

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
August 30, 2015

STUDENT, ¹)	
through the PARENT,)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>)	
)	Case No: 2015-0206
v.)	
)	Date Issued: August 30, 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 June 16, 2015 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On June 25, 2015 Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

On June 19, 2015 Petitioner filed a motion for stay put protection. Respondent filed an opposition to the motion on June 24, 2015, and Petitioner filed a reply to the opposition on June 25, 2015. On July 1, 2015 the undersigned issued an Order granting the stay put motion.

The parties convened a resolution session meeting (“RSM”) in this matter on July 10, 2015. The parties did not reach an agreement during the RSM; however, they agreed to keep the resolution process open for the entire 30-day resolution period. Accordingly, the parties agree that the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on July 17, 2015, and 45 day period concludes on August 30, 2015.

¹ Personal identification information is provided in Appendix A.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on July 16, 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 August 6, 2015 and that the DPH would be held on August 13, 2015 and August 14, 2015. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on July 21, 2015.

The DPH was held on August 13, 2015 and August 14, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Room 2004. Petitioner elected for the hearing to be closed. Petitioner was represented by Alana Hecht, Esq. and DCPS was represented by Daniel McCall, Esq.

Petitioner’s disclosures were timely filed and served. Respondent’s disclosures, though timely filed with the Office of Dispute Resolution and the IHO, were inadvertently not timely served on Petitioner. Therefore, on Petitioner’s motion and pursuant to 34 C.F.R. §300.512(a)(3), Respondent’s disclosures were excluded. At the DPH, Petitioner’s exhibits P-1 (pages P-1-1 through P-1-62) through P-29 were admitted without objection. Petitioner did not offer P-1-63 through P-1-67 into evidence.

Petitioner called the following witnesses at the DPH:

- (a) Parent
- (b) Speech and Language Director, Nonpublic School (“Speech and Language Director”)
- (c) Special Education Teacher, Nonpublic School (“Special Education Teacher”)
- (d) Nonpublic Administrator
- (e) Senior Educational Advocate

Respondent rested on the evidence.

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 in June 2015 DCPS predetermined, without involvement of the parent or IEP team, that it would be removing Student from Nonpublic School to a less restrictive setting, and pre-determined Student’s IEP services.
- (b) Whether DCPS denied Student a FAPE by failing to provide him an appropriate IEP at the June 11, 2015 IEP meeting, in that the IEP: (1) was based on DCPS’ ability to implement it at an LRE, and not on Student’s needs; (2) it inappropriately reduces his level of specialized instruction; and (3) inappropriately removes him from a nonpublic (separate or “special”) school.

- (c) Whether DCPS denied Student a FAPE by failing to consider the harm to Student when they unilaterally determined they would be removing him from a separate/special school and placing him in an LRE.²
- (d) Whether DCPS denied Student a FAPE by delegating his placement decision to a team that does not include the parent or anyone knowledgeable about Student.
- (e) Whether DCPS denied Student a FAPE by failing to offer him an educational placement in any program in DCPS, even after indicating an intention to move him to an LRE.
- (f) Whether DCPS denied Student a FAPE by failing to issue a Prior Written Notice detailing its actions on June 11, 2015.

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) a finding in Petitioner's favor on all issues;
- (b) an Order that DCPS fund Student's tuition and transportation to Nonpublic School, and issue a Prior Written Notice of this placement no later than 15 days following the issuance of the decision in this matter;
- (c) an Order that DCPS give Nonpublic School access to Student in the SEDS computer database within 5 days of the decision in this matter;
- (d) an Order that DCPS hold a properly constituted IEP meeting within 15 school days of a decision in this matter to revise Student's IEP, returning it to the number of service hours and LRE in his April 2014 IEP;
- (e) if the hearing officer fails to find that Student requires a full-time separate day school, an order that DCPS hold a properly constituted IEP meeting within 15 school days of a decision in this matter to revise Student's IEP to align with the hearing officer's findings of fact regarding Student's IEP and placement and order any other appropriate changes to Student's IEP based on hearing officer findings.

FINDINGS OF FACT

1. Student is [AGE] years old. During the 2014-2015 school year, he was a [GRADE] grade student at Nonpublic School. Student resides with her mother ("Parent"/"Petitioner") in Washington, D.C.³

2. From at least the 2011-2012 to the 2013-2014 school year, Student's local education agency responsible for providing him special education and related services was District Charter School. During the 2014-2015 school year, Student had "aged out" of District

² As written in the DPC, Issue (c) contains three sub-issues, which are incorporated into Issue (c), though not separately delineated. The three sub-issues assert that DCPS failed to offer any educational placement to Student and that, from the information that was provided regarding Student's removal from the separate school, the parent was aware that DCPS' intention was to change Student's placement to a less restrictive environment. Petitioner alleges that Student's placement was changed without any consideration of the harm to Student from such a move.

³ Testimony of Parent.

Charter School (in other words, he had progressed beyond the highest grade District Charter School accommodates), and DCPS became the LEA responsible for Student's special education.⁴

3. DCPS required that Student enroll in and/or attend a DCPS school prior to DCPS offering to implement Student's IEP or otherwise provide Student with special education and related services. Parent maintained Student at Nonpublic School and filed a DPC.

4. A February 28, 2015 HOD from Hearing Officer Michael Lazan found DCPS' requirement that Student enroll in and/or attend a DCPS school prior to DCPS providing Student with special education and related services had denied Student a FAPE, and ordered DCPS to fund Student's attendance at Nonpublic School for the 2014-2015 school year, including transportation.⁵

Student's Disability, Assessments and Recent School Performance:

5. Student is eligible for special education and related services under the disability classification "Specific Learning Disability"⁶ ("SLD"). Student has significant reading, writing and mathematics deficits.⁷ Due to his impulsivity, transitions from one place in the building to another place can be difficult for Student, and he requires prompting and redirection to complete assignments. Student also has receptive and expressive language deficits that impact his education and for which he receives speech and language therapy as a related service.⁸

6. During the 2014-2015 school year, Student was in a self-contained class at Nonpublic School with six students who remained in the same classroom for all their academic instruction. The students in Student's classroom, including Student, all have significant deficits and need significant one-on-one instruction/assistance to make academic progress. There were generally four adults in the classroom at any given time, including the teacher, a teacher's assistant, a speech and language therapist or an occupational therapist, and a dedicated aide. All instruction in the classroom was direct instruction (no computerized instruction), and the students received frequent prompting and other executive functioning supports. Student's speech therapy was integrated throughout all his academic instruction.⁹

7. Student made academic progress in reading, mathematics and writing in his 2014-2015 setting. He remains below grade level in each academic area and he continues to require multiple prompts and reminders to start and complete his work; however, his report card grades are good, with mostly "As" and "Bs" and occasional "Cs" during the 2013-2014 and 2014-2015 school years.¹⁰

⁴ P-9.

⁵ P-9.

⁶ P-13-1.

⁷ Testimony of Special Education Teacher.

⁸ P-13-3.

⁹ Testimony of Special Education Teacher.

¹⁰ Nonpublic Administrator; P-3.

8. The most recent assessment included in the DPH record for Student is a two page document from January 7, 2014 prepared by Nonpublic School, providing the results of a Woodcock-Johnson III – Normative Update: Tests of Achievement administered to Student. The assessment shows Student functioning approximately 4-5.5 grade levels below his grade at the time.¹¹ Student’s present levels of performance in his June 2015 IEP continue to reflect struggle in mathematics, reading, written expression and communication/speech and language, though he also made some progress in the highly structured and modified classroom environment to which he was assigned during the 2014-2015 school year.

9. During the 2015-2016 school year, Nonpublic School intends to transition Student to a “step down” program with more transitions (across the hall) during the school day and helping him practice bringing his materials with him. Nonpublic School intends to ease up on the high level of supervision it gave Student during the 2014-2015 school year, and to give Student the opportunity to practice more skills on his own.¹²

10. Student plays sports for a community sports team outside the school day, and he enjoys interacting with his nondisabled peers through the sport.¹³

IEPs/Prior Written Notice/Location of Services Letter:

11. Prior to his current IEP, Student’s most recent IEP was from February 27, 2014 (“February 2014” IEP). The February 2014 IEP defined Student’s least restrictive environment (“LRE”) as a “small, structured classroom [with a] low student to teacher ratio with specialized instruction and integration of therapies in an out of general education, nonpublic placement.” It called for Student to received 29 hours per week of specialized instruction outside of the general education setting, and 240 minutes per month of speech-language pathology outside the general education setting, indicating that Student’s “difficulties in the areas of receptive and expressive language greatly reduce [his] ability to access the classroom curriculum.”¹⁴

12. On June 11, 2015, DCPS convened an annual review IEP team meeting (“June IEP meeting”) for Student. Student, Parent and Senior Educational Advocate attended the meeting, along with Nonpublic Administrator. Two DCPS employees also attended the meeting, including the Compliance Case Manager from the Office of Specialized Instruction at DCPS’ Central Offices¹⁵ and the LEA Representative assigned to monitor Nonpublic School.¹⁶

13. On June 5, 2015, a few days prior to the June IEP meeting, DCPS sent Parent and Senior Educational Advocate a draft IEP for them to review ahead of the meeting (“Draft 1”).¹⁷ Draft 1 maintained the description of Student’s LRE except that it did not include the language that Student needed a “nonpublic placement” and it reduced the number of weekly hours of

¹¹ P-21.

¹² Nonpublic Administrator.

¹³ Testimony of Parent.

¹⁴ P-5-14.

¹⁵ P-1-10

¹⁶ P-13-1.

¹⁷ P-1-13.

specialized instruction Student needed from 29 hours per week to 26.5 hours per week.¹⁸ The 2.5 hours difference in specialized instruction between the 29 hour IEP and the 26.5 hour IEP represents the time a student spends at lunch and in “specials” (elective classes).¹⁹

14. Toward the conclusion of the June 2015 IEP team meeting, DCPS provided team members a revised draft of the IEP (“Draft 2”). Draft 2 maintained the Draft 1 changes, and also removed the language that Student required “integration of therapies.”²⁰

15. During the June 2015 IEP team meeting, the two DCPS employee team members proposed that Student attend a DCPS school (a less restrictive environment) during the upcoming school year. They believed Student’s records indicated he is capable of interacting with non-disabled peers, at least during lunch. Their recommendation was also based on the LEA Representative’s two observations of Student during the 2014-2015 school year (during which she found him to be a very hard worker, asking for help as needed and having positive peer interaction).²¹

16. Only the two DCPS staff members believed that Student was ready for a less restrictive environment. None of the non-DCPS team members agreed with the changes DCPS proposed to the description of Student’s LRE in Draft 1 or Draft 2 of the IEP. Each member of the team was able to fully participate during the meeting, and the entire team essentially agreed on the remainder of the IEP. Though the non-DCPS members of the team were ultimately unsuccessful in persuading the DCPS team members that Nonpublic School remains Student’s LRE, there was a meaningful discussion of what Student’s appropriate LRE was during the meeting, and there was also some discussion of the number of services hours that are appropriate for Student. All members of the team were able to fully share their views during the meeting, and DCPS did not place restrictions on the topics to be discussed.²² However, there was no discussion during the meeting regarding removing the language about “integration of therapies” from Student’s IEP. The meeting had already concluded when Parent’s advocates noticed that this language had been removed from Draft 2.²³

¹⁸ P-1-25.

¹⁹ Testimony of Senior Educational Advocate.

²⁰ P-11-12.

²¹ Testimony of Nonpublic Director; P-12-3.

²² Senior Educational Advocate; Nonpublic Administrator. Though witnesses for Petitioner testified that the LRE portion of the discussion was relegated to the end of the meeting, the Hearing Officer concludes that this portion of the discussion was meaningful based meeting notes from Petitioner’s advocate (the LRE portion of the discussion comprised nearly half of the notes); the fact that, based on the notes, DCPS Compliance Case Manager indicated that DCPS would further consider the arguments from Nonpublic School against moving Student to a less restrictive environment; the fact that Student’s IEP was not finalized until nearly two weeks after the meeting; and the fact that prior to the finalization Petitioner submitted to DCPS additional arguments to consider against moving Student to a less restrictive environment.

²³ Testimony of Senior Educational Advocate; P-12.

17. Student's finalized June 22, 2015 IEP includes the Draft 2 description of Student's LRE.²⁴

18. On June 22, 2015, the same day as the IEP was finalized, DCPS issued to Parent a "Prior Written Notice – Notice of Change in Placement" and a location of services letter assigning Student to the Specific Learning Supports program at District School. District School is able to implement Student's IEP as revised in June 2015,²⁵ but would not have been able to implement the IEP Student had prior to June 2015.

Nonpublic School:

19. Nonpublic School serves students with various disabilities, including SLD.

20. Nonpublic School's typical class size is 7-8 students, though Student's 2014-2015 self-contained classroom at Nonpublic School was smaller than its typical class.

21. Nonpublic School offers students the opportunity to pursue a high school diploma.

22. Nonpublic School has a certificate of approval from the Office of State Superintendent of Education for the District of Columbia ("OSSE"), and charges tuition consistent with the OSSE approved rate – approximately \$41,100 per year, plus the costs of related services.

CONCLUSIONS OF LAW

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the impartial hearing officer by a preponderance of the evidence. DCMR 5-E3022.16; *see also*, *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 17 n.3 (D.D.C. 2008).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the student's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

²⁴ P-13-13.

²⁵ P-14; P-15.

(a) Whether in June 2015 DCPS predetermined, without involvement of the parent or IEP team, that it would be removing Student from Nonpublic School to a less restrictive setting, and pre-determined Student's IEP services.

The IDEA requires LEAs to “ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.” *See* 20 U.S.C. § 1414(e); 34 C.F.R. § 300.327. Respondent argues that Student’s placement was his IEP, which was determined during the June 2015 IEP meeting with Parent’s full participation, and that the subsequent selection of a school for Student to attend was a location of services decision which the IDEA does not require that parents be included in. Respondent is correct that that, while the IDEA requires a student’s parents to be part of the team that creates the IEP and determines the educational placement of the child, it does not explicitly require parental participation in mere site selection. *See, e.g., James v. District of Columbia*, 2013 WL 2650091, 3 (D.D.C. Jun. 9, 2013). Therefore, the relevant inquiry turns around whether the changes made to Student’s IEP during the June 2015 IEP team meeting changed Student’s placement from what it had previously been and, if so, whether DCPS predetermined the components of the IEP that constituted a placement change, prior to the June 2015 meeting. Because the June 2015 IEP reduced the number of hours of specialized instruction Student would receive from 29 hours per week to 26.5 hours per week, removed language requiring that Student would receive “integration of therapies,” and because the June 2015 IEP removed the requirement that Student be educated in a nonpublic school, the Hearing Officer concludes that the June 2015 IEP represented a change in placement from the February 2014 IEP, which had been in place until that time.

The Hearing Officer does not find that the evidence establishes by a preponderance of the evidence that DCPS “predetermined” that DCPS would be moving Student to a less restrictive setting and/or predetermined Student’s IEP services, in the sense that Parent was not a part of the group that made the placement decision. “Predetermination” is a term of art sometimes used to refer to the requirement that parents be given the opportunity to participate in the placement decision for their child. *See J.N. v. District of Columbia*, 677 F. Supp. 2d 314, 320 (D.D.C. 2010). As discussed in the findings of fact above, there was meaningful discussion among the team about the appropriate LRE for Student. There was also some discussion of the number of services hours that are appropriate for Student. All members of the team were able to fully share their views during the meeting, and DCPS did not place restrictions on the topics to be discussed. Neither the fact that DCPS provided a draft IEP proposing a less restrictive environment, nor the fact that the arguments of rest of the team against moving Student to a less restrictive environment were unavailing to the DCPS members of the team establish that Parent was not a part of the team that made the ultimate decision. “While [Petitioner] object’s to [Student’s] ultimate placement, her disagreement does not constitute exclusion form the decision-making process.” *Cooper v. District of Columbia*, 77 F. Supp. 3d 32, 38 (D.D.C. 2014). The draft Petitioner received ahead of the meeting enabled Petitioner to better prepare for the meeting, including being prepared to counter DCPS’ proposal to move Student to a less restrictive environment. The draft Petitioner received on the day of the meeting reflected that, as of that point in time, DCPS had not yet been persuaded that Student continued to require the same level of restrictiveness. DCPS issued a location of services letter and a PWN assigning Student to District School on the same day the IEP was finalized.

However, there was no discussion during the meeting regarding removing the language about “integration of therapies” from Student’s IEP. The meeting had already concluded when Parent’s advocates noticed that this language had been removed from Draft 2. The evidence is that integration of therapies has been of great significance to Student’s learning experience. The removal of that language from his IEP is one of the cumulative factors that lead the Hearing Officer to conclude above that the June 2015 IEP was a change in placement. Failure to include Parent in the decision to remove that language violates the IDEA, and the Hearing Officer finds that this procedural violation also rises to the level of a denial of FAPE, both because it significantly impeded Parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and because it is more likely than not to cause a deprivation of educational benefit to Student.

Petitioner did not meet her burden of proving that DCPS “predetermined” that Student would be moved from Nonpublic School to another setting; however, Petitioner met her burden of proving that DCPS did not include Parent in the decision to remove the requirement for “integration of therapies” from Student’s IEP.

- (b) Whether DCPS denied Student a FAPE by failing to provide him an appropriate IEP at the June 11, 2015 IEP meeting, in that the IEP: (1) was based on DCPS’ ability to implement it at an LRE, and not on Student’s needs; (2) it inappropriately reduces his level of specialized instruction; and (3) inappropriately removes him from a nonpublic (separate or “special”) school.**

As stated above, the Hearing Officer has concluded that the revisions to Student’s IEP in June 2015 constituted a change of placement. However, a change in placement – even when a parent vehemently disagrees with that change in placement – does not inherently mean the changes violated the IDEA or constituted a denial of FAPE.²⁶ Otherwise, an LEA would be powerless to ever, for example, move a student from a nonpublic school to public school when the parent did not want the student to be moved. This is obviously not the type of dynamic the IDEA contemplates, as “[t]he minimum standard set out by the Supreme Court in determining whether a child is receiving a FAPE, or the ‘basic floor of opportunity,’ is whether the child has ‘access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.’” *A.I. ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 167 (D.D.C.2005), quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201 (1982).

What is relevant when assessing the appropriateness of a change in placement is the Student’s needs as reflected (or as should have been reflected) in the student’s IEP, as well as the basis for the decision to change the student’s placement. While the Hearing Officer has not found that DCPS “predetermined” (pursuant to 34 C.F.R. §300.327) Student’s placement or

²⁶ Analyzing the appropriateness of an IEP team’s decision to affirmative change a student’s educational placement is a different from a stay-put analysis. When stay-put protection applies, it is automatic and not a decision on the merits of the case. See *G.B. v. District of Columbia*, 2015 WL 170018, *3 (D.D.C. January 14, 2015).

services, it clearly came to the IEP team meeting table with a perspective on what Student needed, which is not in and of itself improper. Based on the DPH record, however, the Hearing Officer concludes that there was not sufficient data to support a decision to remove language requiring “integration of therapies” from Student’s IEP, reduce Student’s hours of specialized instruction, or to move Student to a less restrictive point along the continuum of alternative placements. Notwithstanding the two observations the LEA Representative conducted of Student during the 2014-2015 school year, the testimony at the DPH and other information provided by the educators at Nonpublic School who work with Student on a daily basis consistently points to the importance of integrating Student’s speech therapy throughout his academic day in order for him to make academic progress as well as the importance of him having supervised lunches due to Student’s difficulty remaining organized during unstructured time. The next level of inquiry turns on whether the procedural violation of reducing Student’s IEP services without sufficient data constituted a denial of FAPE.

Senior Educational Advocate testified that the difference in hours between the February 2014 and the June 2015 IEP represents time spent in lunch and specials. Parent and Educational Advocate testified that they do not believe Student is ready to eat lunch with nondisabled peers because Student may be bullied and because Student still makes inappropriate choices during lunch at Nonpublic School; however, these concerns would not necessarily impact Student’s learning experience. Special Education Teacher testified that when she taught Student, he would sometimes arrive late for class after lunch because he would socialize and lose track of time. This is a concern; however, there was not testimony that post-lunch tardiness has been a pervasive problem for Student, nor was there any credible evidence that only a nonpublic school can mitigate against this type of problem, which even some nondisabled students Student’s age share. “An IEP must be ‘reasonably calculated’ to confer educational benefits on the child, but need not ‘maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children.’” *Dixon v. District of Columbia*, 2015 WL 1244452, *6 (D.D.C. 2015), citing *Rowley*, 458 U.S. at 200. Student’s specials at Nonpublic School were not in a self-contained classroom. Student and his classmates transitioned to physical education, art, and music.²⁷ Additionally, Student’s physical education and art teachers were not certified special education teachers. For these reasons, the Hearing Officer does not find there to be sufficient evidence to conclude that the reduction of hours of specialized instruction and/or the removal of language requiring that Student be educated at a nonpublic school would adversely impact Student’s education.

However, there was substantial testimony of the importance of integration of therapies to Student’s ability to make academic progress. The Hearing Officer finds that with the removal of this language, Student’s IEP was not reasonably calculated for Student to make academic progress. This violation rises to the level of a denial of FAPE both because it significantly impeded Parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and because it is more likely than not to cause a deprivation of educational benefit to Student. Petitioner met her burden of proof on this issue with respect to the removal of language regarding “integration of therapies” from Student’s June 2015 IEP.

²⁷ Testimony of Special Education Teacher.

(c) Whether DCPS denied Student a FAPE by failing to consider the harm to Student when they unilaterally determined they would be removing him from a separate/special school and placing him in an LRE.²⁸

Petitioner's DPC includes three sub-issues along with this issue, asserting that DCPS failed to offer any educational placement to Student and that, from the information that was provided regarding Student's removal from the separate school, Parent was aware that DCPS' intention was to change Student's placement to a less restrictive environment. Petitioner alleges that Student's placement was changed without any consideration of the harm to Student from such a move. As discussed in issue "(a)," the Hearing Officer concludes that DCPS considered the arguments Parent, Student and their advocates made about the harm to Student they foresaw if Petitioner was moved from Nonpublic School to a less restrictive setting, even though DCPS did not agree with Petitioner's position. Therefore, the Hearing Officer does not conclude that Petitioner met the burden of proving that DCPS denied Student a FAPE by failing to consider the harm (as alleged by Petitioner and her advocates) to Student by moving him from a separate school, or that DCPS made that particular decision "unilaterally" (meaning without participation from Parent), despite the lack of agreement among the team members about the ultimate decision.

(d) Whether DCPS denied Student a FAPE by delegating his placement decision to a team that does not include the parent or anyone knowledgeable about Student.

There are instances in which placement can be location specific/dependent; however, in this instance, as stated above with respect to issue "(a)" above, the Hearing Officer has concluded that the changes made to Student's IEP in June 2015 constituted a change of placement. As also stated above, the Hearing Officer has concluded that Parent was a part of the team that made that decision, even though DCPS was not ultimately persuaded by Parent's position. Once Student's placement was changed through the revisions to his IEP, the process of selecting a school that could implement the revised IEP was a location of services decision, which the IDEA does not mandate that the LEA allow a parent to participate in. Petitioner did not meet the burden of proving that DCPS denied Student a FAPE by delegating his placement decision to a team that does not include Parent or anyone knowledgeable about Student.

(e) Whether DCPS denied Student a FAPE by failing to offer him an educational placement in any program in DCPS, even after indicating an intention to move him to an LRE;

Though DCPS had not offered Student a location of services as of the date the DPC in this case was filed – June 16, 2015, three business days after the June 11, 2015 IEP team meeting – DCPS offered Student a location of services on the exact same day it finalized Student's IEP – June 22, 2015. This was not an unreasonable trajectory of events. Petitioner did not meet the

²⁸ As written in the DPC, Issue (c) contains three sub-issues, which are incorporated into Issue (c), though not separately delineated. The three sub-issues assert that DCPS failed to offer any educational placement to Student and that, from the information that was provided regarding Student's removal from the separate school, the parent was aware that DCPS' intention was to change Student's placement to a less restrictive environment. Petitioner alleges that Student's placement was changed without any consideration of the harm to Student from such a move.

burden of proving that DCPS denied Student a FAPE by failing to offer him an educational placement in any program in DCPS, even after indicating an intention to move him to an LRE.

(f) Whether DCPS denied Student a FAPE by failing to issue a Prior Written Notice detailing its actions on June 11, 2015.

Though DCPS had not issued a Prior Written Notice as of the date the DPC in this case was filed – June 16, 2015, three business days after the June 11, 2015 IEP team meeting – DCPS issued a Prior Written Notice assigning Student to a program within DCPS on the exact same day it finalized Student’s IEP – June 22, 2015. This was not an unreasonable trajectory of events. Petitioner did not meet the burden of proving that DCPS denied Student a FAPE by failing to issue a Prior Written Notice detailing its actions on June 11, 2015.

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 is eligible for special education and related services under the disability classification “Specific Learning Disability”²⁹ (“SLD”). Student has significant reading, writing and mathematics deficits.³⁰ Due to his impulsivity, transitions from one place in the building to another place can be difficult for Student, and he requires prompting and redirection to complete assignments. Student also has receptive and expressive language deficits that impact his education and for which he receives speech and language therapy as a related service.

b. Student’s Specialized Educational Needs

During the 2014-2015 school year, Student was in a self-contained class at Nonpublic School with six students who remained in the same classroom for all their academic instruction. The students in Student’s classroom, including Student, all have significant deficits and need significant one-on-one instruction/assistance to make academic progress. There were generally four adults in the classroom at any given time, including the teacher, a teacher’s assistant, a speech and language therapist or an occupational therapist, and a dedicated aide. All instruction in the classroom was direct instruction (no computerized instruction), and the students received

²⁹ P-13-1.

³⁰ Testimony of Special Education Teacher.

frequent prompting and other executive functioning supports. Student's speech therapy was integrated throughout all his academic instruction.

Student made academic progress in reading, mathematics and writing in his 2014-2015 setting. During the 2015-2016 school year, Nonpublic School intends to transition Student to a "step down" program with more transitions (across the hall) during the school day and helping him practice bringing his materials with him. Nonpublic School intends to ease up on the high level of supervision it gave Student during the 2014-2015 school year, and to give Student the opportunity to practice more skills on his own.

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

Nonpublic School is able to provide Student a small, structured classroom setting with a low student to teacher ratio with specialized instruction and integration of therapies in an out of general education, as called for by his February 2014 IEP.

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 needs a small, structured classroom, with a low student to teacher ratio (so that he can receive sufficient one-on-one attention and the frequent prompting and reminders he needs), with specialized instruction and integration of therapies in an out of general education environment in order to be successful. The Hearing Officer does not find that Student necessarily needs a nonpublic placement. There was testimony at the DPH that the classroom DCPS proposed for Student only had six students assigned to it as of the time Student was assigned to it. But the classroom is not necessarily fixed at that low number, and ultimately there would likely be a higher student-teacher ratio than Student now has. There was testimony that District School could offer Student push-in speech therapy services, as well as pull-out services. But it is not clear that District School would be able to offer Student the full integration of services that he currently receives. There was testimony that Student would have access to his non-disabled peers at lunch at District School. The Hearing Officer views this as a positive for Student who is approaching adulthood where he will interact with all types of people in work and other settings, and who has already demonstrated that he can form a rapport with nondisabled peers through his community sports team. However, sufficient supports would need to be in place to help Student manage his time so that he returns to class on time.

In short, while the Hearing Officer has not found that *only* a nonpublic school can meet Student's needs, whatever school he attends will need to have an adequate plan and plan in place to meet his needs, and the record does not support a finding that District School could adequately meet his needs at this time. For this reason, the Hearing Officer finds Nonpublic School represents Student's LRE for the 2015-2016 school year, but will order the team to discuss what, in addition to the "step-down" plan Nonpublic School already has in mind, Student would need to transition to a less restrictive environment, and the extent to which his needs can be met in a less restrictive environment, perhaps as early as the 2016-2017 school year.

Based on the *Branham* factors discussed above, the program at Nonpublic School is reasonably calculated to address Student's disabilities and educational needs. Accordingly, Nonpublic School is an appropriate placement for Student.

ORDER

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

- A. DCPS shall fund Student's tuition and transportation to Nonpublic School for the 2015-2016 school year;
- B. Within 30 school days of this Order, Student's IEP team shall meet to discuss what Student would need to transition to a less restrictive environment, and the extent to which his needs can be met in a less restrictive environment, perhaps as early as the 2016-2017 school year. Student's IEP team shall also revise his IEP to either indicate that Student may have lunch and specials in an outside of general education setting, or it shall restore Student's hours of specialized instruction to 29 hours per week.

All other relief Petitioner requested in the complaint is **DENIED**.³¹

IT IS SO ORDERED.

Date: August 30, 2015

/s/ NaKeisha Sylver Blount
Impartial Hearing Officer

Copies to:
Petitioner (by U.S. mail)
Petitioner's Attorney: Alana Hecht, Esq. (electronically)
DCPS' Attorney: Daniel McCall, 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).

³¹ Petitioner requested that the Hearing Officer order that DCPS provide Nonpublic School access to Student's records in DCPS' SEDs database. The Hearing Officer is not ordering that relief through this action, because it is not closely enough tied to the denials of FAPE the Hearing Officer has found.