DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E.
Washington, D.C. 20002

Parent, on behalf of STUDENT, [1]	)	
Petitioner,	)	
v.	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Respondent.	)	**Hearing Officer: Frances Raskin**

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*; the District of Columbia Code, §§ 38-2561.01, *et seq.*; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

II. BACKGROUND

On October 4, 2012, this Hearing Officer was assigned to preside over this case. Respondent filed a response ("Response") to the Complaint on November 6, 2012. Respondent filed it Response twenty-one days after the deadline for filing a response.[2]

[1] Personal identification information is provided in Attachment A.
[2] If the Local Education Agency ("LEA") has not sent a prior written notice under 34 C.F.R. § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the

During the prehearing conference, counsel for Petitioner asserted that Petitioner was not prejudiced by Respondent's failure to timely file the Response.

On October 26, 2012, the parties participated in a resolution meeting but did not resolve the Complaint. The parties did not agree to start the forty-five day, due process hearing period on that date. Thus, the resolution period ended on November 2, 2012.

On November 6, 2012, this Hearing Officer held a prehearing conference in which Donovan Anderson, counsel for Petitioner, and William Jaffe, counsel for Respondent, participated. During the prehearing conference, both counsel agreed that the forty-five day, due process hearing timeline began on November 2, 2012. This Hearing Officer informed counsel that the end of the forty-five-day timeline, i.e., the deadline for the hearing officer determination ("HOD"), is December 17, 2012.

During the prehearing conference, the parties agreed to schedule the due process hearing for 9:30 a.m. on November 27, 2012. On November 6, 2012, this Hearing Officer issued a prehearing conference summary and order.

The due process hearing commenced in room 2003 at 9:30 a.m. on November 27, 2012. At the outset of the hearing, this Hearing Officer entered into evidence Petitioner' proposed exhibits,[3] as well as Respondent's proposed exhibits.[4] Petitioner testified and presented three witnesses on her behalf: her educational advocate ("Advocate"), a DCPS school psychologist ("Psychologist"), and an admissions director ("Director") from a nonpublic school ("Nonpublic School"). Respondent presented one witness, a coordinator for co-location classrooms ("Coordinator"). After the parties presented oral closing arguments, the due process hearing concluded at 2:15 p.m. on November 27, 2012.

III. ISSUE PRESENTED.

This Hearing Officer certified the following issue for adjudication at the due process hearing:

Whether Respondent denied the Student a free, appropriate, public education ("FAPE") on September 26, 2012, by failing to provide her an appropriate placement because the program that Respondent identified, the Rise Program at Shaw Middle School, cannot provide the 31 hours of specialized instruction outside the general education

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parent a response that includes (i) an explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) a description of other options that the IEP team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the other factors that are relevant to the agency's proposed or refused action. 34 C.F.R. § 300.508(e).

[3] This Hearing Officer admitted into evidence Petitioner's exhibits 1-7 inclusive. Neither party objected to the admission of the other party's exhibits.

[4] This Hearing Officer admitted into evidence Respondent's exhibits 1-5, inclusive.

setting required by the Student's individualized education program ("IEP"), and is a program for emotionally disturbed students, which would be detrimental to the Student because her behavior would deteriorate.

Petitioner requests relief in the form of an order that would require Respondent to place the Student at public expense at the Nonpublic School for the remainder of the 2012-213 school year.

IV. FINDINGS OF FACT

1. The Student attends a public middle school ("DCPS School 3") in the District of Columbia.[5] She is currently eligible for special education services as a student with other health impairment ("OHI") due to her diagnosis of attention deficit hyperactivity disorder ("ADHD).[6] Her ADHD impacts her overall academic ability and her ability to focus in the classroom.[7]

2. The Student has a full-scale IQ of 100, which is in the average range.[8] She performs in the low average range for her age in reading and in the average range for her age in mathematics, except in the area of math calculation.[9] In math calculation, she performs in the low average range.[10]

3. The Student performs in the low range for her age in written language.[11] In writing fluency she performs in the very low range.[12] She also performs in the low range in the area of reading fluency.[13]

4. The Student's most recent IEP, developed on February 2, 2012, provides that she is to receive thirty-one hours per week of specialized instruction outside the general education setting.[14] The IEP provides that she is to receive sixty minutes per week of

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[5] Testimony of Petitioner; Petitioner Exhibit 1 at 1 (February 2, 2012, Individualized Education Program ("IEP")).
[6] Testimony of Psychologist; Petitioner Exhibit 3 at 4 (May 8, 2012, Addendum to March 26, 2012, Psychological Evaluation); Petitioner Exhibit 1-A at 3 (May 10, 2012, Multidisciplinary Team Meeting Notes).
[7] Testimony of Psychologist.
[8] Petitioner Exhibit 2 at 10 (March 26, 2012, Confidential Comprehensive Psychological Re-evaluation).
[9] *Id.* at 12-13.
[10] *Id.* at 13.
[11] *Id.*
[12] *Id.*
[13] *Id.* at 17.
[14] Petitioner Exhibit 1 at 5.

behavioral support services.[15] The IEP specifies that the Student must be educated in a small class.[16]

5. During the 2011-2012 school year, the Student attended DCPS School 1.[17] At DCPS School 1, she was placed in a program for students with emotional disturbance ("ED").[18] All of the children in this program were eligible for special education services with the disability classification of emotional disturbance.[19]

6. In the ED program at DCPS School 1, the Student's classmates picked on her and agitated her.[20] As a result of her exposure to these students, the Student's behavior changed significantly.[21] She started displaying the inappropriate behaviors exhibited by her classmates and became aggressive.[22] The Student exhibited these behaviors only when provoked or agitated by her peers.[23]

7. On May 10, 2012, the Student's IEP team at DCPS School 1 convened a meeting to discuss the Student's IEP recent psychological assessment.[24] Petitioner attended the meeting as did the Psychologist.[25]

8. During the May 10, 2012, IEP meeting, the Student's IEP team expressed concern that the DCPS School 1 ED program was not appropriate for the Student, particularly because the emotionally disturbed students in this program agitated and picked on her.[26] The Psychologist recommended that the Student be removed from the ED program and placed in her neighborhood school.[27]

9. At the May 10, 2012, IEP meeting, the other members of the Student's IEP team agreed that the ED program was not appropriate for the Student and that she should not have contact with emotionally disturbed students during the school day.[28] The IEP

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[15] *Id.*
[16] *Id.* at 6.
[17] Testimony of Petitioner; testimony of Psychologist.
[18] Testimony of Psychologist.
[19] Some of the children were classified as multiply disabled but emotional disturbance was a component of these children's disability classification. Testimony of Psychologist.
[20] *Id.*
[21] Testimony of Petitioner.
[22] *Id.*
[23] Testimony of Psychologist.
[24] Petitioner Exhibit 1-A at 1.
[25] *Id.*
[26] Testimony of Psychologist.
[27] *Id.*
[28] *Id.*

team recommended that the Student enroll in her neighborhood school for the 2012-2013 school year.[29]

10. At the beginning of the 2012-2013 school year, Petitioner enrolled the Student in her neighborhood school, DCPS School 2.[30] She had attempted to re-enroll the Student in DCPS School 1 but the DCPS School 1 special education coordinator informed Petitioner that she had to enroll the Student in her neighborhood school.[31]

11. The Student has been attending DCPS School 2 since late August 2012.[32] From the date she began attending DCPS School 2 through the date of the due process hearing, the Student has been educated in the school's program for students with emotional disturbance and intellectual disability.[33]

12. On September 26, 2012, Petitioner attended a resolution meeting to discuss a due process complaint she had filed against Respondent.[34] At the resolution meeting, Respondent informed her that it planned to place the Student in the "Rise" program at DCPS School 3.[35] DCPS School 3 is the only middle school with a Rise program.[36]

13. The Rise program is for students with challenging behaviors that impact their ability to learn.[37] The Rise program at DCPS School 3 utilizes blended instruction in which students receive direct instruction from a special education teacher and engage in online learning on a computer.[38] The computer program assesses each student's skill levels and then provides exercises designed to assist the student in achieving grade-level performance.[39] The computer program is designed to reinforce the direct instruction the student's teacher provides.[40]

14. In the Rise program, online learning comprises twenty-five percent of the instruction.[41] The students rotate between direct instruction, online learning, and working independently.[42]

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[29] *Id.*
[30] Testimony of Petitioner.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] Testimony of Coordinator.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*

15. The students in the Rise program remain in their classroom throughout the school day except during their lunch period.[43] They have lunch in the cafeteria at a time when no other students are present.[44]

16. DCPS School 3 has two classrooms dedicated to the Rise program.[45] One classroom has students in the sixth, seventh, and eighth grades.[46] The other classroom has students in the seventh and eighth grades.[47] One of these classrooms has five students and the other classroom has four students.[48] Each classroom has a special education teacher, a paraprofessional/aide, and a behavioral technician.[49] Thus, the student-adult ratio in the Rise classrooms is either 5:3 or 4:3.[50]

17. All but one of the students in the Rise program at DCPS School 3 are emotionally disturbed.[51] The remaining student has a disability classification of OHI.[52]

18. Sometime before September 26, 2012, a DCPS compliance team assigned the Coordinator the task of determining whether the Rise program would be appropriate for the Student.[53] The Coordinator subsequently determined that the Rise program at DCPS School 3 would be appropriate for the Student because it would be able to provide thirty of the thirty-one hours of specialized instruction required by her IEP.[54]

19. In considering whether the Rise Program at DCPS School 3 would be appropriate for the Student, the Coordinator acknowledged that the Student's IEP team at DCPS School 1 had determined that the Student should have no contact with emotionally disturbed students during the school day.[55] She understood that the team reached this conclusion due to the Student's history of mimicking the inappropriate behaviors of the emotionally disturbed students in the ED program at DCPS School 1.[56] Even though the Student would be surrounded by students with emotional disturbance, the Coordinator determined that the Rise program would be appropriate for the Student.[57]

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[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] Testimony of Coordinator.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*

20. At the September 26, 2012, meeting, a representative from the RISE program explained to Petitioner that, in the Rise program, the Student would be placed in a classroom with students with emotional disturbance.[58] Because Petitioner did not believe it was appropriate for the Student to be in a classroom with students with emotional disturbance, she did not follow Respondent's directive to enroll her in DCPS School 3.[59] To date, the Student has continued to attend DCPS School 2.[60]

21. The Nonpublic School is a special education day school.[61] The school primarily serves students with learning disabilities, although it also serves students with other disability classifications.[62] Students at the Nonpublic School have no interactions with their nondisabled peers during the school day.[63]

22. At the Nonpublic School, the Student would be placed in a self-contained classroom with six other students.[64] A special education teacher and a paraprofessional staff each of the classrooms at the Nonpublic School.[65] If the Student were to attend the Nonpublic School, the student-adult ratio in her classroom would be 3.5:1.[66]

23. The Student would not interact with emotionally disturbed students at the Nonpublic School.[67]

24. The Nonpublic School would provide the Student the thirty-one hours of specialized instruction and one hour of behavioral support services required by the Student's February 2, 2012, IEP.[68] It also would provide the art therapy that the Student requires as part of her behavioral support services.[69]

25. At the Nonpublic School, the Student's classroom teacher would provide individualized instruction for twenty-five minutes of each hour.[70] During the remainder of the hour, the Student's time would be divided between working on a computer-assisted

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[58] Testimony of Petitioner.
[59] *Id.*
[60] *Id.*
[61] Testimony of Director.
[62] *Id.*
[63] *Id.*
[64] Testimony of Director. The Student and her classmates would eat lunch in their classroom. *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*; Petitioner Exhibit 1-A at 3.
[70] *Id.*

assignment and working independently at her desk.[71] The computer-assisted assignments are designed to reinforce the classroom instruction.[72]

26. In total, at the Nonpublic School, the Student would spend seventy-five minutes per day working on computer-assisted assignments.[73] The Student would receive assistance from the teacher or paraprofessional throughout the school day.[74]

27. All of the teachers at the Nonpublic School have certifications to teach special education.[75] The teachers who provide instruction in core academic areas also have teaching certifications in English.[76]

28. The District of Columbia Office of State Superintendent of Education has issued a certificate of approval to the Nonpublic School.[77] The tuition at the Nonpublic School is $36,000 per year.[78] The Student's behavioral support services would be an additional $67.67 per hour.[79]

29. Petitioner provided credible testimony. She testified forthrightly about the Student's behavioral difficulties at DCPS School 1. The Psychologist corroborated Petitioner's testimony about the inappropriateness of the ED program at DCPS School 1. Petitioner's testimony evidenced a clear recollection of the facts of this case, including the meetings she attended and the discussions at those meetings.

30. The Psychologist provided credible testimony. Her testimony revealed that she was intimately familiar with the facts of this case, including the findings of the psychological assessment she conducted and the discussion during the May 10, 2012, IEP meeting. The testimony of Petitioner, as well as the documentary evidence, corroborated the Psychologist's testimony.

31. The Educational Advocate did not provide credible testimony. She admitted that she had no first-hand knowledge of the facts of this case, did not attend any of the meetings, had not observed the Student in her classroom, and had not observed the Rise program at DCPS School 3. She admitted that her testimony was speculative.

32. The Coordinator provided credible testimony. She admitted that she placed the Student in the Rise program with the knowledge that the Student's IEP team determined that she should not be educated with children with emotional disturbance. She also admitted that her decision to place the Student in the Rise program was not based on

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[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*

the Student's individualized needs but instead on the ability of the Rise program to implement her IEP. She also admitted that she made the decision to place the Student in the Rise program unilaterally. These admissions show that that the Coordinator testified credibly.

V. CONCLUSIONS OF LAW

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."[80] Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.[81] FAPE is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA . . . include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)."[82]

In deciding whether Respondent provided a student a FAPE, the inquiry is limited to (a) whether Respondent complied with the procedures set forth in IDEA; and (b) whether the student's IEP is reasonably calculated to enable the student to receive educational benefit.[83] Under this second "substantive" prong, a school district need not maximize the potential of children with disabilities, but the door of public education must be opened in a meaningful way, and the IEP must provide the opportunity for more than only "trivial advancement."[84]

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.[85] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[86]

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[80] *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).
[81] *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).
[82] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.
[83] *Rowley*, 458 U.S. at 206-207.
[84] *P. v. Newington Bd. of Educ.*, 546 F.3d. 111 (2nd Cir. 2008) (citations omitted).
[85] 34 C.F.R. § 300.513 (a)(2).
[86] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

The burden of proof is properly placed upon the party seeking relief.[87] Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[88] The preponderance of evidence standard simply requires the trier of fact to find that the existence of a fact is more probable than its nonexistence.[89] In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.[90]

Unlike other standards of proof, the preponderance-of-evidence standard allows both parties to share the risk of error in roughly equal fashion,[91] except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.[92]

VI. DISCUSSION

Petitioner Proved that Respondent Denied the Student a FAPE by Failing to Provide Her an Appropriate Placement for the 2012-2013 School Year.

The IEP is "the centerpiece of the statute's education delivery system for disabled children."[93] An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,[94] establishes annual goals related to those needs,[95] and provides appropriate specialized instruction and related services.[96] For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."[97]

Each LEA must ensure that, as soon as possible following the development of an IEP, special education and related services are made available to the child in accordance with

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[87] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[88] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).
[89] *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).
[90] *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), *aff'd*, 512 U.S. 267 (1994).
[91] *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).
[92] *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).
[93] *Honig v. Doe*, 484 U.S. 305, 311 (1988).
[94] 34 C.F.R. § 300.320 (a) (1).
[95] 34 C.F.R. § 300.320 (a) (2).
[96] 34 C.F.R. § 300.320 (a) (4).
[97] *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).

the child's IEP.[98] In order to implement the IEP, a team that includes the child's parents determines where the child should be placed based on the child's IEP.[99]

Placement decisions must be made in conformity with the child's IEP.[100] Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.[101] The considerations relevant to determining whether a particular placement is appropriate for a particular student include 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 school; the placement's cost; and the extent to which the placement represents the least restrictive environment.[102]

The term "educational placement" refers to the type of educational program prescribed by the IEP.[103] Educational placement refers to the general educational program, such as the classes, individualized attention, and additional services a child will receive, rather than the "bricks and mortar" of the specific school.[104]

The question of what constitutes a change in educational placement is, necessarily, fact specific and thus, "in determining whether a given modification in a child's school day should be considered a 'change in educational placement,'" the "touchstone" is whether the modification "is likely to affect in some significant way the child's learning experience."[105] In determining whether a "change in educational placement" has occurred, the LEA must

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[98] 34 C.F.R. § 300.323 (c)(2). Public agency includes the state education agency, local education agencies ("LEAs"), educational service agencies ("ESAs"), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of a State that are responsible for providing education to children with disabilities. 34 C.F.R. § 300.33.
[99] 34 C.F.R. § 300.116.
[100] 34 C.F.R. § 300.116 (a)(2)(b), D.C. Mun. Reg. tit. 5-E § 3013 (2006); *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258 (4th Cir. 1988).
[101] *See Rourke v. District of Columbia,* 460 F.Supp.2d 32, 44 (D.D.C. 2006).
[102] *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202). *See also* D.C. Mun. Reg. tit. 5-E § 3013 (in selecting the least restrictive environment, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs).
[103] *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).
[104] *Id.* In the District of Columbia, special education placements shall be made in the following order or priority, provided, that the placement is appropriate for the student and made in accordance with IDEA: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school; (2) Private or residential District of Columbia facilities; and (3) Facilities outside of the District of Columbia. D.C. Code § 38-2561.02. If no public school can accommodate the student's needs, the government is required to place the student in an appropriate private school and pay the tuition.

[105] *J.R. v. Mars Area Sch. Dist.*, 318 Fed. Appx. 113, 119 (3d Cir. Pa. 2009).

determine whether the proposed change would substantially or materially alter the child's educational program.[106]

In determining the appropriate placement for a child, preference given to the least restrictive environment and the appropriate schools nearest the child's home.[107] In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs.[108] A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.[109] 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.[110]

In the District of Columbia, special education placements shall be made in the following order or priority, provided, that the placement is appropriate for the student and made in accordance with IDEA: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school; (2) Private or residential District of Columbia facilities; and (3) Facilities outside of the District of Columbia.[111] If no public school can accommodate the student's needs, the government is required to place the student in an appropriate private school and pay the tuition.[112]

Here, the Student's IEP team determined that she requires thirty-one hours of specialized instruction outside the general education environment. In other words, the IEP team determined that the Student must be educated in a classroom environment where she has no interaction with her nondisabled peers. Throughout the 2011-2012 school year, and from the beginning of the 2012-2013 school year through the date of the due process hearing, the Student has been educated in this environment. This is the only factor the Coordinator considered in deciding to place the Student in the Rise program at DCPS School 3.

While the Rise program can substantially implement the Student's IEP, this is not the only factor that Respondent should have considered in determining where to place her for the 2012-2013 school year. In deciding to place the Student in the Rise program at DCPS School 3, Respondent failed to give proper weight to the fact that it would expose the Student to emotionally disturbed students throughout the school day. As her experience at DCPS School 1 showed, this would cause the Student to mimic the inappropriate behaviors of the emotionally disturbed students and become aggressive. For this reason, the Rise

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[106] *Letter to Fisher*, 21 IDELR 992 (Office of State Education Programs ("OSEP")), July 6, 1994).
[107] *Id.*
[108] *Id.* at § 300.116 (d).
[109] *Id.* at § 300.116 (e)
[110] 34 C.F.R. § 300.116 (c).
[111] D.C. Code § 38-2561.02.
[112] 20 U.S.C. § 1412(a)(10)(B)(I); *see also Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369 (1985).

program at DCPS school 3 would not be appropriate for the Student.

The Student fared no better at her neighborhood school. Instead of placing the Student in the classroom setting that her IEP team determined would be appropriate, DCPS School 2 again placed her in a program where she was exposed to students with emotional disturbance throughout the school day.

Thus, Petitioner proved that Respondent denied the Student a FAPE by failing to provide her an appropriate placement for the 2012-2013 school year. Petitioner also proved that Respondent cannot implement the Student's IEP in the setting that meets her individualized needs or ensures that she has no contact with emotionally disturbed students.

Petitioner also proved that the Nonpublic School would be appropriate for the Student. The Nonpublic School can fully implement the Student's IEP. Although it is a slightly more restrictive placement than the placement contemplated by the Student's February 2, 2012, IEP, the Nonpublic School will provide the small classes she requires. Most importantly, at the Nonpublic School, the Student will have no contact with students with emotional disturbance throughout the school day.

Thus, this Hearing Officer finds that the Nonpublic School is an appropriate placement for the Student. This Hearing Officer further finds that the Nonpublic School's tuition rates are reasonable.

ORDER

Based upon the findings of fact and conclusions of law herein, it is hereby ordered that, by January 7, 2013, Respondent shall place the Student at the Nonpublic School, with transportation, for the remainder of the 2012-2013 school year at public expense.

By: /s/ *Frances Raskin*
Frances Raskin
Hearing Officer

Date: December 13, 2012.

NOTICE OF APPEAL RIGHTS

The decision issued by this Hearing Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).