

**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  
August 19, 2015

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STUDENT, <sup>1</sup>	)	
through the PARENT,	)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>	)	
	)	Case No: 2015-0200
v.	)	
	)	<b>Date Issued:</b> August 19, 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 June 5, 2015 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). The DPC was not fully served on Respondent until June 9, 2015; therefore, the timeline was reset on June 16, 2015 to begin as of June 9, 2015, making Respondent’s Response to the DPC due on June 19, 2015. On June 16, 2015, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties did not convene a Resolution Session Meeting (“RSM”) in this matter; however, both parties waived the resolution meeting in writing after the 30-day resolution period had concluded. Accordingly, the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on July 10, 2015, and the Hearing Officer Determination (“HOD”) in this matter is due date on August 23, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on June 24, 2015, during which the parties discussed and clarified

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

the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by July 28, 2015 and that the DPH would be held on August 4, 2015. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on June 25, 2015.

The DPH was held on August 4, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Rooms 2004 and 2008. Due to recording difficulties at the Office of Dispute Resolution, the DPH recessed on August 4, 2015 and resumed and concluded on August 11, 2015. Petitioner elected for the hearing to be closed. Petitioner was represented by Kiran Hassan, Esq. and DCPS was represented by Tanya Chor, Esq.

Petitioner’s and Respondent’s disclosures were timely filed. At the DPH, Petitioner’s exhibits P-1 through P-31 were admitted without objection. Respondent’s exhibits R-1 through R-19 were admitted without objection. Respondent’s exhibit R-20 was not offered into evidence.

Petitioner called the following witnesses at the DPH:

- (a) Parent
- (b) Student
- (c) Educational Advocate A<sup>2</sup>
- (d) Educational Advocate B

Respondent called the following witness at the DPH:

- (a) Assistant Principal for Special Education (“Assistant Principal”)

Petitioner and Respondent gave oral closing arguments.

### **ISSUE**

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 FAPE from October 2014 through the present time by failing to fully implement Student’s October 23, 2014 amended IEP, when it failed to provide the requisite 15 hours of specialized instruction outside the general education setting.

### **RELIEF REQUESTED**

Petitioner requested the following relief:

- (a) a finding in Petitioner’s favor as to the issue raised in the complaint;
- (b) an Order that DCPS fund compensatory education in the form of 220 hours of individual tutoring, 40 hours of mentoring services, and an iPad or laptop computer with educational software.

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<sup>2</sup> Qualified as an expert in the area of IEP implementation, over Respondent’s objection.

### FINDINGS OF FACT

1. Student is [AGE] years old, resides with her mother (“Parent”/“Petitioner”) in Washington, D.C., and is eligible for special education and related services under the disability classification “Specific Learning Disability.” During the 2014-2015 school year, Student was in [GRADE] grade.<sup>3</sup>
2. From February 2014 to the present time, except for the period from October 3, 2014 to October 28, 2014,<sup>4</sup> Student’s IEPs called for her to receive 15 hours of specialized instruction outside the general education setting and 120 minutes of behavioral support services outside the general education setting.<sup>5</sup>
3. From the beginning of the 2014-2015 school year until just prior to winter break in December 2014, Student attended City Charter School, which could not implement a 15 hour per week outside of general education setting IEP.<sup>6</sup>
4. On October 22, 2014, DCPS assigned District High School as Student’s new location of services and provided enrollment instructions, as District High School could implement Student’s IEP. In December 2014 just prior to winter break, Student began attending District High School.<sup>7</sup>
5. Prior to Student’s most recent IEP team meeting on May 13, 2015, the special education coordinator at District High School proposed to Assistant Principal and to Parent that Student’s IEP hours be revised to reflect more hours outside of the general education setting; however, ultimately the hours on Student’s May 13, 2015 IEP remained the same.<sup>8</sup>
6. During the May 13, 2015 IEP team meeting, the special education coordinator erroneously informed Parent and Educational Advocate that Student was not receiving 15 hours of specialized instruction outside the general education setting as called for in her IEP.<sup>9</sup>
7. In reality – as special education teacher corrected herself via electronic mail to Parent and her advocates within a few hours after the meeting – throughout her time at District High School, Student received at least 15 hours per week of instruction solely with other students with IEPs, taught by certified special education, even though some of those teachers were also certified in a content area.<sup>10</sup>

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<sup>3</sup> Testimony of Parent; P-11-1.

<sup>4</sup> From October 3, 2014 through October 28, 2014, Student had an IEP that called for 15 hours per week of specialized instruction inside the general education setting and 3 hours per week of specialized instruction outside the general education setting.

<sup>5</sup> P-6, P-7, P-10, P-11.

<sup>6</sup> Testimony of Parent.

<sup>7</sup> Testimony of Parent; R-16.

<sup>8</sup> Testimony of Assistant Principal; P-26; P-11.

<sup>9</sup> Testimony of Educational Advocate B; testimony of Assistant Principal; P-24.

<sup>10</sup> Testimony of Assistant Principal; P-24; R-18.

### 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 denied Student a FAPE from October 2014 through the present time by failing to fully implement Student’s October 23, 2014 amended IEP, when it failed to provide the requisite 15 hours of specialized instruction outside the general education setting.**

Not every failure to provide services according to a student’s IEP amounts to an IDEA violation; however, a material failure to implement an IEP violates the IDEA. *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP. A showing of educational harm is not required to find a denial of FAPE for failing to implement an IEP. *See Department of Education, State of Hawaii v. R.F. by Pauline F.*, 57 IDELR 197 (2011).

Notwithstanding the special education coordinator’s prompt correction of the mischaracterization she made during the May 13, 2015 IEP team meeting regarding how Student’s IEP services were being provided, Petitioner argues that Student did not in fact receive 15 hours of specialized instruction outside of the general education setting at District High School. The Hearing Officer, however, credits the clarification email the special education teacher sent within hours of the meeting, prior to the current litigation. The Hearing Officer also credits the testimony of Assistant Principal, who testified to the special education certification status of Student’s teachers. Assistant Principal and the special education coordinator work in District High School daily, and have a clearer understanding of where and by whom Student is educated. The printout of Student’s schedule is not inconsistent with the testimony of Assistant Principal, the email representations of the special education coordinator, or Student’s own testimony during the DPH.

Petitioner argues that even if Student had at least 15 hours of instruction outside of the general education setting, it was not specialized instruction with respect to, for example, time Student spent using the “Read 180” computerized reading program, because while District High

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School may only use Read 180 for special education students, other schools use it for general education students as well. However, in *Letter to Chambers*, 59 IDELR 170 (2012) the Office of Special Education Programs (“OSEP”) stated that “[t]he fact that [an educational service] may also be considered ‘best teaching practices’ or ‘part of the district’s regular education program’ does not preclude those services from meeting the definition of ‘special education’ or ‘related services’” as defined by 34 C.F.R. §300.320(a)(4).

The Hearing Officer does not find that Petitioner met the burden of proving that DCPS denied Student a FAPE from October 2014 through the present time by failing to fully implement Student’s October 23, 2014 amended IEP, in failing to provide the requisite 15 hours of specialized instruction outside the general education setting.

**ORDER**

As there has been no finding of a denial of FAPE, all requested relief is **DENIED**. The complaint is **DISMISSED** with prejudice.

**IT IS SO ORDERED.**

Date: August 19, 2015

**/s/ NaKeisha Sylver Blount**  
Impartial Hearing Officer

Copies to:  
Petitioner (by U.S. mail)  
Petitioner’s Attorney: Kiran Hassan, 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).