inattention, impulsivity and hyperactivity contribute to [Student's] low adaptive skills. These *deficits in adaptive skills prevent [Student] from accessing the academic curriculum* and following school rules and expectations."²⁵

18. Student's IEP calls for him to receive a high school diploma.²⁶

Academic Performance

19. During the 2013-2014 school year, Student made progress on many of his IEP goals; however, Student has not made documented progress on his socio-emotional goals.²⁷

20. Student passed all of his core academic classes in the 2013-2014 school year, and earned mostly "C" grades throughout the 2013-2014 school year,²⁸ as well as during the first quarter of the 2014-2015 school year.²⁹

²¹ P-6-9.

²² District Middle School LEA Representative

²³ P-6-7 (emphasis added).

²⁴ *Id.* (emphasis added).

²⁵ *Id.* (emphasis added).

²⁶ P-7-18; R-10-22.

²⁷ R-1; P-8.

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21. Student's DC CAS state standardized test scores reflect "basic" level proficiency during the 2012-2013 and 2013-2014 school years, which is one level above where Student's scores fell during prior school years.³⁰

22. As his IEPs and twice yearly Paced Interim Assessments reflect, Student has struggled with certain math and reading skills from at least the 2012-2013 school year through the present time. His disruptive behavior, resistance to working in small groups, and class absences have impeded his progress in math and reading, since at least the 2011-2012 school year.³¹

Proposed DCPS School Settings

23. One of two school settings DCPS has suggested for Student is to remain in his current mixed-grade, self-contained classroom for students with emotional disturbance, within District Middle School.³²

24. The second of two school settings DCPS has suggested for Student is to transition to a self-contained classroom at District High School for students with emotional disturbance.³³ DCPS has not specified how Student would be able to keep up with a high school level academic workload while moving directly from seventh (or currently, eighth) grade straight to high school.³⁴ Additionally, all students in the self-contained behavioral program at District High School are on track to obtain a certificate of completion³⁵ rather than a high school diploma, and Student's IEP calls for him to receive a high school diploma.³⁶

25. While DCPS suggested to Parent that Student attend District High School, DCPS never issued a Prior Written Notice or Location of Services letter formally changing Student's school setting to anything other than his current school setting in District Middle School.³⁷

26. Other than a middle school-to-high school transition/preparation program that had been available to some students during the summer of 2014, but to which Student was not able to gain entrance, and which could not at the time have implemented the number of service hours on Student's IEP, DCPS has not suggested any options other than Student remaining in the self-contained classroom at District Middle School or moving directly into the self-contained classroom District High School.³⁸

²⁸ R-2.

²⁹ R-5.

³⁰ P-10-1; R-3-1.

³¹ P-5-2; P-5-3; P-26-8. P-27-10. During the 2011-2012 school year, Student was a 12 year old sixth grader at his District Middle School. Student had only been retained once at that time, and was not significantly older than his classmates. P-27-15.

³² Testimony of Paralegal; testimony of District Middle School LEA Representative.

³³ *Id.*

³⁴ Testimony of Paralegal.

³⁵ P-29-2.

³⁶ P-7-18; R-10-22.

³⁷ Testimony of Paralegal; testimony of District Middle School LEA Representative.

³⁸ Testimony of Paralegal; testimony of District Middle School LEA Representative.

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Nonpublic School

27. Nonpublic School is a private, full-time special education day school that works with students with emotional, learning, and behavioral disabilities.³⁹

28. Nonpublic School serves students from Washington, DC and Virginia, Kindergarten through twelfth grades.⁴⁰

29. Nonpublic School's middle school program serves sixth, seventh and eighth graders. Only eighth graders are in the eighth grade class.⁴¹

30. Nonpublic School's high school program serves ninth through twelfth grade students, and students are separated based on which credits they need to earn.⁴²

31. Student has been accepted to Nonpublic School, and would be a part of the eighth grade class if he attended there. Most students in the eighth grade class are the typical age for an eighth grader (two years younger than Student, who has been retained twice).⁴³

32. All District of Columbia students at Nonpublic School are working toward their high school diplomas.⁴⁴

33. Nonpublic School has certificate of approval from the Office of State Superintendent of Education in the District of Columbia ("OSSE"), and its tuition costs have been approved by OSSE.⁴⁵

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-

³⁹ Nonpublic Supervisor/Assistant Principal.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

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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).

1. Whether DCPS denied Student a free appropriate public education ("FAPE") by failing to provide an appropriate IEP from January 7, 2014 through the present, in that it failed to accurately represent Student's LRE and need for a more restrictive placement.

In order for an IEP to be appropriate, (1) the LEA must have complied with IDEA's administrative procedures and (2) the IEP must reasonably be calculated to provide some educational benefit to Student. *See N.T. v. District of Columbia* 839 F.Supp.2d 29, 33 (D.D.C.2012), quoting *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir.2003); *J.N. v. District of Columbia*, 677 F.Supp.2d 314, 322 (D.D.C. 2010). The appropriateness of an IEP must be assessed as of the time the IEP was developed. *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008), quoting *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir.2008) ("Because the question . . . is not whether the IEP will guarantee some educational benefit, but whether it is reasonably calculated to do so, . . . the measure and adequacy of an IEP can only be determined as of the time it is offered to the student. . . . Neither the [IDEA] nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement.") Petitioner does not assert that DCPS failed to comply with the administrative procedures attendant to developing Student's IEP. Rather, Petitioner claims that the January 7, 2014 IEP is inappropriate in that it did not designate the appropriate least restrictive environment ("LRE") for Student.

To the maximum extent possible, students with disabilities must be educated with nondisabled students, with supplementary supports as necessary and appropriate. 34 C.F.R. § 114(a)(2). "In determining the least restrictive environment, consideration is given to the types of services that the child requires." *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006). In this case, Student's January 7, 2014 IEP designates his LRE as 27 hours of specialized instruction per week outside the general education setting, with 90 minutes per month of behavioral support outside of the general education setting. Academic progress is one of the "yardsticks" used by courts to assess the validity and sufficiency of an IEP. *See, e.g., Smith v. District of Columbia*, 846 F.Supp.2d 197, 201 (D.D.C. 2012); *Hunter v. District of Columbia*, 2008 WL 4307492, 10 (D.D.C. Sept. 17, 2008), citing *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir.1998) ("An appropriate public education under IDEA is one that is likely to produce progress, not regression.") Therefore, to determine whether Student's IEP was adequate, as to its LRE (or other) provisions, one must look at the extent to which Student was likely to make academic progress under the January 7, 2014 IEP at the time it was created.

At the time Student's IEP team met to develop his January 7, 2014 IEP, Student's behavioral challenges and their impact on his ability to make academic progress was well documented. Student had a number of behavior infractions that same school year, prior to the January 7, 2014 IEP team meeting. Such behavioral challenges were consistent with those Student had in previous school years. Student's academic progress as of January 2014 was uneven. Student had made limited progress by certain measures (for example, he went up one

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level from the “Below Basic” score range in the 2010-2011 and 2011-2012 school years to the “Basic” score range in the 2012-2013 and 2013-2014 school years on the DC CAS standardized test). However, Student’s IEP itself, as well as his Paced Interim Assessments reflect that Student continued to struggle in the classroom in the areas of reading, written expression and mathematics, and that his behavior is one of the most prominent factors impeding his progress in these areas. While the record does not establish that the hours of specialized instruction or placement on the continuum of alternative placements was inappropriate for Student, reducing Student’s behavioral support in his January 7, 2014 IEP, when he had not made behavioral or consistent academic progress under the previous, January 11, 2013 (which provided for 360 minutes of behavioral support per month) was not reasonably calculated to produce academic progress for Student. As such, Student’s LRE as reflected in his January 7, 2014 IEP (which provided for 90 minutes of behavioral support per month) was inappropriate, in that it failed to accurately represent Student’s LRE. Petitioner meets the burden of proof on this issue.

II. Whether DCPS denied Student a FAPE by failing to provide Student with an appropriate educational placement and corresponding location of services as far back as January 7, 2014, and through the present time.

The Hearing Officer has found that Student’s January 7, 2014 IEP was inappropriate to the extent that it reduced the amount of behavioral support he was receiving, when Student has not been making behavioral progress under the higher level of support, and where Student’s behavior adversely impacted his academic progress. The undersigned has not otherwise found the January 7, 2014 to have been inappropriate. 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, it was not able to implement the IEP’s behavioral goals, which call for improving Student’s socialization and peer interaction skills, as a means of improving his behavior overall, and thereby minimizing one of his impairments to academic progress. A classroom filled with mostly 11 and 12 year olds was not an appropriate location of services for this particular student. Student’s need to mature and develop age-appropriate social skills is directly linked with his likelihood of making academic progress.

Taken together, Student’s lack of age-appropriate social skills, his frequent behavioral problems, the fact that he often would not attend class, even when he was in the school building, his aversion to participating in small-group based learning (with students several years his junior), and the fact that Student himself has indicated that he feels stigmatized and uncomfortable in a class where all the other children are at a much younger life-stage⁴⁶ than he is are indicators that Student’s classroom assignment is not appropriate for his socio-emotional

⁴⁶ The Hearing Officer finds to be significant, not only the number of years age difference between Student and his classmates, but the vast difference in maturity and life experience between 11 and 12 years olds and a 15 year old. A three or four year age difference may not be as pronounced for students who are, for example all in their late teens, though some are 15 and others are 19.

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needs, as reflected in his IEP. While some District Middle School personnel made suggestions to Parent that she consider enrolling Student in District High School, Student's IEP team did not develop a plan for how such a transition could be accomplished while ensuring that Student's IEP was fully implemented at the high school, that he would be able to keep up with the workload of high school without completing middle school, or for how Student would be able to continue working toward his high school diploma at District High School as called for on his IEP, when the students in District High School's self-contained emotional disturbance program are on the certificate track. Petitioner met the burden of proving that Student's location of services at District Middle School was inappropriate, at least as far back as January 7, 2014, and through the present time, in that it is not a classroom environment consistent with Student's socio-emotional needs, as reflected in his IEP.

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 emotional disability is severe. Student has demonstrated adverse behaviors, such as aggressive outbursts; vandalism/property damage; verbal aggression toward peers and teachers; wandering the school and not attending class, even when in the school building.

b. Student's Specialized Educational Needs

Student requires behavioral support to address his problems with anger, his difficulty following directions, and his poor and inappropriate communication and expression. It is important for Student to be educated with at least some other students in his age range, as his lack of age-appropriate social skills and problem-solving skills impedes his educational progress.

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

Nonpublic School is a private, full-time special education day school that works with students with emotional, learning, and behavioral disabilities. Student has been accepted to Nonpublic School, and would be a part of the eighth grade class if he attended there. Most students in the eighth grade class are the typical age for an eighth grader – two years younger than Student, who has been retained twice. At Nonpublic School, Student could have access to students in his age range in other parts of the building; however, he would not have access to same-age peers in his eighth grade classroom environment, though some of his classmates would

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be slightly older than most of his classmates at District Middle School. Student has been retained twice, so the Hearing Officer does not conclude that a classroom where Student is two years older than all his classmates is *per se* inappropriate. Nonetheless, while the Hearing Officer concludes that Nonpublic School would be a slightly better fit for Student's socio-emotional needs than is District Middle School; it would not be the ideal fit for Student's socio-emotional needs, as they impact his education. An age-appropriate learning environment is important for this particular student, as reflected in his IEP.

d. Cost of Placement at Private School

Nonpublic School has certificate of approval from the Office of State Superintendent of Education in the District of Columbia ("OSSE"). Its tuition costs have been approved by OSSE, and the Hearing Officer concludes that its costs are reasonable.

e. Extent to Which Private School Represents Least Restrictive Environment

The Hearing Officer does not conclude that Nonpublic School necessarily represents Student's LRE. While it was uneven, Student made some degree of educational progress by certain measures while at District Middle School, even though his behavioral support had been inappropriately reduced in January 2014, and even though his classroom environment was not conducive for achieving some of the socio-emotional goals on his IEP. The self-contained emotional disturbance program at District High School would seem to meet Student's socio-emotional needs as they impact his education, but whether Student could be transitioned to such a program from an academic standpoint remains an open question that Student's IEP team will need to discuss and consider.

Based on the *Branham* factors discussed above, the Hearing Officer does not make a finding that the program at Nonpublic School is reasonably calculated to address Student's disability as it impacts his ability to access his education, or that Nonpublic School is an appropriate location of services/educational placement for Student. Student's IEP team will need to convene and consider the most appropriate setting for meeting student's academic and socio-emotional IEP goals.

Compensatory Education

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

Here, the Hearing Officer has concluded that reducing Student's level of behavioral support in January 2014 to approximately 25% of what it had previously been, when his behavior

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remained problematic, was not reasonably calculated to provide Student educational benefit. Additionally, Student's current classroom environment is not consistent with his socio-emotional goals, as reflected in his IEP, in that it is not conducive to enabling him to develop appropriate social skills or demonstrate the ability to utilize age appropriate problem skills. As compensatory education, Petitioner requests 150 hours of mentoring to be provided by an independent provider of Parent's choice to address the lack of appropriate social interactions with Student's same age peers. While Petitioner's proposed compensatory education would help to remedy one aspect of the harm Student experienced, the Hearing Officer concludes that the most appropriate compensatory education for Student would afford him the opportunity to strengthen his skills in reading, writing, mathematics and/or social and life skills in a small group setting, with students in his age range.

ORDER

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

- A. Within 15 school days of a decision in this matter, DCPS shall convene a meeting of Student's IEP team to revise the LRE section of Student's IEP: (1) increasing his levels of behavioral support, as appropriate; and (2) specifying the type of school/classroom environment, and/or supplementary supports within the school/classroom environment, Student requires in order to meet both his instructional and socio-emotional needs, as described in his IEP;
- B. As compensatory education, DCPS shall provide Student 150 hours of tutoring and/or mentoring by a provider agreed to by Parent, in the areas of reading, written expression, mathematics, and/or social and life skills. DCPS shall undertake reasonable efforts to ensure the tutoring and/or mentoring occurs in a small group setting consisting of at least three students (including Student), 15 years of age or older; however, DCPS is not responsible by way of this Order for any costs associated with services provided to other students in Student's tutoring/mentoring group.⁴⁷ Hours not utilized by June 30, 2016 shall be forfeited.

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

IT IS SO ORDERED.

Date: March 8, 2015

/s/ NaKeisha Sylver Blount
Impartial Hearing Officer

⁴⁷ To the extent that tutoring and/or mentoring for Student cannot occur in a small group setting, Student shall receive the order tutoring and/or mentoring hours on an individual basis.

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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).