

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

OSSE  
Office of Dispute Resolution  
October 1, 2015

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STUDENT, <sup>1</sup>	)	
through the PARENTS,	)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioners,</i>	)	
	)	Case No: 2015-0283
v.	)	
	)	<b>Date Issued:</b> October 1, 2015
District of Columbia Public Schools,	)	
<i>Respondent.</i>	)	

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**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 August 24, 2015 by Petitioners (Student’s parents), residents of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On September 8, 2015, Respondent filed its Response (by mutual agreement of the parties, the Response was not deemed untimely), denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties convened a Resolution Session Meeting (“RSM”) in this matter on September 11, 2015. The DPC contains discipline-related allegations; therefore, the case had to be heard on the expedited DPH timeline. Accordingly, the deadline for the Hearing Officer’s Determination (“HOD”) in this matter is October 1, 2015 (10 school days after the DPH).

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on September 8, 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 September 10, 2015 and that the DPH would be held on September

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<sup>1</sup> Personal identification information is provided in Appendix A.

17, 2015. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on September 8, 2015.

The DPH was held on September 17, 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 Carolyn Houck, Esq. and DCPS was represented by Tanya Chor, Esq.

Petitioners’ and Respondent’s disclosures were timely filed. At the DPH, Petitioners’ exhibits P-1 through P-14 were admitted without objection. Respondent’s exhibits R-1 through R-25 were admitted without objection. Respondent’s exhibits R-26 and R-27 were not offered or admitted into evidence.

Petitioners called the following witnesses at the DPH:

- (a) Father
- (b) Mother
- (c) Student
- (d) Educational Advocate<sup>2</sup>
- (e) Nonpublic Administrator

Respondent rested on the evidence and did not call witnesses.

Petitioners and Respondent gave oral closing arguments.

### **ISSUES**

As discussed at the PHC and reflected in the PHO,<sup>3</sup> the following issues were presented for determination at the DPH.

- (a) Whether DCPS failed to adequately evaluate Student in all areas of suspected disability during the two years prior to the filing of the DPC.
- (b) Whether DCPS failed to develop an appropriate IEP on February 4, 2015, including, but not limited to failing to allow Mother to participate in the development of the IEP.
- (c) Whether DCPS failed to provide appropriate placements beginning two years prior to the filing of the DPC.
- (d) Whether DCPS failed to comply with the discipline regulations during the two years prior to the filing of the DPC.

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<sup>2</sup> Qualified as an expert in IEP Development. Respondent took no position on the proffered designation.

<sup>3</sup> The day prior to the DPH, Petitioners requested to consolidate the ten issues listed in the PHO into the four issues reflected in this decision. At the start of the DPH, Petitioners clarified that they were not withdrawing any of the ten issues through the re-wording, only consolidating them. Respondent objected to the re-wording. Finding the wording to be more efficient and not to have added any new issues, the Hearing Officer allowed the re-wording.

### RELIEF REQUESTED

Petitioners requested the following relief:

- (a) an Order that DCPS immediately place and fund Student at Nonpublic Program, where he can receive credit recovery;
- (b) an Order that DCPS fund an independent comprehensive psychological and functional behavioral assessments at market rates;
- (c) an Order that DCPS convene a meeting to develop an IEP;
- (d) an Order awarding compensatory education as crafted by the Hearing Officer and/or an acknowledgement in the HOD that compensatory education is not yet ripe, as Student's assessments have not yet been completed.<sup>4</sup>

### FINDINGS OF FACT

1. Student is [AGE] years old. During the 2013-2014 he was in the [REDACTED] grade at District High School. He repeated [REDACTED] grade at District High School in the 2014-2015 school year, and he is again assigned to the [REDACTED] grade for the 2015-2016 school year.

2. Student resides with his mother<sup>5</sup> in Washington, D.C. Student's father is also closely involved in Student's life and education.

3. Student is eligible for special education and related services under the disability classification "Specific Learning Disability."<sup>6</sup> He has been eligible since at least 2012.<sup>7</sup>

### IEP, Academic Levels & Academic Performance

4. Student passed no classes and earned no credits in the 2013-2014 or 2014-2015 school years.<sup>8</sup>

5. Student has not received a comprehensive psychological evaluation in recent years, including during the two years prior to the filing of the DPC. One of Student's teachers administered the Woodcock-Johnson III Tests of Achievement to Student in February 2014.

6. Student's most recent IEP is from February 4, 2015. It provides 15 hours per week of specialized education outside of the general education setting (10 hours per week in mathematics and 5 hours per week of reading), and 240 minutes per month of behavioral support services on a consultative basis.<sup>9</sup>

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<sup>4</sup> Respondent's position is that compensatory education is ripe in this action.

<sup>5</sup> Student's mother is technically his stepmother; however, she has reared him since before he was a year old and is his primary caregiver, including with respect to his education. Therefore, this decision will refer to her as Student's mother. Collectively, "Mother" and "Father" will be referred to as "Parents" or "Petitioners."

<sup>6</sup> Testimony of Parent; P-3-1.

<sup>7</sup> P-5-4.

<sup>8</sup> P-4; P-8.

<sup>9</sup> P-7-10.

7. The present levels of performance in Student's current IEP rely in part on the Woodcock-Johnson III from February 2014.

8. Father participated in the February 4, 2015 IEP meeting. Mother wanted to participate, but is wheelchair bound. When she had traveled to the school to that point, she had generally not been able to access the building, because her wheelchair is too wide to fit through the metal detectors. School security required everyone (including her) to go through the metal detector, even though she physically could not do so. Mother had previously informed school personnel that her physical inability to pass through the metal detectors was the reason she was unable to attend meetings for Student in person at the school. Mother was not provided an option for participating in the February 4, 2015 meeting by phone.<sup>10</sup>

9. The transition plan in Student's February 4, 2015 IEP identified Student's desire to become an auto mechanic. It states that Student's post-secondary education and training goal is to attend a four-year college after graduating from high school in order to obtain a certificate in auto mechanics, and that he will be given one hour per year to research colleges in the computer lab, with assistance from a teacher, case manager or counselor. It also states that his employment goal after graduating from high school is to work at an auto shop. If offers him two hours per year in the computer lab to practice completing job applications. The education/training goal is not well-suited to guiding Student toward becoming an auto mechanic, because a four-year college is likely not the best place to pursue an auto mechanic certificate, and because Student would likely need more than hour per year of computer lab support to identify an appropriate training program. The employment goal is not well-suited to guiding Student toward becoming an auto mechanic, because while filling out theoretical applications could be useful, learning more about the type of jobs he could be eligible before and after obtaining some training as an auto mechanic would be a necessary first step, and would likely require more than two hours per year of support, given Student's academic deficits.<sup>11</sup>

10. Student finds school work to be difficult to understand and complete. Even though he has some special education classes, the support he currently receives is not sufficient to help him understand how to do the work. He spoke with school personnel about the difficulty he was having, but the message he received from them was that he needed to try harder.<sup>12</sup>

11. Student learns better with one-on-one instruction, and he needs a small educational setting with limited distractions.<sup>13</sup>

12. When Student was in school, Student received special education services during the 2013-2014 and 2014-2015 school year.<sup>14</sup>

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<sup>10</sup> Testimony of Mother; testimony of Father.

<sup>11</sup> Testimony of Educational Advocate; P-14 through P-18.

<sup>12</sup> Testimony of Student.

<sup>13</sup> R-23.

<sup>14</sup> Testimony of Student.

**Behavior**

13. Student likes going to school (he would rather go to school than stay home);<sup>15</sup> however, Student is frequently tardy to certain classes, and is sometimes late entering the school building in the mornings, even if he is on school grounds on time.<sup>16</sup> Student sometimes attends certain classes and not others, even when he is in school for the day.<sup>17</sup>

14. Student is consistently late for class and engages in constant off-tasks behaviors, inside and outside the classroom, and for the entire class period. The lay opinion of at least one of his teachers is that his behavior may be consistent with “a serious case of ADHD,” and that he appears to be engaging in negative behaviors to avoid learning.

15. Student was constructively suspended on some occasions during the 2013-2014 and 2014-2015 school years, generally for infractions such as walking the halls and being out of area (not for fighting/physical aggression).<sup>18</sup> The school would generally request that a parent come for a meeting at the school before Student would be allowed to return, and Father was the parent who would attend the meetings.<sup>19</sup>

16. On January 30, 2014, Student was given an official suspension of ten days. There was a manifestation determination review meeting (“MDR”), and the behavior was determined to be a manifestation of Student’s disability; therefore, the suspension was not implemented.<sup>20</sup> On March 31, 2015, there was an MDR in which Student’s behavior on February 27, 2015 was determined to not be a manifestation of his disability.<sup>21</sup>

17. In April 2015, Student received a Functional Behavioral Assessment (“FBA”),<sup>22</sup> as well as a Behavioral Intervention Plan (“BIP”).<sup>23</sup>

**Nonpublic School**

18. Nonpublic Program is smaller, nontraditional full-time special education program within a nonpublic special education school. It is diploma based, has a strong transition planning focus, and offers a flexible schedule to make it possible for students to balance school and work obligations.<sup>24</sup>

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<sup>15</sup> Testimony of Father, testimony of Mother; testimony of Student.

<sup>16</sup> Testimony of Student; R-9; R-10.

<sup>17</sup> P-4; R-10.

<sup>18</sup> Testimony of Student; testimony of Father.

<sup>19</sup> Testimony of Father; testimony of Mother; testimony of Student.

<sup>20</sup> R-2.

<sup>21</sup> R-22.

<sup>22</sup> R-23.

<sup>23</sup> R-24.

<sup>24</sup> Testimony of Nonpublic Administrator.

19. All students in Nonpublic Program have IEPs, which the program implements, including related services. It has some students who have repeated grades or been otherwise unsuccessful.<sup>25</sup>

20. When a student enters Nonpublic Program, the student is given a standards based assessment, identifying the goals the student is not meeting. The program then reteaches those skills to the student, aiming for at least 80% mastery.<sup>26</sup>

21. Students in Nonpublic Program have the opportunity to make up missed credits (credit recovery) while at the same time earning new credits.<sup>27</sup>

22. Student has been accepted<sup>28</sup> to Nonpublic Program and is excited about the prospect of attending.<sup>29</sup>

### 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).

**(a) Whether DCPS failed to adequately evaluate Student in all areas of suspected disability during the two years prior to the filing of the DPC.**

An LEA must ensure that students eligible for special education and related services are assessed in “all areas related to the suspected disability.” 34 CFR § 300.304(c)(4). In determining the content of a student’s IEP, the LEA must conduct an evaluation that uses a “variety of assessment tools and strategies to gather relevant functional developmental and academic information about the child.” 34 C.F.R. 300.304(b)(1). Here, Student has not been sufficiently assessed to determine his educational needs. While the Woodcock-Johnson III was

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<sup>25</sup> Testimony of Nonpublic Administrator.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> P-12.

<sup>29</sup> Testimony of Student; testimony of Nonpublic Administrator.

administered to determine his academic performance levels, he would at least require a psychoeducational evaluation to provide more insight into the root causes of his areas of academic struggle and how best to address them. Additionally, Student needs an FBA that can draw on insights gleaned from a psychoeducational evaluation.

The failure to appropriately assess a student is a procedural violation of the IDEA. In this instance, it rises to the level of a substantive violation, because it impeded the Parents' ability to fully participate in the decision-making process regarding the provision of FAPE to Student n that Parents did not have the information they needed to meaningfully participate in IEP team meetings. It also impeded Student's right to a FAPE and caused Student a deprivation of educational benefit, because had he been appropriately assessed and his needs properly determined and addressed, he would have been better able to better grasp the academic material and have made more progress over the past couple of years. Petitioners have met their burden of proving that DCPS denied Student a FAPE by failing to adequately evaluate him in all areas of suspected disability during the two years prior to the filing of the DPC.

**(b) Whether DCPS failed to develop an appropriate IEP on February 4, 2015, including, but not limited to failing to allow Mother to participate in the development of the IEP.**

At a minimum, an IEP must “provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005), quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). While an LEA is not required to maximize a student's educational potential, it also cannot “discharge its duty under the by providing a program that produces some minimal academic advancement, no matter how trivial.” *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir.1985). Here, Student has made no meaningful progress in the past two school years, having earned not a single academic credit and having to repeat ██████████ grade this year for the third time. As stated above, the LEA would have needed sufficient evaluative data to adequately determine Student's educational needs and how to address them in order to develop an appropriate IEP for Student. Additionally, as discussed in the Findings of Fact, the transition plan in Student's current IEP is not reasonably calculated to help Student derive any practical benefit from it.

Further, an LEA must ensure that a student's IEP team include, among other people, “the parents of the child.” In this instance, Mother was not provided access to the school building for Student's February 4, 2015 IEP meeting, because her wheelchair would not fit through the metal detector. Though she made the school aware of the fact that she was not provided access to the building and that she was interested in attending the meeting, she was not offered another means of participation, such as via telephone. Father attended the meeting since Mother could not, but this does not satisfy the regulation's requirement that “the *parents* of the child” (emphasis added) be included a part of his IEP team. The failure to provide Mother access to the February 4, 2015 IEP meeting was a procedural violation, but also amounted to a denial of FAPE, because Mother is Student's primary caregiver and takes the lead in his education, with support and assistance from Father. Each parent would have important insights into Student's IEP process, and

Mother's lack of access to the meeting significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child. Petitioners' met the burden of proving that DCPS denied Student a FAPE by failing to develop an appropriate IEP on February 4, 2015.<sup>30</sup>

**(c) Whether DCPS failed to provide appropriate placements beginning the two years prior to the filing of the DPC.**

The appropriateness of a student's IEP and placement must be assessed as of the time the IEP was developed. "Neither the statute nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement." *Id.*, ), quoting *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir.2008).) The record does not include sufficient information for the Hearing Officer to conclude that Student 2013-2014 IEP was inappropriate at the time it was created.<sup>31</sup> By the time Student's February 4, 2015 IEP was created, however, Student was in [REDACTED] grade for the second time and not making progress. The evidence is that Student learns better in a one-on-one or small class setting with minimal distractions. Student was also engaging in work avoidance behaviors, due in large part to his academic struggles. Sufficient evaluations would have provided specific insight into Student's placement needs, but based on the available data Student needed additional services at least as of February 4, 2015. This procedural violation impeded Student's right to a FAPE and resulted in a deprivation of educational benefit for Student; therefore, it rises to the level of a substantive denial of FAPE. Petitioners met the burden of proving that Student's placement was inappropriate, at least as of February 4, 2015.

**(d) Whether DCPS failed to comply with the discipline regulations during the two years prior to the filing of the DPC.**

Pursuant to IDEA, within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the child's IEP team, including the child's parent, must review all relevant information in the child's file, to determine if the child's conduct was a manifestation of the child's disability. *See* 34 CFR § 300.530(e). A disciplinary change of placement occurs under IDEA if a student is subjected to a series of removals that total more than ten school days in a school year. *See* 34 CFR § 300.536. Once an eligible student has been suspended for more than ten days in a school year, the local education agency ("LEA") must conduct a Manifestation Determination Review ("MDR") to determine whether the conduct in question was caused by, or had a direct relationship to, the student's disability. 34 CFR § 300.530(e).

The Hearing Officer credits the testimony of Father, Mother and Student that Student was constructively suspended on some occasions throughout the 2014-2015 and 2013-2014 school years. However, despite Father's testimony that he was called to the school 2-3 times per week

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<sup>30</sup> Student testified that he received special education services when he was in school; therefore, the Hearing Officer does not conclude that Respondent denied Student a FAPE by failing to implement his IEP.

<sup>31</sup> Only one page of Student's March 11, 2014 IEP is included in the record.

due to Student's suspensions, and the testimony of all three witnesses that Student was out of school more than in school during the past two school years, the Hearing Officer does not conclude that Student was constructively suspended for more than ten days either of the relevant school years without an MDR. Student's attendance records reflect a great divergence in the number of days missed for various classes, in addition to reflecting a high number of tardies overall. From this information, the Hearing Officer concludes that Student was often in the school building and engaging in class avoidance behaviors, such as attending some classes but not others; however the Hearing Officer does not find sufficient evidence to conclude that Student had ten days of constructive suspensions either school year without an MDR, particularly because there was an MDR in February 2014 and in March 2015. Therefore, Petitioners do not meet the burden of proof on this issue.

### **Request for Placement at Non-Public Program**

An order for DCPS to fund a placement at Nonpublic Program is part of the relief Petitioners seek for the denials of FAPE. 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 has not received a comprehensive psychological evaluation in recent years; therefore, it is not possible to fully describe the nature and extent of Student's disability. Student is consistently late for class and engages in constant off-tasks behaviors, inside and outside the classroom, and for the entire class period. The lay opinion of at least one of his teachers is that his behavior may be consistent with "a serious case of ADHD," and that he appears to be engaging in negative behaviors to avoid learning.

#### *b. Student's Specialized Educational Needs*

Student has not received a comprehensive psychological evaluation in recent years; therefore, it is not possible to fully describe his specialized educational needs. Student passed no classes and earned no credits in the 2013-2014 or 2014-2015 school year. Student finds school work to be difficult to understand and complete. Even though he has some special education classes, the support he receives is not sufficient to help him understand how to do the work.

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

Student would benefit from the diploma-based, transition planning-focused Nonpublic Program, including its flexible schedule which would make it possible for him to balance school and work obligations. Student would also benefit from the small class sizes at Nonpublic

Program, and the opportunity to make up missed credits (credit recovery) while at the same time earning new credits.

*d. Cost of Placement at Private School*

Nonpublic Program'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 has not received a comprehensive psychological evaluation in recent years; therefore, it is not possible to fully assess the extent to which he requires a full-time special education school as his least restrictive environment ("LRE").

Based on the *Branham* factors discussed above, the program at Nonpublic School appears to be well-suited to Student's disabilities and educational needs; however, Student needs a comprehensive psychological evaluation before his LRE can be clearly determined. For this reason, the Hearing Officer does not award Nonpublic Program under the *Branham* analysis.

**Request for Compensatory Education**

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

Here, Petitioners assert that DCPS' failure to implement Student's IEP, failure to develop appropriate IEPs, failure to provide appropriate placements, and failure to allow Mother to participate in Student's IEP meeting harmed Student, resulting in him failing to school years. The Hearing Officer has concluded that DCPS denied Student a FAPE by failing to appropriately evaluate Student for the two years prior to the filing of the DPC, failing to provide an appropriate IEP on February 4, 2015 (including by not allowing Mother to participate), and failing to provide an appropriate placement for Student, at least as of February 4, 2015. Had these denials of FAPE not occurred (starting with the failure to appropriately evaluate Student), Student would have had the type and level of support he needed to make educational progress, likely would not have missed so much instructional time due to class avoidance behaviors and constructive suspensions, and likely would have earned sufficient credits to have passed from grade to grade. As a result, rather than repeating ██████ grade for a third time this school year, Student would have been in ██████ grade, and on track to graduate during the ██████ school year.

Without educational assessments, the Hearing Officer could not determine whether Nonpublic Program constitutes Student's LRE, but based on the remainder of the *Branham*

analysis, Student would derive educational benefit from Nonpublic Program. Nonpublic Program would help Student make up some of the credit hours he missed due to the denials of FAPE and; therefore, placement at Nonpublic Program through the summer of 2016 will be appropriate compensatory education for Student. The equities further support this award in light of the fact that the LEA's failure to evaluate Student prevents the Hearing Officer from being able to reach a conclusion about Student's LRE under the *Branham* analysis.

Due to the low student-teacher ratio and personalized assistance available to students at Nonpublic Program, the Hearing Officer will not also award tutoring services. The Hearing Officer will award 36 hours of mentoring/therapy/behavioral support to help Student overcome the patterns of class avoidance and off-task behaviors he developed/strengthened during the denials of FAPE.

**ORDER**

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

- A. within 7 business days of this Order, DCPS shall place and fund Student at Nonpublic Program through at least August 1, 2016;
- B. within 7 school days of this Order, DCPS shall fund an independent comprehensive psychological evaluation at DCPS' prevailing rates;<sup>32</sup>
- C. within 7 school days of the comprehensive psychological evaluation being completed, with the report provided to DCPS, DCPS shall fund an independent functional behavioral assessment at DCPS' prevailing rates. The functional behavioral assessment shall be conducted after the comprehensive psychological evaluation report is completed;
- D. within 10 business days of the functional behavioral assessment being completed, DCPS shall convene a meeting to develop an appropriate IEP for Student;
- E. within 30 calendar days of this Order, DCPS shall fund 36 hours of mentoring, therapy or behavioral support<sup>33</sup> for Student, through the provider(s) of Parents' choice, funded at DCPS' prevailing rates. Any hours not used by August 31, 2017 shall be forfeited.

Any days of delay in fulfilling the requirements of this Order that are solely attributable to Parents, Student, their advocates and/or their chosen service providers shall not count against DCPS.

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

**IT IS SO ORDERED.**

Date: October 1, 2015

/s/ NaKeisha Sylver Blount  
Impartial Hearing Officer

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<sup>32</sup> While Petitioners requested that the independent evaluations be funding at market rate, no evidence was offered as to why the DCPS prevailing rates would not be sufficient.

<sup>33</sup> Parents may utilize the 36 hours for any combination of mentoring, therapy and/or behavioral support they choose.

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Copies to:  
Petitioners (by U.S. mail)  
Petitioners' Attorney: Carolyn Houck, Esq. (electronically)  
DCPS' Attorney: Tanya Chor, Esq. (electronically)  
Chief Hearing Officer Virginia Dietrich, Esq. (electronically)  
OSSE-SPED (electronically)  
ODR (electronically)

**NOTICE OF RIGHT TO APPEAL**

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