

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
May 4, 2015

STUDENT, ¹)	
through the PARENT,)	Hearing Officer: NaKeisha Sylver Blount
)	
<i>Petitioner,</i>)	
)	
v.)	
)	Date Issued: May 3, 2015
District of Columbia Public Schools,)	
)	
<i>Respondent.</i>)	

Hearing Officer Determination

SUBJECT MATTER JURISDICTION

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

PROCEDURAL BACKGROUND

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

The DPC was filed on December 31, 2014 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On January 6, 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 February 2, 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. On February 4, 2015, Petitioner filed a motion for leave to amend the DPC. Respondent filed an opposition on February 9, 2015. Petitioner filed a reply on February 11, 2015. The motion was granted on February 17, 2015 and the amended DPC was deemed filed on February 17, 2015. Respondent’s amended Response was due on February 27, 2015, and was filed on February 27, 2015. The Hearing Officer Determination is due on May 3, 2015.

Hearing Officer Determination

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 15, 2015 and that the DPH would be held on April 22-23, 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 April 22, 2015 and April 23, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Petitioner elected for the hearing to be closed.

Petitioner’s and Respondent’s disclosures were timely filed on April 17, 2015.² At the DPH, Petitioner’s exhibits P-9; P-15; P-16 through P-23; P-25; P-27 through P-42; P-45 through P-47 were admitted into evidence, without objection. Petitioner’s exhibits P-1 through P-8; P-24; P-26; P-43 and P-44 were admitted into evidence over Respondent’s objection. Petitioner’s exhibits P-5; P-8; and P-10 through P-13 were not admitted. Respondent’s exhibits R-1 through R-43 were admitted into evidence without objection.

Petitioner called the following witnesses at the DPH:

- (a) Petitioner/Parent
- (b) Special Education Compliance Expert
- (c) Psychiatrist
- (d) Psychologist

Respondent called the following witness at the DPH:

- (a) Assistant Principal (District Middle School)
- (b) Special Education Teacher (District Middle School)
- (c) Director – Office of Specialized Instruction
- (d) Compliance Case Manager

Petitioner and Respondent each gave an oral closing argument.

ISSUE

As discussed at the PHC and reflected in the PHO, the following issues were presented for determination at the DPH:

- (a) Whether DCPS denied Student a FAPE by failing to implement the 2013-2014 IEP’s requirement of 32 hours of services per week, pursuant to 20 U.S.C. § 1401(9) and 5-E DCMR §§ 3001 & 3002(d).
- (b) Whether DCPS denied Student a FAPE by failing to provide Student an appropriate placement and location of services from August 26, 2013 to January 20, 2014, pursuant to *Eley v. D.C.*, No. CIV.A. 11-309 BAH, 2012 WL 3656471, at *7 and other caselaw cited in the DPC.

² The parties’ disclosures were originally due on April 15, 2015; however, by mutual agreement of the parties, the five-day disclosure deadline was extended to April 17, 2015.

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*****Note***** *On April 7, 2015, Respondent filed a motion to dismiss and Petitioner filed a cross motion for summary judgment. In partially granting both motions on April 16, 2015, the hearing officer issued an order taking administrative notice of a January 14, 2015 federal district court stay-put order involving the parties to this case, and adopted twelve of the district court's findings that are relevant to the instant proceedings. At the start of the due process hearing, the hearing officer granted summary judgment for the Petitioner on issues "(a)" and "(b)" in light of the twelve adopted district court findings. Therefore, issues "(a)" and "(b)" were no longer live issues, and were not litigated during the DPH.*

- (c) Whether DCPS denied Student a FAPE by failing to reevaluate Student from 2014 and/or from May 28, 2014, pursuant to 20 U.S.C. § 1414(a)(2) and 34 C.F.R. § 300.536(b).
- (d) Whether DCPS denied Student a FAPE through the December 8, 2014 IEP formulation process.
 - 1. Whether DCPS denied Student a FAPE by failing to convene a proper IEP team, pursuant to 20 U.S.C. § 1414(d)(1)(B)(v) (specifically, the DPC alleges that an evaluator/individual who can interpret assessment results was not present).
 - 2. Whether DCPS denied Student a FAPE by failing to properly review and revise Student's IEP, pursuant to 20 U.S.C. § 1414(d)(4).
- (e) Whether DCPS denied Student a FAPE by failing to provide a harassment free learning environment, pursuant to *Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 643 (1999).
****As communicated to the parties on April 20, 2015, the hearing officer construes issue "(e)" as an allegation that the placement/location of services was inappropriate for Student due to the alleged harassment, in that the alleged harassment interfered with Student's ability to access her education. The hearing officer will not rely on statutory provisions outside of/not authorized by the IDEA.*

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) a finding in Petitioner's favor on all issues in the due process complaint;
- (b) an Order that DCPS immediately fund non-public placement at Nonpublic School for the remainder of the 2014-2015 school year, and through the summer of 2015;
- (c) an Order that DCPS fund an IEE psychological review assessment to be conducted in June 2015 to assess Student's social, emotional and behavioral progress;
- (d) a finding that the December 8, 2014 IEP is invalid, and an Order that DCPS convene an IEP team meeting;³

³ During the DPH, Petitioner indicated that what had been designated in the PHO as request for relief "(i)" ("an Order requiring DCPS to revise Student's IEP to a full-time outside of general education IEP") is incorporated into request for relief "(d)".

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- (e) an Order that DCPS reimburse Parents for all out-of-pocket costs incurred while providing Student counseling and instruction from May 28, 2014 through the present time;
- (f) an Order that DCPS fund an independent compensatory education package to compensate Student for the educational deficiencies that resulted from the denials of FAPE;⁴
- (g) an Order that DCPS reimburse Petitioners for transportation to and from Nonpublic School at reasonable rates for the time period placement there through the present time;
- (h) an Order that DCPS provide transportation for Student to and from Nonpublic School at public expense.

FINDINGS OF FACT

1. Student resides with her mother (“Parent”/“Petitioner”) and father in Washington, D.C.⁵
2. During the 2013-2014 school year, Student was a [REDACTED] grader at District Middle School.⁶

⁴ During the DPH, Petitioner indicated that what had been designated in the PHO as request for relief “(j)” (“an Order that DCPS provide Student with compensatory education”) is incorporated into request for relief “(f)”.

⁵ Testimony of Petitioner; P-1.

⁶ P-1-1.

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Request for Home/Hospital Instruction

5. On May 15, 2014, Parent requested that Student receive home instruction for the remainder of the 2014-2015 school year.⁹

6. On June 19, 2015¹⁰ and September 25, 2014¹¹ Psychiatrist completed a the physician verification form that DCPS requires in order to evaluate and consider a request for a student to participate in its home/hospital instruction program (“HHIP”). On the form, Psychiatrist indicated that Student was under care for an acute, catastrophic or chronic illness or injury that would cause her to be absent from school for at least 15 school days, that Student was well enough to participate and benefit from an instructional program at home, and recommending that Student receive full-time homebound instruction, noting that Student was unable to attend any portion of the school day.¹² The September 25, 2014 version of the form

⁹ R-15-1.

¹⁰ P-9.

¹¹ P-19.

¹² P-16-5.

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was substantially the same as the June 19, 2014 version of the form, but included some additional handwritten notes, including the note “unable to attend current school.”¹³

7. On September 29, 2014 and October 27, 2014, DCPS’ Office of Specialized Instruction (“OSI”) faxed to Psychiatrist a request for clarification as to whether Student was unable to attend school at all, or unable to attend her current school.¹⁴ The OSI did not speak with Student or Parent, review Student’s medical records, or speak with Psychiatrist in assessing Parent’s request for HHIP.¹⁵ On or around November 5, 2014, Psychiatrist attempted to reach the OSI by phone to clarify his recommendation, but was unable to reach anyone or leave a voice message as the voice mailbox was full. Parent’s counsel informed the OSI by email the next day that Psychiatrist had unsuccessfully attempted to reach the office by phone.¹⁶

8. DCPS denied Parent’s request for HHIP on November 25, 2014, finding that Student did not meet the program criteria.¹⁷

Changes in School Assignments

10. Student never attended City Middle School, and never attended District Middle School. Parent refused to send Student to either school.¹⁹

11. On or around October 2, 2014, DCPS identified Municipal Middle School as Student’s location of services, pending a final decision on Parent’s request for HHIP.²⁰ Due to its structure, Municipal Middle School was not fully capable of implementing Student’s IEP.²¹

12. Student attended Municipal Middle School for approximately three days in December 2014. However, a student in the class to which Student was assigned charged at and threatened Student in class one day, and Student no longer attended Municipal Middle School.²²

¹³ P-19-3.

¹⁴ R-39.

¹⁵ Testimony of Director – Office of Specialized Instruction.

¹⁶ Testimony of Psychiatrist; R-33-1.

¹⁷ R-16-1.

¹⁹ Testimony of Parent; R-42-1;

²⁰ R-27-1.

²¹ Based on the twelve findings of fact the hearing officer adopted from the January 14, 2015 federal district court stay-put order involving the parties to this case.

²² Testimony of Parent.

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13. Following a January 14, 2015 stay-put order from the United States District Court Judge, the District of Columbia placed and funded Student at Nonpublic School, which is an appropriate placement.²³ Student currently attends Nonpublic School, and is making good progress.²⁴

Evaluations

14. On May 15, 2014, an attorney who represented Parent prior to her current counsel of record requested that DCPS provide Student an independent educational evaluation and an independent psychological evaluation.²⁵

15. On May 15, 2014, DCPS agreed to conduct its own psychological evaluation and educational evaluation for Student; however, these evaluations were not conducted because Student did not go back to District Middle School or attend City Middle School.²⁶ It is possible for DCPS to evaluate a student in a location other than a student's assigned school; however, this option was not offered to Parent.²⁷

16. On September 11, 2014, Parent's current counsel requested an independent evaluation ("IEE") for Student.

17. On September 24, 2014, DCPS authorized an IEE for Student.²⁸

18. An independent comprehensive psychological evaluation was completed for Student on December 2, 2014, with the evaluation report completed on December 14, 2014.²⁹

December 8, 2014 IEP Team Meeting

19. An IEP team meeting for Student was held at Municipal Middle School on December 8, 2014.³⁰

20. No school psychologist or other individual capable of interpreting evaluations was present at the December 8, 2014 IEP team meeting.³¹

21. Psychologist's evaluation report was not finalized as of the meeting, because the teacher ratings scales Psychologist had disseminated had not yet been returned to Psychologist for inclusion in the report.³² However, Psychologist provided her written recommendations regarding Student's educational needs for consideration by the IEP team, based on the

²³ R-11; stipulation by the parties.

²⁴ Testimony of Parent.

²⁵ R-15-1.

²⁶ R-15-1.

²⁷ Testimony of Assistant Principal.

²⁸ P-18-1.

²⁹ P-23.

³⁰ P-22-1.

³¹ P-22-2; R-7-1.

³² Testimony of Psychologist; P-22-2; R-6-4.

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information she had as of the meeting. The IEP team did not consider or rely on the expert report during the December 8, 2014 meeting because: (1) the evaluation report was not complete without the teacher rating scales, (2) because a school psychologist was not present at the meeting, and (3) because the report was provided to DCPS only a short while prior to the meeting.³³

22. Parent requested that the IEP not be finalized based on the December 8, 2014 meeting, because the team would not be considering the report from Psychologist during that meeting. DCPS indicated that Student's IEP was due to be reviewed by December 11, 2014, and that the team needed to finalize the IEP based on the December 8, 2014 meeting.³⁴

23. DCPS received the finalized version of Psychologist's evaluation report on January 6, 2015, and reviewed it in a report dated January 21, 2015.³⁵ By that point in time, Student had already been placed at Nonpublic School.

24. Among the recommendations included in Psychologist's December 2014 evaluation report for Student was a recommendation that Student receive a clinical update evaluation in June 2014 "to determine if she is ready to attend school."³⁶

25. Prior to the IEE, Student's most recent evaluation had been a triennial evaluation conducted on November 14, 2013.

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-E D.C.M.R. § 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).

³³ R-7-2.

³⁴ P-22-2.

³⁵ P-24-1.

³⁶ P-23-11.

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I. Whether DCPS denied the student a FAPE by failing to reevaluate the student from 2014 and/or from May 28, 2014, pursuant to 20 U.S.C. § 1414(a)(2) and 34 C.F.R. § 300.536(b).

Pursuant to 20 U.S.C. § 1414(a)(2), an LEA must “ensure that a reevaluation” of a student eligible for special education and related services is conducted when the LEA determines that the “educational or related services needs” of the child warrant reevaluation, or if the student’s parent or teacher requests a reevaluation. In this case, Parent requested an independent reevaluation as of May 15, 2015.

A parent is only entitled to an independent evaluation if the parent disagrees with the LEA’s evaluation. Therefore, the LEA was entitled to evaluate Student prior to authorizing an IEE. However, the offer to conduct the reevaluation either at District Middle School or City Middle School, without offering alternatives such as conducting the reevaluation at Student’s home or another non-school location was not reasonable in light of the fact that Student had just experienced a traumatic event inside a school building and she was not psychologically ready to return to a school building at that time, which was the primary reason Parent was requesting a reevaluation. This procedural violation rises to the level of a denial of FAPE in that it impeded Student’s right to a FAPE; significantly impeded Parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and caused a deprivation of educational benefit, because there was no current evaluation data at that time about Student’s learning needs in the wake of a major and traumatic event. Petitioner met her burden of proof that failure to reevaluate Student from May 15, 2014 (when Parent first made the request) through September 24, 2014 (when DCPS authorized an IEE) constituted a denial of FAPE.

II. Whether DCPS denied the student a FAPE through the December 8, 2014 IEP formulation process.

1. Whether DCPS denied the student a FAPE by failing to convene a proper IEP team, pursuant to 20 U.S.C. § 1414(d)(1)(B)(v) (specifically, the DPC alleges that an evaluator/individual who can interpret assessment results was not present).
2. Whether DCPS denied the student a FAPE by failing to properly review and revise the student’s IEP, pursuant to 20 U.S.C. § 1414(d)(4).

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Pursuant to 20 U.S.C. § 1414(d)(1)(B)(v), “an individual who can interpret the instructional implications of evaluation results” is a required member of an IEP team. No such individual was present at Student’s December 8, 2014 IEP team meeting. This is a procedural violation, meaning it does not automatically constitute a denial of FAPE. However, in this instance, the absence of an individual who could fill this required role did impede Student’s right to a FAPE; significantly impede Parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and cause a deprivation of educational benefit, because this was the first IEP meeting for Student since the 2014 traumatic event, and it was likely that significant changes to her IEP would be necessary.

Additionally, an IEE was nearly finalized at that point, and even though the teacher rating scales had not yet been returned to Psychologist so that she could finalize the report, she had compiled input and recommendations for the team to consider in light of the information she had gathered to date. It is true that Psychologist’s written input only reached DCPS shortly before the meeting; however, Parent offered/requested a postponement of the meeting if the DCPS team members needed additional time to review the evaluation. There was no evidence of any extenuating circumstance that would make it necessary to go forward with the IEP meeting on that particular date, other than the fact that Student was due for an annual IEP meeting by December 14, 2014. Had an individual capable of interpreting evaluations been present at the meeting, Psychologist’s recommendations compiled as of December 8, 2014 may possibly have been able to serve some useful role in the meeting, even though the report had not yet been formally reviewed. Since no such person was present, slightly delaying the meeting with Parent’s agreement would have been reasonable and appropriate under these particular circumstances. Petitioner met her burden of proving that DCPS denied Student a FAPE through the December 8, 2014 IEP formulation process.

III. Whether DCPS denied Student a FAPE by failing to provide an appropriate placement/location of services for Student, in that Student was subjected to harassment in the learning environment that interfered with her ability to access her education.

As originally framed by Petitioner, this issue relied on *Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 643 (1999), which is a case brought under a federal statute other than the IDEA (Title IX). On April 7, 2014, Respondent filed a motion to dismiss the DPC, in part on the grounds that the harassment claim did not cite to a provision of the IDEA. On April 16, 2015, the portion of Respondent’s motion to dismiss related to the harassment claim was denied, because while the hearing officer will not decide the case based on Title IX, the DPC alleges facts that can be construed as a claim that Student’s placement/location of services was inappropriate, due to harassment she experienced in the learning environment. On April 20, 2015, Respondent requested clarification on the standard that would be used at the DPH with respect to the harassment issue. The hearing officer clarified to the parties that the issue would be read as an allegation that DCPS did not provide Student an appropriate placement/location of services. During the DPH, Respondent made an oral motion for directed verdict as to the harassment issue, arguing that the case to which Petitioner cites, *Davis Next Friend LaShonda D.*, relies on a pervasive-and-persistent-pattern standard, which was not evident in this case. However, Petitioner’s amended DPC also states as follows with respect to

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the harassment claim, “By failing to provide the educational program as proscribed in [Student]’s IEP and then failing to provide the therapeutic environment required, DCPS exercised deliberate indifference to [Student]’s rights and denied a floor of opportunity to access the educational curriculum.” As indicated to the parties prior to the hearing, this language is consistent with an allegation that Student’s placement/location of services was inappropriate, a claim that falls within the purview of the IDEA. Therefore, the motion for directed verdict on this issue is **DENIED**.

Turning to the merits of the question of whether Student was denied an appropriate placement/location of services due to harassment, summary judgment has already been granted on the issue of whether DCPS denied the student a FAPE by failing to provide the student an appropriate placement and location of services from August 26, 2013 to January 20, 2014, and the hearing officer has already found that Student’s placement/location of services was inappropriate during this time period. However, the evidence does not establish that the placement/location of services was inappropriate due to a pattern of harassment. The evidence indicates that the 2014 incident was an egregious and traumatic incident of harassment toward Student, but not part of a pattern. Petitioner argues that DCPS wrongfully involuntarily transferred Student to another school under a provision of the District of Columbia Municipal Regulations that is supposed to be applicable to students who have committed criminal acts. While such an action could arguably merit its own allegation in the appropriate forum, the hearing officer does not find this argument to fall within the realm of harassment. Petitioner did not meet the burden of proving that DCPS denied the student a FAPE by failing to provide an appropriate placement/location of services for Student, in that Student was subjected to harassment in the learning environment that interfered with her ability to access her education.

Compensatory Education

IDEA gives hearing officers “broad discretion” to award compensatory education as an “equitable remedy” for students who have been denied a FAPE. *See Reid, supra*, 401 F.3d at 522-23. The award must “provide the educational benefits that likely would have accrued from special education services” that the school district “should have supplied in the first place.” *Id.* at 524. A compensatory education award must “rely on individualized assessments” after a “fact specific” inquiry. *Id.* “In formulating a new compensatory education award, the hearing officer must determine ‘what services [the student] needs to elevate him to the position he would have occupied absent the school district’s failures.’” *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010), quoting *Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 527 (D.C.Cir.2005). *See also, e.g., Turner v. District of Columbia*, 2013 WL 3324358, 10-11 (D.D.C. July 2, 2013).

While a hearing officer has the authority to fashion an appropriate compensatory education award, it is Petitioner’s burden to present evidence at regarding Student’s “specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits.” *See Reid* 401 F.3d 516 at 526. The evidence can, but need not, come via expert testimony. Petitioner’s five-day disclosures listed a compensatory education expert, but did not disclose a compensatory education plan as required by the PHO. Respondent objected, and the compensatory education expert was not permitted to testify. Counsel for Petitioner was permitted to argue during closing arguments what conclusions the

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hearing officer could and should draw from the record regarding compensatory education, yet the record does not clearly establish what if any educational deficits Student experienced.³⁷ In this case, Student has been placed at and attending Nonpublic School since January 2015. Student is doing well at Nonpublic School and making great progress. It is possible that Student suffered educational harm; however, the record is not clear on the extent to which Student suffered harm, and what the harm may have been. Therefore, compensatory education will be dismissed without prejudice.

ORDER

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

- A. DCPS shall fund Student's placement at Nonpublic School for the remainder of the 2014-2015 school year, and through the summer of 2015;
- B. DCPS shall fund an independent psychological review assessment to be conducted in June 2015, to assess Student's social, emotional and behavioral progress;
- C. within 30 school days of this Order, DCPS shall convene an IEP meeting for Student;³⁸
- D. DCPS shall reimburse Student's parents for all out-of-pocket costs incurred while providing Student counseling and instruction from May 28, 2014 through Student's first day in attendance at Nonpublic School in January 2015;
- E. DCPS shall reimburse Student's parents for any reasonable out of pocket costs they have incurred in transporting Student to and from Nonpublic School from the time Student was placed there, through the present time;
- F. DCPS shall provide transportation for Student to and from Nonpublic School at public expense through the summer of 2015;
- G. Petitioner's claim for compensatory education is dismissed, without prejudice.

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

IT IS SO ORDERED.

Date: May 3, 2015

/s/ NaKeisha Sylver Blount
Impartial Hearing Officer

³⁷ As noted in Petitioner's disclosures, compensating a student for missed services and an award of compensatory education are not necessarily the same.

³⁸ During the DPH, Petitioner indicated that what had been designated in the PHO as request for relief "(i)" ("an Order requiring DCPS to revise Student's IEP to a full-time outside of general education IEP") is incorporated into request for relief "(d)".

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NOTICE OF RIGHT TO APPEAL

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