

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

STUDENT, ¹)	
through PARENTS,)	Hearing Officer: NaKeisha Sylver Blount
Petitioners,)	
)	Case No: 2015-0081
v.)	
)	Date Issued: June 9, 2015
District of Columbia Public Schools,)	
Respondent.)	

Hearing Officer Determination

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and D.C. Code 38-2561.02(a).

PROCEDURAL BACKGROUND

This is a due process complaint (“DPC”) proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 et seq.

The DPC was filed on March 10, 2015 by Petitioners (Student’s parents), residents of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On March 13, 2015, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties convened a Resolution Session Meeting (“RSM”) on March 24, 2015. The parties did not reach an agreement during the RSM, but agreed to keep the resolution process open for the entire 30-day resolution period. Accordingly, the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on April 10, 2015, with an HOD due date of May 24, 2015. The DPH did not conclude in two days as anticipated; therefore, Petitioners filed a motion for continuance on May 12, 2015, which was granted on May 13, 2015, and which extended the HOD deadline to June 9, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on March 23, 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 April 27, 2015 and that the DPH would be held on May 4, 2015 and May 5, 2015. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on March 24, 2015.

The DPH was held on May 4, 2015, May 5, 2015 and May 28, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Room 2006. Petitioners elected for the hearing to be closed. Petitioners were represented by Michael Eig, Esq. and Benjamin Massarsky, Esq. and DCPS was represented by Daniel McCall, Esq.

Petitioner’s and Respondent’s disclosures were timely filed. At the DPH, Petitioner’s exhibits P-1 through P-27; P-31 through P-38; P-40 through P-46; P-50 through P-52 were admitted without objection. Petitioner’s exhibits P-28; P-29; P-30; P-39; P-47 through P-49 were admitted over Respondent’s objection. Respondent’s exhibits R-1 and R-3-28 through R-3-33 were admitted over Petitioner’s objection. Respondent’s exhibits R-3-13 through R-3-24 and R-3-34 through R-3-35 were withdrawn and not admitted into evidence.

Petitioners called the following witnesses at the DPH:

- (a) Petitioner/Parent²
- (b) Nonpublic Curriculum Coordinator³
- (c) Occupational Therapy Consultant (“OT Consultant”)⁴
- (d) Neuropsychologist⁵

Respondent called the following witness at the DPH:

- (a) DCPS Psychologist
- (b) DCPS Social Worker⁶
- (c) Special Education Teacher⁷
- (d) Compliance Case Manager
- (e) LEA Representative

Petitioners and Respondent gave oral closing arguments.

² When used in the singular, “Petitioners/Parents” refers to both of Student’s parents. When used in the singular, “Petitioner/Parent” refers to Student’s father, who testified at the DPH.

³ Qualified, without objection, as an expert in programming for and instruction of learning disabled students and students classified as “Other Health Impairment” (“OHI”).

⁴ Qualified, without objection, as an expert in occupational therapy.

⁵ Qualified, without objection, as an expert in neuropsychology.

⁶ Qualified as an expert in clinical social work in a public school setting, with an emphasis in behavioral support services. No objection from Petitioner, except as to the portion of the designation stating “in a public school setting.”

⁷ Qualified, without objection, as an expert in special education programming and determining special education services and least restrictive environment, and special education instruction education of students with learning disability and OHI.

ISSUES

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

- (a) Whether DCPS denied Student a FAPE⁸ by failing to propose an appropriate program for her in proposing a June 9, 2014 and a January 20, 2015 IEP that lacked appropriate goals, social skills support and training, and that lacked a sufficient amount of specialized instruction. In particular, the DPC alleges that Student's June 9, 2014 and/or January 20, 2015 IEPs did not incorporate and/or were not updated to include feedback from Nonpublic Curriculum Coordinator, Student's May 12, 2014 independent neuropsychological evaluation, evaluations from teachers at Nonpublic School, Student's November 19, 2014 DCPS functional behavioral assessment ("FBA"), Student's December 2, 2014 DCPS occupational therapy ("OT") assessment, and Student's third grade report card. The DPC further alleges that Student's IEPs lacked goals in the area of executive functioning, and that they failed to designate Student's least restrictive environment ("LRE") as a full-time separate day school.
- (b) Whether DCPS denied Student a FAPE by failing to propose an appropriate placement for her during the 2014-2015 school year. Specifically, the DPC alleges that DCPS failed to designate Student's LRE as a full-time, separate day school.
- (c) Whether DCPS denied Student a FAPE by failing to propose an appropriate location of services for her during the 2014-2015 school year. Specifically, the DPC alleges that DCPS inappropriately selected District Elementary School as Student's location of services, though Student previously had negative experiences at District Elementary School that have impacted her social and academic well-being.

RELIEF REQUESTED

- (a) an Order that DCPS reimburse petitioners for Student's placement at the Nonpublic School for the 2014-2015 school year;
- (b) an Order that DCPS fund Student's placement at the Nonpublic School for the 2015-2016 school year, along with all related services and costs.

FINDINGS OF FACT

1. Student is █ years old and resides with her parents ("Parents"/"Petitioners") in Washington, D.C.⁸

2. From pre-Kindergarten through the 2013-2014 school year, Student attended District Elementary School. District Elementary School is not Student's in-boundary school; however, Parents selected District Elementary School through the school lottery, and were matched with the school. City Elementary School is Student's in-boundary school, which she

⁸ Testimony of Parent; P-38-1.

has a right to attend at any time. Parents have concerns about the quality and performance of City Elementary School, and do not believe Student would receive a quality education there.⁹

3. During the 2014-2015 school year, Student was in fourth grade at Nonpublic School, where she was unilaterally placed by Parents.¹⁰

4. Student was referred by her pediatrician for an independent neuropsychological evaluation, the results of which were reported in an evaluation report dated May 12, 2014.¹¹

5. DCPS received a copy of the independent neuropsychological evaluation on May 19, 2014.¹²

6. On May 27, 2014, Student was determined eligible for special education and related services under the classification “Other Health Impairment,” resulting from Student’s Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (“ADHD”).¹³

Social Interactions

7. Student is vivacious, creative and energetic; however, Student has a history of difficulty interacting with peers. She has been bullied and teased since she was in first grade due to her weight and academic challenges, and as a result tends to project a disposition toward classmates that many of them perceive as mean and bullying.¹⁴

8. During the 2013-2014 school year, Student felt traumatized by a note that makes a sexual proposition and instructs the recipient not to tell anyone about the note, or the sender will kill the recipient with a knife.¹⁵ Student was deeply upset and felt traumatized after her experience with the note.¹⁶

9. Student can benefit from being with non-disabled peers.¹⁷ District Elementary School would offer Student interaction with non-disabled peers.¹⁸ Nonpublic School does not offer Student interaction with non-disabled peers.¹⁹

⁹ Testimony of Parent; testimony of Special Education Teacher.

¹⁰ Testimony of Parent; P-32-1.

¹¹ Testimony of

¹² R-1-1.

¹³ P-19; P-21.

¹⁴ Testimony of Neuropsychologist; P-16-2.

¹⁵ P-15. Petitioners state that the note was a threat to Student from another student. However, the hearing officer does not make the finding that another student wrote the note. The plain language of the note says “Dear [other student] . . . From: [Student].” School Psychologist testified that she believes Student wrote the note. An internal school investigation did not uncover any other student as the note writer. There are spelling errors and poorly formed letters in the note, as Student’s handwriting is described. When comparing the handwriting in the note to samples of Student’s handwriting (such as a P-28), the hearing officer did not find the samples to be so divergent as to be able to establish by a preponderance of the evidence that someone other than Student wrote the note at P-15.

¹⁶ Testimony of Parent.

¹⁷ Testimony of Neuropsychologist; testimony of DCPS School Psychologist.

May 12, 2014 Independent Neuropsychological

10. Student has strong language and verbal reasoning skills and average skills in learning and memory and reading. Student has above average fine motor skills.²⁰

11. Student has problems with inattention, impulsivity. Student has problems in the area executive functioning, manifesting through difficulties with working memory, flexibility, impulsivity and organization.²¹

12. Student has weaknesses in the areas of math skills and written expression.²²

13. Student can present with depressed mood and rule-breaking behavior.²³

14. The independent neuropsychological includes a host of recommendations, including: strategies to help Student with organizational skills, a recommendation for Student to receive an occupational therapy evaluation, a recommendation that Student receive occupational therapy, a speech-language assessment, and a recommendation that Student receive regular sessions with a school psychologist. The evaluation report further makes recommendations related to Student's attention, executive skills, mathematics, written expression, and motivation/task persistence deficits.²⁴

June 9, 2014 IEP

15. Student's initial IEP was completed on June 9, 2014. It called for Student to receive 1 hour per day of specialized instruction in mathematics outside the general education setting; 30 minutes per day of specialized instruction in written expression, inside the general education setting; and 1 hour per week of behavioral services, outside the general education setting.²⁵

16. Student's June 9, 2014 IEP addressed her present levels of performance and included specific goals appropriate to her present levels of performance in the areas of mathematics, written expression, and emotional, social and behavioral development.²⁶

17. Student's June 9, 2014 IEP addresses her difficulty with peer interaction, lack of self-confidence, insecurity about not feeling as "smart" as her classmates, and the impact of this combination of feelings on Student's ability to feel motivated to participate in and complete academic activities.

¹⁸ Testimony of Special Education Teacher.

¹⁹ Testimony of Neuropsychologist.

²⁰ P-16-3.

²¹ P-16-3.

²² P-16-4.

²³ P-16-3.

²⁴ P-16-5 through P-16-7.

²⁵ P-24-7.

²⁶ P-24-3 through P-24-5.

18. Student's June 9, 2014 IEP reflects consideration of the May 12, 2014 independent neuropsychological evaluation and is in many ways consistent with the neuropsychological.²⁷

19. Student's final third grade report card was issued on June 18, 2014, nine days after the June 9, 2014 IEP was completed.²⁸ At the time of the June 9, 2014 meeting, the team only had Student's report card through the third term of the school year. The team considered the extent to which the report card reflected a limited amount of progress, as well as the weaknesses it reflects²⁹

20. Parents participated as a part of the team that drafted the June 9, 2014 IEP, and did not express disagreement with the IEP or disability classification.³⁰ DCPS members of the team discussed with Parents that an IEP is a working document, and that there would be a 30-day review of how well the IEP was working, and that revisions could be made to the IEP at that time.³¹

Final Third Grade Report Card (June 18, 2014)

21. Student was below grade level in writing and language, and approaching expectations for her other academic subjects.³²

22. Student made some degree of progress over the course of the school year in reading, going from below basic in Terms 1 and 2 to approaching grade level expectations in Terms 3 and 4.³³

23. Student required frequent prompting or limited prompting to perform most of the skills in the area of "Work habits, personal and social skills." Student could perform some of the skills independently at some times, but could not consistently perform the skills independently.³⁴

24. Student's final third grade report card reflects 17 total absences (including the final week of school, which Student did not attend) and 25 tardies for the school year³⁵ Student's missed instructional time had some degree of impact on her academic performance.³⁶

²⁷ P-24-5 through P-24-6.

²⁸ P-27.

²⁹ Testimony of Special Education Teacher.

³⁰ Testimony of Parent; testimony of Special Education Teacher.

³¹ Testimony of Special Education Teacher.

³² P-27.

³³ P-27.

³⁴ Testimony of Special Education Teacher; P-27.

³⁵ P-27.

³⁶ Testimony of Special Education Teacher.

Unilateral Placement

25. After evaluating Student, Neuropsychologist recommended some nonpublic schools to Parents, including Nonpublic School. Parents began researching schools and decided to apply to Nonpublic School in around late May or early June 2014.

26. District Elementary School implemented the June 9, 2014 IEP for four days. After that point, Student did not return to District Elementary School for the remainder of the school year. Parents instead placed Student in camp for the last week of school.³⁷

27. On around June 18, 2014, Parents requested that a teacher at District Elementary School complete an evaluation of Student's strengths and needs for their application to Nonpublic School.³⁸ Parents also requested that District Elementary School submit Student's transcript to Nonpublic School.³⁹

28. In early August 2014, Petitioners signed a contract for Student to begin attending Nonpublic School.⁴⁰

29. Student began attending Nonpublic School in August 2014.⁴¹

30. On August 28, 2014, Petitioners submitted a handwritten note signed by Student's mother to District Elementary School stating "To Whom it May Concern: I am withdrawing [Student] from [District Elementary School] as of 8/28/14. She is attending [Nonpublic School]."⁴²

November 19, 2014 DCPS Functional Behavioral Assessment ("FBA")

31. Consistent with the independent neuropsychological evaluation's recommendation, Student received a DCPS-conducted FBA dated November 19, 2014.

32. At the time of the FBA, Student was attending Nonpublic School. Her poor social skills, distractibility and mood dysregulation had escalated by that point in the 2014-2015 school year as compared to earlier in the school year.⁴³

³⁷ Testimony of Special Education Teacher.

³⁸ Testimony of Parent; P-25.

³⁹ Testimony of LEA Representative.

⁴⁰ Testimony of Parent.

⁴¹ Testimony of Parent.

⁴² R-2. Petitioners indicate that they had earlier provided written notice to District Elementary School of their intention to place Student at Nonpublic School – after the June 9, 2014 IEP meeting and before placing Student at Nonpublic School. Parent testified that he gave a written notice to the person who was Principal at District Elementary School at the time, and that the principal gave the written notice to his administrative assistant. However, the person who was Principal at that time no longer works at District Elementary School. The person who was administrative assistant at that time has passed away. Special Education Teacher, who was Student's case manager at District Elementary School, testified that she is not aware of a written notice earlier than August 28, 2014. Therefore, the hearing officer does not make a finding of an earlier notice than August 28, 2014.

⁴³P-31-1, P-31.-12

33. The FBA recommended that Student's team meet and consider the FBA and create a Behavioral Intervention Plan for Student.⁴⁴

November 24, 2014 DCPS Occupational Therapy Assessment ("OT Assessment")

34. Consistent with the independent neuropsychological evaluation's recommendation, Student received a DCPS-conducted OT Assessment dated November 24, 2014.⁴⁵

35. At the time of the OT Assessment, Student was attending Nonpublic School. Student was able to write legibly; however, not all her letters were properly formed.⁴⁶

36. Student has weaknesses in the area bilateral coordination, meaning she does not always use both hands simultaneously to perform classroom tasks such as holding her paper when she writes.⁴⁷

37. Student's motor coordination and visual perception are low.⁴⁸

38. The OT assessment includes a number of recommendations, including: strategies to help Student improve her handwriting, visual perception and motor coordination.⁴⁹

December 19, 2014 Input from Nonpublic Curriculum Coordinator

39. On December 19, 2014, Petitioners submitted to DCPS input from Nonpublic Curriculum Coordinator for use in revising Student's IEP.⁵⁰

40. Nonpublic Curriculum Coordinator provided information about Student's present levels of performance in mathematics, writing and reading.⁵¹

January 20, 2015 IEP

41. Student's IEP was revised on January 20, 2015. The January 20, 2015 IEP calls for Student to receive 5 hours per week of specialized instruction in mathematics outside the general education setting; 3 hours per week of specialized instruction in written expression, outside the general education setting; 2 hours per week of specialized instruction in reading, inside the general education setting; 120 minutes per month of behavioral support services, outside the general education setting; 30 minutes per week of occupational therapy, inside the general education setting; and 30 minutes per month of consultative occupational therapy

⁴⁴ P-31-12.

⁴⁵ P-32.

⁴⁶ P-32-2.

⁴⁷ P-32-3, P-32-4.

⁴⁸ P-32-4.

⁴⁹ P-32-6.

⁵⁰ P-39.

⁵¹ P-39-2 through P-39-3.

services.⁵² Student's service hours increased from the June 9, 2014 IEP to the January 20, 2015 IEP.

42. Student's January 20, 2015 updates her present levels of performance and includes even more specific goals than the June 9, 2014 IEP. The goals are appropriate to Student's present levels of performance in the areas of mathematics; written expression; and emotional, social and behavioral development.⁵³ Additionally, Student's January 20, 2015 IEP includes goals in the areas of reading,⁵⁴ motor skills/physical development, which appropriately reflect the data as of January 20, 2015, including the November 24, 2014 DCPS OT Assessment and the December 19, 2014 input from Nonpublic Curriculum Coordinator.

43. Student's January 20, 2015 IEP addresses, among other topic, Student's need for movement breaks and organizational supports, need to test in a distraction free setting, difficulty with peer interaction, lack of self-confidence, insecurity, difficulty with motivation, and behavior. Student's executive functioning needs are addressed in the social emotional section of the IEP.

44. Student's June 9, 2014 IEP reflects consideration of the May 12, 2014 independent neuropsychological evaluation, the November 19, 2014 FBA, the November 24, 2014 OT assessment, the and Student's final third grade report card, and is in many ways consistent with this data.⁵⁵

45. Parents and their representatives participated as a part of the team that drafted the January 20, 2015 IEP and did not express disagreement with the IEP, except as to the number of hours of services, because Parents believed Student needed a full-time IEP.⁵⁶

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-

⁵² P-24-7.

⁵³ P-24-3 through P-24-5.

⁵⁴ P-40-6 and P-40-7.

⁵⁵ P-40.

⁵⁶ Testimony of Compliance Case Manager; R-3-60 through R-3-65.

making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

- (a) **Whether DCPS denied Student a FAPE” by failing to propose an appropriate program for her in proposing a June 9, 2014 and a January 20, 2015 IEP that lacked appropriate goals, social skills support and training, and that lacked a sufficient amount of specialized instruction. In particular, the DPC alleges that Student’s June 9, 2014 and/or January 20, 2015 IEPs did not incorporate and/or were not updated to include feedback from Nonpublic Curriculum Coordinator, Student’s May 12, 2014 independent neuropsychological evaluation, evaluations from teachers at Nonpublic School, Student’s November 19, 2014 DCPS FBA, Student’s December 2, 2014 DCPS OT assessment, and Student’s third grade report card. The DPC further alleges that Student’s IEPs lacked goals in the area of executive functioning, and that they failed to designate Student’s LRE as a full-time separate day school.**

In order for a student’s IEP/educational program to be appropriate: (1) the LEA must have complied with IDEA’s administrative procedures and (2) the IEP must reasonably calculated to provide some educational benefit to Student. *See N.T. v. District of Columbia* 839 F.Supp.2d 29, 33 (D.D.C.2012), quoting *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir.2003); *J.N. v. District of Columbia*, 677 F.Supp.2d 314, 322 (D.D.C. 2010). The appropriateness of an IEP must be assessed as of the time the IEP was developed. *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008), quoting *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir.2008) (“Because the question . . . is not whether the IEP will guarantee some educational benefit, but whether it is reasonably calculated to do so, . . . the measure and adequacy of an IEP can only be determined as of the time it is offered to the student. . . . Neither the [IDEA] nor reason countenance ‘Monday Morning Quarterbacking’ in evaluating the appropriateness of a child’s placement.”) Petitioners do not assert that DCPS failed to comply with the administrative procedures attendant to developing Student’s IEP. Rather, Petitioners claim that the relevant IEPs for Student are not reasonably calculated to provide Student educational benefit in that they failed to develop appropriate goals for Student, failed to include related services, and failed to develop an appropriate transition plan.

As stated in the findings of fact above, the hearing officer has not concluded that the academic goals and/or social skills support and training were inappropriate, based on the data the Student’s IEP team had at its disposal when each IEP was drafted. Student’s IEP service hours increased from the June 9, 2014 IEP to the January 20, 2015 IEP, and OT and reading goals were added. While the January 20, 2015 is appropriate for Student, the hearing officer does not conclude that the June 9, 2014 IEP was inappropriate at the time it was drafted, based on the information the team had at the time. By the time the June 9, 2014 IEP was drafted, an independent neuropsychological had recommended that Student receive an OT assessment. In the weeks between when the independent neuropsychological was completed and submitted to the school, Student was determined eligible and her initial IEP was developed. The hearing officer does not conclude that it was unreasonable or a denial of FAPE that the school had not

also completed the OT assessment within this short period of time. It was appropriate and a high priority for the school to have convened an IEP team meeting within this time period, even though other assessments were needed. As was discussed with the parents during the meeting, an IEP is a working document and can and must be amended as needed in response to new information. Several days after the June 9, 2014 IEP was in place, Student stopped attending District Elementary School, and never returned to District Elementary School or any other DCPS School. Therefore, DCPS never had an opportunity to implement the IEP.

The January 20, 2015 IEP includes reading goals, which is appropriate based on the feedback from Nonpublic School. However, the hearing officer does not conclude that it was inappropriate for the team not to have included reading goals as of June 9, 2014. The team, which considered the independent neuropsychological, made a determination based on its experience with Student that reading is a relative strength for her, and that reading goals did not need to be added at that time. Parents participated actively with the team and did not express disagreement with any aspect of the IEP. Based on the information the team had when each IEP was drafted, neither the June 9, 2014 nor the January 20, 2015 IEP was inappropriate for Student or a denial of FAPE. Petitioners did not meet the burden of proof on this issue.

(b) Whether DCPS denied Student a FAPE by failing to propose an appropriate placement for her during the 2014-2015 school year. Specifically, the DPC alleges that DCPS failed to designate Student's LRE as a full-time, separate day school.

Consistent with the IDEA's least restrictive environment ("LRE") mandate, removal of children with disabilities from the regular educational environment may occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *See* 34 CFR § 300.114(a). Student does have deficits that need to be addressed; however, the hearing officer agrees with the members of Student's team who concluded that her deficits are not of the nature and severity that require complete removal from the general education setting. The IDEA requires every LEA to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities eligible for special education and related services, including instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. *See* 20 U.S. Code § 1412(5)(A); 34 CFR § 300.115. Additionally, 34 C.F.R. §300.116(c) requires that "unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled." Student has deficits that need to be addressed, but based on the evidence, the hearing officer does not conclude that the services and supports she requires can only be provided in a full-time special education day school.

District Elementary School, for example, offers specialized instruction in reading, mathematics and written expression, as well as occupational therapy and behavioral supports. There was no evidence from which the hearing officer concludes that the services at District Elementary School could not meet Student's needs as reflected in either her June 9, 2014 or her January 20, 2015 IEPs, or even if her services had been greatly augmented beyond what the bulk of the team deemed appropriate. As stated above, the hearing officer has not found the hours

described in either of the IEPs to be inappropriate. However, even if student's hours had been increased to a full-time program of, for example, 26 hours per week, the record does not support a finding that it would be necessary to move Student to a special school – a more restrictive point along the continuum of alternative placements. Petitioners did not meet their burden of proving that DCPS denied Student a FAPE by failing to designate her LRE for the 2014-2015 school year as a full-time separate day school.

- (c) **Whether DCPS denied Student a FAPE by failing to propose an appropriate location of services for her during the 2014-2015 school year. Specifically, the DPC alleges that DCPS inappropriately selected District Elementary School as Student's location of services, though Student previously had negative experiences at District Elementary School that have impacted her social and academic well-being.**

As stated above, the hearing officer does not find that District Elementary School could not have implemented Student's IEP. Petitioners argue that District Elementary School was inappropriate for Student because she was not safe there and/or did feel safe there. Assuming this is true, the hearing officer does not find sufficient evidence to conclude that Student was given no option but to attend District Elementary School as the location where her services would be implemented. For example, the record is clear that Student has a right to attend City Elementary School, her in-boundary school, at any time. Parents are not comfortable with sending Student to City Elementary School; however, that does not change the fact that the school is available to Student. Petitioners did not meet the burden of proving that DCPS denied Student a FAPE by inappropriately selecting District Elementary School as Student's location of services.

Motion for Directed Verdict

At the close of Petitioners' case-in-chief, Respondent made an oral motion for a directed verdict, asserting that Petitioners did not meet their burden of proof. Petitioners orally opposed the motion, and the hearing officer took the matter under advisement. Having decided the case on the merits, the motion for directed verdict is hereby **DENIED** as it is **MOOT**.

ORDER

As no denial of FAPE was found on the issue alleged, all relief Petitioners requested in the complaint must be **DENIED**. The complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED.

Date: June 9, 2015

/s/ NaKeisha Sylvester Blount
Impartial Hearing Officer

Copies to:

Petitioners (by U.S. mail)

Petitioner's Attorney: Michael Eig, Esq. and Benjamin Massarsky, 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).