

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution  
1050 First Street, N.E., 4<sup>th</sup> Floor  
Washington, D.C. 20002

OSSE  
Office of Dispute Resolution  
April 08, 2018

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2018-0009
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 4/8/18
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates: 3/20/18 & 4/5/18
("DCPS"),	)	ODR Hearing Room: 112
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because Student had not been sufficiently evaluated, nor provided an appropriate Individualized Education Program (“IEP”) and placement. DCPS responded that it had properly evaluated Student and developed an appropriate IEP and placement.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

**Procedural History**

Following the filing of the due process complaint on 1/16/18, the case was assigned to the undersigned on 1/17/18. Respondent filed a response on 2/1/18, which did not challenge jurisdiction, apart from asserting that Hearing Officers lack jurisdiction over a claim of lack of access to educational records. The resolution session meeting took place on

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<sup>1</sup> Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

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2/9/18 without success. The 30-day resolution period ended on 2/15/18. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by a 15-day continuance, which requires a Hearing Officer Determination (“HOD”) by 4/16/18.

The due process hearing took place on 3/20/18 and 4/5/18 (which was delayed from 3/21/18 by weather that closed the District of Columbia government) and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in the first day of the hearing and a portion of the second day.

Petitioner’s Disclosures, submitted on 3/13/18, contained documents P1 through P51, which were admitted into evidence without objection. Respondent’s Disclosures, submitted on 3/13/18, contained documents R1 through R14, which were also admitted into evidence without objection.

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see Appendix A*):

1. *Educational Advocate* (qualified over objection as an expert in Special Education Programming and IEP Development)
2. *Principal of Proposed Nonpublic School*
3. *Educational Expert* (qualified over objection as an expert in Psychology/ Neuropsychology, Special Education Programming, IEP Development and Compensatory Education)
4. Parent

Respondent’s counsel presented 4 witnesses in Respondent’s case (*see Appendix A*):

1. *Special Education Coordinator A* from *Public School* (qualified without objection as an expert in Special Education Programming and Placement)
2. *Compliance Case Manager*
3. *Special Education Coordinator B* from *New Public School* (qualified without objection as an expert in Special Education Programming and Placement)
4. *School Psychologist* at *Public School* (qualified without objection as an expert in Psychology)

The issues to be determined in this Hearing Officer Determination are:

**Issue 1:** Whether DCPS denied Student a FAPE on or about 12/18/17 by failing to provide an appropriate IEP, placement or location of service based on (a) reduction in instructional service when more support was needed, (b) lack of ESY, (c) lack of

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appropriate accommodations, (d) lack of a dedicated aide, and (e) insufficient behavioral support services (“BSS”). *Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*

**Issue 2:** Whether DCPS denied Student a FAPE by failing to provide access to educational records despite Petitioner’s visits to the school and 11/3/17 written request, and prior to a 12/18/17 IEP meeting. *Petitioner has the burden of persuasion on this issue.*

**Issue 3:** Whether DCPS denied Student a FAPE by failing to comprehensively evaluate Student in light of deficits and/or to agree to conduct an adaptive assessment, an occupational therapy evaluation, and a functional behavioral assessment (“FBA”) of Student. *Petitioner has the burden of persuasion on this issue.*

The relief requested by Petitioner is:

1. A finding that DCPS denied Student a FAPE.
2. DCPS shall conduct or fund (a) an occupational therapy evaluation, (b) an adaptive assessment, and (c) fund an FBA if it has not been completed by the time of the hearing.
3. DCPS shall provide Parent with copies of all records requested.
4. DCPS shall convene an IEP meeting and revise Student’s IEP to include (a) not less than 27.5 hours/week of specialized instruction outside general education, (b) ESY, (c) accommodations such as “Read Aloud,” (d) increased BSS, (e) a dedicated aide, and (f) placement in an appropriate setting with parental approval or funding for a nonpublic placement with transportation.
5. DCPS shall provide compensatory education for any denial of FAPE.<sup>2</sup>
6. Any other relief that is just and appropriate.

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<sup>2</sup> Petitioner’s request for compensatory education will be considered during the due process hearing, except to the extent that it depends on the findings of assessments that may be carried out in the future and determination of any impact on the appropriate level of special education services, which will be reserved.

With regard to any remaining request for compensatory education, Petitioner’s counsel was put on notice at the prehearing conference that Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student’s alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was encouraged at the prehearing conference to be prepared to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

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### Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact<sup>3</sup> are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>4</sup> Student is *Age*, *Gender* and in *Grade* at Public School; in 2016/17 Student attended *Prior Public School*.<sup>5</sup> Student was retained twice in a lower grade, but after 2016/17 was "socially promoted" and skipped the grade prior to the current Grade.<sup>6</sup>

2. Student's disability classification is now Multiple Disabilities ("MD"), with both Specific Learning Disability ("SLD") and Other Health Impairment ("OHI") based on Attention Deficit Disorder ("ADD") or Attention Deficit Hyperactivity Disorder ("ADHD").<sup>7</sup> Student met the diagnostic criteria for a Specific Learning Disorder in the areas of reading, math and writing.<sup>8</sup> SLD was first added to Student's 12/18/17 IEP, which is the only IEP at issue in this case.<sup>9</sup>

3. Student's 12/18/17 IEP reduced specialized instruction outside general education to 52 hours/month (or about 13 hours/week), down from 27.5 hours/week on Student's 3/10/17 and 3/15/16 IEPs.<sup>10</sup> BSS has remained consistent at 120 minutes/month in the 3 IEPs.<sup>11</sup>

4. Evaluations. A court-ordered Psychoeducational Evaluation was completed on 9/21/17.<sup>12</sup> Based on the Wechsler Intelligence Scale for Children – Fifth Edition ("WISC-V"), Student's Full Scale IQ ("FSIQ") was 74, which is considered very low, with a 95% confidence interval of 69-81.<sup>13</sup> Student appeared to have "test anxiety" based on behavior

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<sup>3</sup> Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>4</sup> Parent.

<sup>5</sup> Parent; P1-1; P2-1.

<sup>6</sup> Parent; P8-14; P2-1; P11-1; P7-2; P28-1.

<sup>7</sup> P1-1.

<sup>8</sup> P6-16; Educational Advocate.

<sup>9</sup> P1-1; P2-1; P3-1; P22-1.

<sup>10</sup> P1-12; P2-16; P3-16.

<sup>11</sup> *Id.*

<sup>12</sup> P6-1.

<sup>13</sup> P6-10.

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during some of the cognitive testing tasks.<sup>14</sup> Student was restless and frustrated on tasks such as reading and writing.<sup>15</sup>

5. School Psychologist believes that Student is likely at the high end of the FSIQ confidence interval in the 9/21/17 evaluation.<sup>16</sup> School Psychologist noted concerns about the court-ordered evaluation because it was administered in one sitting, which may depress scores, and there was no classroom observation or input from teachers.<sup>17</sup> Parent and her advocates agreed that the scores were depressed at a 12/18/17 meeting and that Student's functioning was higher than indicated.<sup>18</sup> The 12/18/17 meeting was cordial; School Psychologist was surprised to receive Petitioner's advocate's 1/5/18 "dissent letter" changing positions and raising new issues.<sup>19</sup>

6. An earlier Comprehensive Psychological Reevaluation of Student dated 1/25/15, administered the Reynolds Intellectual Assessment Scales ("RIAS").<sup>20</sup> Student had a Composite Intelligence Index ("CIX") of 89, in the below average range, and a Total Test Battery ("TTB") score of 91, in the average range.<sup>21</sup> Prior to that, a 10/21/13 Psychoeducational Evaluation of Student administered the Wechsler Intelligence Scale for Children – Fourth Edition ("WISC-IV") and found a FSIQ of 71, which is borderline.<sup>22</sup>

7. DCPS sought to conduct a new comprehensive psychological evaluation of Student, but had difficulty obtaining consent from Parent based on concerns from her advocates about suitable assessments to use to avoid the "practice effect."<sup>23</sup> Parent consented to a new comprehensive psychological evaluation between the first and second days of this hearing.<sup>24</sup>

8. Academics. Student's academic abilities are well below expected age and grade level.<sup>25</sup> According to the Woodcock-Johnson results reported in Student's 12/18/17 IEP, Student was 4 grades behind in math and observed counting on Student's fingers during testing, 5-6 grades behind in reading, and 6 grades behind in writing.<sup>26</sup> The 3/1/18 report card Progress Report showed that Student is currently receiving all "Ds" and "Fs."<sup>27</sup>

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<sup>14</sup> P6-18.

<sup>15</sup> P6-9.

<sup>16</sup> School Psychologist.

<sup>17</sup> School Psychologist; P14-1; P48-3; R11-2.

<sup>18</sup> School Psychologist.

<sup>19</sup> School Psychologist; P41-2 *et seq.*

<sup>20</sup> P8-1,6.

<sup>21</sup> P8-6.

<sup>22</sup> P9-1.

<sup>23</sup> School Psychologist; Special Education Coordinator A; Educational Expert; R9-2,3; R11-2.

<sup>24</sup> Special Education Coordinator A.

<sup>25</sup> P6-16.

<sup>26</sup> P1-4,5,7; *cf.* P6-14,14 (4 grades behind in math, 4-5 grades behind in reading, and over 4 grades behind in writing).

<sup>27</sup> P16-1,2.

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Student is said to produce good and sound work when motivated and focused, but consistently displays negative, inappropriate, and off-task behaviors.<sup>28</sup>

9. According to SRI lexile scores, Student has progressed steadily in reading and has been in the Basic band at each data point available in 2015/16, 2016/17 and 2017/18, except that Student was in the Proficient band at the end of 2016/17 (at the lower grade level before skipping a grade).<sup>29</sup>

10. Behavior. Student is likeable, outgoing and independent, but “over-the-top” playful.<sup>30</sup> Student disrupts instruction by engaging in teasing, excessive talking, and profanity towards peers and teachers, which impedes Student and others.<sup>31</sup> Student reported to an evaluator that Student is very popular and has “too many friends,” with many friends several years older than Student.<sup>32</sup> Student viewed self as a “player” but was “calming down in 2017.”<sup>33</sup> While sociable and playful, Student teases other students to the point of bullying and does not know when to stop.<sup>34</sup> Student is overactive, impulsive, and disruptive in both school and home settings, with a tendency to be quick-tempered.<sup>35</sup> Student has difficulty regulating emotions and behavior, which is a reflection of the existing attention disorder and low cognitive functioning.<sup>36</sup>

11. As of 12/15/17, Student had 27 unexcused absences for 2017/18 when Student had not been at school the entire day, and another 25 days when Student was tardy, out of 78 days enrolled.<sup>37</sup> The Progress Report showed that Student had 40 absences for the year as of 3/1/18.<sup>38</sup>

12. Specialized Instruction. DCPS reduced Student’s specialized instruction hours in the 12/18/17 IEP because “Parent indicated that she did not want her [child] in classes with all disabled students” and the IEP team concurred.<sup>39</sup> There was no disagreement about reducing Student’s specialized instruction hours until the 1/5/18 dissent letter.<sup>40</sup> DCPS’s notes from the 1/18/18 meeting report that “parent stated she would like for student not to be placed in a full time self-contained setting.”<sup>41</sup> Educational Advocate’s notes from the

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<sup>28</sup> P1-9.

<sup>29</sup> R6-1,2,3,5; P28-3; P17-4.

<sup>30</sup> Special Education Coordinator A; School Psychologist.

<sup>31</sup> P1-9.

<sup>32</sup> P6-4.

<sup>33</sup> P6-5.

<sup>34</sup> School Psychologist; Special Education Coordinator A; Parent (Student “misunderstood” as bully); P1-9; P14-2; R4-8.

<sup>35</sup> P6-19.

<sup>36</sup> P6-17.

<sup>37</sup> Special Education Coordinator A; P22-5; P14-1.

<sup>38</sup> P16-1,2.

<sup>39</sup> R11-4; Special Education Coordinator A.

<sup>40</sup> School Psychologist; P41-4.

<sup>41</sup> R14-2.

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1/18/18 meeting with Public School confirmed that Parent wanted Student to be with non-disabled peers and not in a self-contained setting.<sup>42</sup> The Prior Written Notice (“PWN”) following the 1/18/18 meeting stated that “parent requested that the team not consider the advocate’s request for increasing hours on the IEP to 27.5 hours.”<sup>43</sup> At the due process hearing, in contrast, Parent testified that she disagreed with the reduction of specialized instruction hours in the 12/18/17 IEP.<sup>44</sup> Parent was clear that she did not want Student in a self-contained BES classroom, which was causing worse behavior, but was willing to have 27.5 hours/week of specialized instruction with all disabled students if helpful for Student to succeed in school.<sup>45</sup> Student doesn’t know what is best for self.<sup>46</sup>

13. ESY. ESY was removed from Student’s 12/18/17 IEP; Student did not qualify for ESY based on teacher input.<sup>47</sup> Special Education Coordinator A explained to Parent the differences between ESY and summer school.<sup>48</sup> Educational Advocate sought reconsideration of ESY after the winter and spring breaks; Special Education Coordinator A testified that he had just sent out a letter proposing dates to meet about ESY, now that spring break is over.<sup>49</sup> ESY was required by Student’s 3/10/17 IEP and Student was signed up for ESY in the summer of 2017, but was “frequently absent,” “not present,” and noted for “non-attendance.”<sup>50</sup>

14. Accommodations. Student’s 12/18/17 IEP removed prior IEPs’ accommodations of being “Read Aloud” to and speech-to-text for testing and in the classroom.<sup>51</sup> Parent and Educational Advocate requested Read Aloud and text-to-speech (although speech-to-text was on the previous IEPs) be included on Student’s IEP during the 1/18/18 meeting; DCPS disagreed based on teacher input.<sup>52</sup> School Psychologist credibly testified that there is no need to read to Student as confirmed by Student’s lexile scores.<sup>53</sup>

15. Dedicated Aide. The court-ordered 9/21/17 Psychoeducational Evaluation recommended a dedicated aide.<sup>54</sup> Student did not fit any of the categories for a dedicated aide, as Student is very capable; a dedicated aide is not needed for Student to access the curriculum.<sup>55</sup> Special Education Coordinator A and School Psychologist credibly testified that given Student’s self image as a “cool kid,” they were certain that Student would not

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<sup>42</sup> P12-3.

<sup>43</sup> R7-1.

<sup>44</sup> Parent.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Special Education Coordinator A; P14-4; P25-1.

<sup>48</sup> R2-21.

<sup>49</sup> P14-4; Special Education Coordinator A.

<sup>50</sup> P11 *passim*.

<sup>51</sup> P1-14; P2-18; P3-18; P14-3.

<sup>52</sup> P12-2; Educational Advocate; P14-3.

<sup>53</sup> School Psychologist.

<sup>54</sup> P6-20.

<sup>55</sup> Special Education Coordinator A; School Psychologist.

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tolerate a dedicated aide and that there was no way a dedicated aide could prevent Student from skipping classes or leaving in the middle of class.<sup>56</sup> Student is currently looked up to by peers, but would be ridiculed and teased by peers and friends for having a dedicated aide.<sup>57</sup> Dedicated aides are not permitted to physically restrain students; Special Education Coordinator A testified that a dedicated aide getting close to Student's personal space would likely cause a negative physical reaction from Student.<sup>58</sup> At Public School, dedicated aides are required to be with their assigned students all day long, not just for limited times or specific classes.<sup>59</sup>

16. BSS. On 1/18/18, Petitioner sought an increase in Student's BSS from 120 to 240 minutes/month, but Public School did not agree.<sup>60</sup> Student needed more therapy hours, including individual therapy and not just a small group.<sup>61</sup> The first recommendation in the court-ordered Psychiatric Evaluation of Student dated 8/27/17 was for individual therapy.<sup>62</sup>

17. Documents. Both sides put a great deal of effort into dealing with Student's educational records, with the school concerned about multiple overlapping requests and Petitioner's advocates concerned about not receiving everything sought; Special Education Coordinator A ended up requesting a written receipt listing the specific documents provided, with limited success.<sup>63</sup> Petitioner's initial document request was made on 11/3/17 and appeared to be limited to 2017/18 documents; later communications from Petitioner's advocates also sought earlier documents.<sup>64</sup> The initial 11/3/17 request sought access to review and copy Student's educational file if Public School could not email or fax the entire academic file to Petitioner.<sup>65</sup> Public School never denied the right to inspect and copy Student's educational records, although Public School tried to provide all records requested.<sup>66</sup> Not all the documents requested were available.<sup>67</sup>

18. Petitioner sought Student's documents in advance of the 12/18/17 meeting, but did not obtain all she needed.<sup>68</sup> At the 12/18/17 meeting, Educational Advocate specifically sought (a) 2017/18 ANET, SRI, iReady data, (b) 2017/18 Report Card, and (c) 2017/18 IEP Progress Report.<sup>69</sup> Special Education Coordinator A agreed to check with teachers for (a),

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<sup>56</sup> Special Education Coordinator A; School Psychologist; Parent (Student is biggest student in class).

<sup>57</sup> Special Education Coordinator A.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> P12-4; Educational Advocate.

<sup>61</sup> Educational Advocate.

<sup>62</sup> P7-1,8.

<sup>63</sup> P42; P40; P37; P14; Special Education Coordinator A; Educational Advocate.

<sup>64</sup> P42-1; P37-2,3.

<sup>65</sup> P42-1.

<sup>66</sup> Special Education Coordinator A.

<sup>67</sup> *Id.*

<sup>68</sup> Educational Advocate.

<sup>69</sup> P14-4.

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noting that if Student was not present there may not be beginning-of-year data, and sent Educational Advocate to the registrar for (b) and (c).<sup>70</sup> Public School's report card Progress Report for Student dated 3/1/18 was later obtained by Petitioner.<sup>71</sup>

19. On 3/5/18, Educational Advocate sought 2016/17 discipline records/incident reports, to which Special Education Coordinator A responded the same day saying that there were no behavior incidents on file for Student for 2016/17; Petitioner's counsel continued to seek 2016/17 BSS Trackers although Educational Advocate had confirmed she had received all months except August and October.<sup>72</sup> Two other categories of documents were not received by Educational Advocate and continued to be sought: 2017/18 Standardized Testing/Informal Assessments and 2017/18 IEP Progress Reports.<sup>73</sup> Educational Advocate testified that Public School did not provide (a) 2017/18 IEP Progress Report for the 2<sup>nd</sup> term, (b) SDQ responses, (c) standardized testing, and (d) 2017/18 BSS service trackers (except for the 1 month of November 2017).<sup>74</sup>

20. FBA/BIP. An FBA and Behavioral Intervention Plan ("BIP") had been completed for Student around 11/6/15.<sup>75</sup> The 9/21/17 Psychoeducational Evaluation recommended an FBA and BIP to assist with monitoring and controlling Student's disruptive classroom behavior.<sup>76</sup> On 12/18/17, Student's IEP team determined that Student needed an FBA and BIP to address attendance issues and planned to move forward.<sup>77</sup> Parent signed a consent form on 12/18/17 permitting the FBA.<sup>78</sup> Educational Advocate asked again on 1/18/18 that an FBA and BIP be completed and Public School again agreed.<sup>79</sup> The FBA had not been completed when the hearing concluded on 4/5/18.<sup>80</sup>

21. Occupational Therapy ("OT"). Educational Advocate and Parent sought an OT evaluation at the 12/18/17 meeting based on concern about Student's handwriting and sensory issues raised in the Comprehensive Psychological Reevaluation.<sup>81</sup> Public School did not have an occupational therapist at the 12/18/17 meeting, so stated that an OT evaluation would have to be discussed later.<sup>82</sup> Special Education Coordinator A emailed

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<sup>70</sup> *Id.*

<sup>71</sup> P16-1,2.

<sup>72</sup> P34-1,4.

<sup>73</sup> P34-1,3,4.

<sup>74</sup> Educational Advocate.

<sup>75</sup> P29; P30.

<sup>76</sup> P6-21.

<sup>77</sup> P14-2,4.

<sup>78</sup> P26-1; R2-23; Educational Advocate.

<sup>79</sup> R7-1 (PWN); P12-3,4.

<sup>80</sup> Special Education Coordinator A.

<sup>81</sup> P14-4; R2-20,21.

<sup>82</sup> P14-4.

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Parent a consent to evaluate form for OT on 2/27/18 which was signed and returned on 3/1/18 (along with consent for adaptive measures and FBA).<sup>83</sup>

22. Adaptive Measures. Adaptive measures are routinely used when the IQ is 70 or below, which is 2 standard deviations below the mean.<sup>84</sup> To determine whether adaptive measures were needed, School Psychologist gave Student an informal assessment and determined that Student was in the average range for all areas covered, including washing clothes, making telephone calls, writing letters, and completing a job application, among other things.<sup>85</sup> Student's teacher confirmed that adaptive behavior was not a concern and that Student's adaptive skills were comparable to non-disabled peers.<sup>86</sup> School Psychologist stated in the 1/18/18 meeting that the court's evaluator would have completed an adaptive measure had Student needed one, but School Psychologist was willing to reevaluate Student and include an adaptive assessment.<sup>87</sup>

23. Other Issues. DCPS proposed on 3/13/18 to amend Student's IEP to return Student to about 27.5 hours/week of specialized instruction outside general education; Parent agreed and Petitioner's counsel confirmed by email.<sup>88</sup> The proposed IEP amendment left BSS unchanged at 120 minutes/month.<sup>89</sup> Student's IEP was amended to make the change in the first days of April 2018.<sup>90</sup> Public School can't provide self-contained electives for a 27.5 hours/week IEP, so the Least Restrictive Environment ("LRE") team was involved and a new location of services ("LOS") letter for Student naming New Public School was to be sent to Parent on 4/5/18.<sup>91</sup>

24. Student would benefit from a mentoring program.<sup>92</sup> Parent expressed a desire for Student to have a mentor.<sup>93</sup> School Psychologist stated at the 12/18/17 meeting that she would set Student up with a mentor at Public School.<sup>94</sup> Student would also benefit from tutoring services, as Student is significantly below grade level.<sup>95</sup> Parent believed that Student would benefit from a tutor as well.<sup>96</sup> Parent asked Public School staff about tutoring during the 1/18/18 meeting and was told that Public School offers tutoring and Saturday school.<sup>97</sup> Public School offered tutoring to Student, but Student made clear

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<sup>83</sup> P38-1,4.

<sup>84</sup> Educational Advocate; School Psychologist.

<sup>85</sup> School Psychologist; P12-1.

<sup>86</sup> R14-7.

<sup>87</sup> P12-1; School Psychologist.

<sup>88</sup> Educational Expert; R10-2.

<sup>89</sup> R10-14.

<sup>90</sup> Special Education Coordinator A.

<sup>91</sup> Special Education Coordinator A; Compliance Case Manager.

<sup>92</sup> P6-21.

<sup>93</sup> P6-5.

<sup>94</sup> P14-2.

<sup>95</sup> P6-19.

<sup>96</sup> P6-5,6.

<sup>97</sup> P12-2.

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Student's unwillingness to stay after school for tutoring.<sup>98</sup> Similarly, Student visited Proposed Nonpublic School and was very clear that Student was not going to attend there.<sup>99</sup>

25. Educational Expert prepared a Compensatory Education Proposal in which she calculated that primarily because of the reduction in specialized instruction outside general education Student should receive 84 hours of independent tutoring and 42 hours of mentoring.<sup>100</sup> For the mentoring, Educational Expert suggested a weekly meeting of 2-3 hours on the weekend.<sup>101</sup>

### Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994, quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, DCPS must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Andrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. at 1001. The Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support

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<sup>98</sup> Special Education Coordinator A.

<sup>99</sup> *Id.*

<sup>100</sup> Educational Expert; P50-6.

<sup>101</sup> Educational Expert.

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services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), citing *Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its recent decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Andrew F.*, 137 S. Ct. at 1001.

In addition, Respondent must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs 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. 34 C.F.R. 300.114; *Andrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible).

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 child’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). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), quoting *N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a prima facie case. D.C. Code Ann. § 38-2571.03(6); *Schaffer ex rel. Schaffer v. West*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). “Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] 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.

**Issue 1:** *Whether DCPS denied Student a FAPE on or about 12/18/17 by failing to provide an appropriate IEP, placement or location of service based on (a) reduction in instructional service when more support was needed, (b) lack of ESY, (c) lack of appropriate accommodations, (d) lack of a dedicated aide, and (e) insufficient BSS. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner did establish a prima facie case on this issue, shifting the burden to Respondent, which met its burden of persuasion except for subpart (e).

The applicable legal standard for analyzing the appropriateness of an IEP was

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articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. The undersigned views this new standard as building on and buttressing prior articulations of whether the challenged IEP was “reasonably calculated to produce meaningful educational benefit” and to permit Student to access the general education curriculum to the extent possible. See *Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016); *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. The measure and adequacy of the IEP are determined as of the time it was offered to Student. See, e.g., *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008).

The appropriateness of Student’s IEP is analyzed by considering the specific concerns raised by Petitioner, which are considered below in turn.<sup>102</sup> See 34 C.F.R. 300.320(a)(4),(5); *Honig*, 484 U.S. at 311.

(a) Specialized Instruction. The initial element of the challenged IEP at issue is the amount of specialized instruction, which the 12/18/17 IEP reduced from 27.5 hours/week to 52 hours/month outside general education, a reduction of a little more than half. While there was conflicting testimony, the undersigned was persuaded by the contemporaneous documentation that DCPS reduced Student’s specialized instruction hours because of Parent’s concerns and preference for Student not to be in a full-time self-contained setting, with which the IEP team concurred.

School Psychologist credibly testified that there was no disagreement over reducing Student’s specialized instruction hours at the 12/18/17 meeting. Petitioner’s advocate did raise concerns in a 1/5/18 dissent letter, but at the next meeting on 1/18/18, Parent stated that she did not want Student to be in a full time self-contained setting. Indeed, Educational Advocate’s notes from that meeting confirmed that Parent wanted Student to be with non-disabled peers and not in a self-contained setting. Significantly, the PWN following the 1/18/18 meeting stated that “parent requested that the team not consider the advocate’s request for increasing hours on the IEP to 27.5 hours.”

While DCPS does have a duty to provide a FAPE to Student with an appropriate amount of specialized instruction, the undersigned finds DCPS’s concurrence with Parent’s views understandable and reasonable in this case where Parent is thoughtfully and deeply engaged in decision-making concerning Student’s program in a diligent effort to keep Student attending classes and getting an education.

(b) Extended School Year. ESY is necessary to provide a FAPE under 34 C.F.R. 300.106(a) when the benefits a disabled child gains during a regular school year will be “significantly jeopardized” if the child is not provided with an educational program during the summer months. *Johnson v. Dist. of Columbia*, 873 F. Supp. 2d 382, 386 (D.D.C.

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<sup>102</sup> As an initial matter, a Hearing Officer must determine whether “the State complied with the procedures” set forth in the IDEA. *A.M.*, 933 F. Supp. 2d at 204, quoting *Rowley*, 458 U.S. at 206-07. No procedural violations were alleged in this case.

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2012), *quoting MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 537-38 (4th Cir. 2002). However, the “mere fact of likely regression” is not a sufficient basis for finding ESY eligibility, for all students may regress to some extent during lengthy breaks; ESY is required only when regression will substantially thwart the goal of “meaningful progress.” *Johnson*, 873 F. Supp. 2d at 386, *quoting MM*, 303 F.3d at 538.

Here, Public School removed ESY from Student’s first IEP at Public School because Student did not qualify for ESY as of 12/18/17 based on teacher input. Educational Advocate sought reconsideration of the ESY decision after the winter and spring breaks; DCPS agreed and Special Education Coordinator A is currently scheduling the meeting to revisit the ESY decision. The undersigned finds no FAPE violation here and, in any case, there has been no harm at this point.

(c) Accommodations. Petitioner next objects to lack of accommodations in the IEP, such as Student being read to (so-called Read Aloud) and text-to-speech (although speech-to-text was on the previous IEPs) during testing and in the classroom. The accommodations were rejected based on teacher input and School Psychologist convincingly testified that there was no need to read to Student as confirmed by Student’s lexile scores. The undersigned concludes that Student’s reading may well need to be strengthened and enhanced through more reading, but the solution is not to have a reader for Student.

(d) Dedicated Aide. While the 9/21/17 Psychoeducational Evaluation recommended a dedicated aide, the undersigned agrees with DCPS that Student did not require a dedicated aide to access the curriculum. *See Rowley*, 458 U.S. at 203 (dedicated aide required if necessary “to permit the child to benefit educationally from [the IEP personalized] instruction”).

Further, as a practical matter, Special Education Coordinator A and School Psychologist convincingly testified that given Student’s self image as a “cool kid,” Student would not tolerate a dedicated aide and the accompanying ridicule or teasing from peers and friends. Moreover, a dedicated aide could not prevent Student from skipping classes or leaving in the middle of class, for dedicated aides are not permitted to physically restrain students and a dedicated aide getting close to Student’s personal space would likely cause a negative physical reaction from Student.

(e) Behavioral Support Services. At the 1/18/18 meeting, Petitioner sought an increase in Student’s BSS from 120 to 240 minutes/month, requiring a demonstration of significant social-emotional or behavior concerns that hinder Student’s academic performance or progress, a standard that Student’s IEP team did not believe satisfied. However, the undersigned is persuaded that Student needed more behavioral support.

The uncontroverted evidence is that Student disrupts classroom instruction by engaging in teasing, excessive talking, and profanity towards peers and teachers, which impedes Student and others. Student teases other students to the point of bullying and does not know when to stop. Student is overactive, impulsive, and disruptive, with a tendency to be quick-tempered as Student has difficulty regulating emotions and behavior. Moreover, the first recommendation in the court-ordered Psychiatric Evaluation of Student dated

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8/27/17 was for individual therapy.

Denial of needed BSS may have contributed to Student's 27 absences in the first months of 2017/18, along with other negative impacts and deprivation of educational benefit and is thus a substantive violation and a denial of FAPE. 34 C.F.R. 300.513(a). Accordingly, DCPS is ordered below to increase Student's BSS to 180 minutes/month. This denial of FAPE contributes to the award of compensatory education below.

Placement/Location of Services. The legal standard under the IDEA is that DCPS "must place the student in a setting that is capable of fulfilling the student's IEP." *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013). *See also O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student's IEP requirements). Here, DCPS met its burden of proving that Public School was able to implement Student's 12/18/17 IEP with 52 hours/month of specialized instruction outside general education and 120 minutes/month of BSS.

With Student's IEP now returning to 27.5 hours/week of specialized instruction outside general education, Public School couldn't provide the electives outside general education needed for the full 27.5 hour IEP, so the LRE team was involved and a new LOS letter naming New Public School was to be sent to Parent. Special Education Coordinator B testified about the suitability of New Public School for Student and its ability to implement Student's amended IEP, although that is not an issue in this case.

**Issue 2:** *Whether DCPS denied Student a FAPE by failing to provide access to educational records despite Petitioner's visits to the school and 11/3/17 written request, and prior to a 12/18/17 IEP meeting. (Petitioner has the burden of persuasion on this issue.)*

Petitioner did not meet her burden of persuasion on the issue of access to records. Both sides in this case put a great deal of effort into dealing with Student's educational records, with frustration for all involved, as Public School was concerned about multiple overlapping requests and Petitioner's advocates were concerned about not receiving everything sought. Petitioner had to make numerous requests in an effort to obtain Student's educational records, due in part to shifting requests, but she failed to convincingly demonstrate a failure to receive any significant documents that actually existed, much less an inability to directly inspect and copy Student's records.

As an initial matter, the undersigned is of the view that lack of access to educational documents does come within the jurisdiction of this forum, based on the general authority by which any "matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" can be the basis of a due process complaint and hearing. *See* 20 U.S.C. § 1415(b)(6) & (f)(1). *See also Letter to Kohn*, 17 IDELR 522 (OSERS 1991) ("OSEP's position is that, based upon the facts and circumstances of each individual case, an impartial hearing officer has the authority to grant any relief he/she deems necessary, inclusive of compensatory education, to ensure that a child receives the FAPE to which he/she is entitled"). It is possible for the failure of DCPS to provide documents to rise to the level of a denial of a FAPE to Student if it significantly impeded Parent's opportunity to pursue her rights pursuant to 34 C.F.R.

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300.507. *See* 34 C.F.R. 300.513(a), 300.613(a).

This Hearing Officer is mindful that the importance of missing documents may not always be clear without being able to examine them. However, if the documents have the potential to impact Student substantively, the undersigned would expect Petitioner to steadily pursue them. Here, the time period of the document request appeared to shift from 2017/18 to include earlier periods, and some of the documents sought shifted over time as noted in the Findings of Fact above, making the process more difficult.

More fundamentally, the right under the IDEA is simply to inspect, review and copy education records, and Petitioner has made no assertion that her right to inspect, review and copy was blocked. *See* 34 C.F.R. 300.501(a) (opportunity to “inspect and review” all educational documents), 300.613(a) (right to “inspect and review” records); *Jalloh ex rel. R.H. v. Dist. of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) (“parents have the right to examine records and DCPS must give parents the opportunity to inspect, review, and copy records”). Here, DCPS provided the large majority of the documents Petitioner sought. This Hearing Officer finds no violation of the IDEA in these circumstances.

**Issue 3:** *Whether DCPS denied Student a FAPE by failing to comprehensively evaluate Student in light of deficits and/or to agree to conduct an adaptive assessment, an occupational therapy evaluation, and an FBA of Student. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden of demonstrating that DCPS did not conduct a timely FBA, but did not meet her burden as to adaptive measures or that an OT evaluation was untimely.

Failure to complete all necessary evaluations results in a substantive denial of FAPE due to harm to the disabled child. *See Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60-61 (D.D.C. 2011) (“in the absence of necessary and appropriate evaluations the district cannot develop a program that is tailored to the student’s unique needs and reasonably calculated to enable him to receive educational benefits” (citation omitted)). *See also Hill v. Dist. of Columbia*, 2016 WL 4506972, at \*18 (D.D.C. 2016); 34 C.F.R. 300.304(c)(4).

Decisions on the areas to be assessed are to be made based on the suspected needs of the child. Office of Special Education and Rehabilitative Services, U.S. Department of Education, *Analysis of Comments and Changes*, 71 Fed. Reg. 46643 (2006). However, the IDEA does not require a public agency to administer every test requested by a parent or recommended in an evaluation, as the public agency has the prerogative to choose assessment tools and strategies to gather relevant information. *Cf. James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 143 (D.D.C. 2016). The evaluations sought by Petitioner are considered in turn.

(a) Functional Behavioral Assessment. In *Harris v. Dist. of Columbia*, 561 F. Supp. 2d 63, 67 (D.D.C. 2008), the Court made clear that an FBA is an “educational evaluation” that comes within 34 C.F.R. 300.304(c)(4). The Court in *Long*, 780 F. Supp. 2d at 61, quoting *Harris*, 561 F. Supp. 2d at 68, further explained that an FBA is “essential” in

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addressing behavioral difficulties, so plays an integral role in the development of an IEP. The IDEA requires, in the case of a student whose behavior impedes the student's own learning or that of others, that the IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 C.F.R. 300.324(a)(2)(i).

Here, an FBA and BIP had been completed for Student in late 2015, but were as insubstantial as they were dated. Student's IEP team easily agreed on 12/18/17 that Student needed an FBA and BIP to address poor attendance, if not other behaviors. In fact, Parent signed a consent form that day permitting the FBA to go forward, but winter break began at the end of the week which understandably delayed the process a couple of weeks. Educational Advocate asked again at the next meeting on 1/18/18 that an FBA and BIP be completed and Public School again agreed. Yet the FBA inexplicably had not been completed by the end of the hearing on 4/5/18, some 3-1/2 months after the initial commitment to conduct the FBA.

In the view of the undersigned, such a delay is not reasonable and DCPS did not offer an explanation for more than the final few days. Lack of a current FBA and BIP caused a deprivation of educational benefit, as Student was constantly cutting up in class and so disengaged from school that by 3/1/18 Student had been absent 40 full days. Accordingly, this Hearing Officer concludes that the delay in conducting an FBA and developing a BIP is a substantive violation and a denial of FAPE. *See* 34 C.F.R. 300.513(a). DCPS is ordered below to promptly complete the FBA and develop a BIP, if possible at Student's new school. This denial of FAPE also contributes to the award of compensatory education below.

(b) Occupational Therapy. Petitioner and her advocates sought an OT evaluation based on concern about Student's handwriting and sensory issues raised in the Comprehensive Psychological Reevaluation. DCPS finally agreed to the OT evaluation, sending Parent a consent to evaluate form for OT on 2/27/18 which was promptly signed by Parent and returned on 3/1/18. The evaluation had not begun by the conclusion of the hearing on 4/5/18, but the undersigned is not persuaded that there was any significant harm from the few weeks of delay of the OT evaluation. *See Smith v. Dist. of Columbia*, 2010 WL 4861757, at \*4,5 (D.D.C. 2010) (no relief warranted where petitioner "has not shown that DCPS' failure to conduct the reevaluations here sooner affected substantive rights" or that the child's "education would have been different" but for the violation).

(c) Adaptive Measures. Finally, much advocacy during this case focused on the issue of whether an adaptive assessment was needed based on Student's IQ level. Both sides agreed that adaptive measures are routinely used when the IQ is 70 or below, which is 2 standard deviations below the mean, but the record does not indicate that Student's IQ has ever been found to be that low. Petitioner's advocates argued that even at 75 an adaptive assessment should be conducted, which School Psychologist vigorously and credibly disputed, especially given the other information in this case.

School Psychologist gave Student an informal assessment and determined that Student was in the average range for all areas covered, including washing clothes, making

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telephone calls, writing letters, and completing a job application. Student's teacher confirmed that adaptive behavior was not a concern and that Student's adaptive skills were comparable to non-disabled peers. This Hearing Officer is not persuaded that adaptive measures are needed in this case and while there may be no harm from an unneeded assessment – as Petitioner's counsel asserted – there is no FAPE violation here.

### Remedies

The IDEA gives Hearing Officers broad discretion to provide an equitable remedy for students who have been denied a FAPE. *See Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 522-23 (D.C. Cir. 2005); *B.D. v. Dist. of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016); *Hill v. Dist. of Columbia*, 2016 WL 4506972, at \*25 (D.D.C. 2016) (IDEA prescribes broad discretion in fashioning relief for educational deprivation).

While there is “difficulty inherent in figuring out both what position a student would be in absent a FAPE denial and how to get the student to that position,” *B.D.*, 817 F.3d at 799, that does not permit the effort to be avoided. *See Henry v. Dist. of Columbia*, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse). Moreover, a student is not required “to have a perfect case to be entitled to compensatory education.” *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (citations omitted). Indeed, “hearing officers are reminded that ‘[t]he essence of equity jurisdiction’ is ‘to do equity and to mould each decree to the necessities of the particular case.’” *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), quoting *Reid*, 401 F.3d at 523-24.

Here, as remedy for the denials of FAPE found above, within 15 business days the BSS in Student's IEP shall be increased from 120 to 180 minutes/month outside general education and within 30 days an FBA shall be conducted and a BIP developed, preferably at Student's new school. Compensatory education is also awarded below, based on this Hearing Officer's determination of what would be most beneficial to put Student in the position Student should have been in at this point had there been 180 minutes/month of BSS from 12/18/17 to date and a timely FBA and BIP. This determination takes into account the Compensatory Education Proposal and testimony of Educational Expert, recognizing that only a portion of the claims were found to be a denial of FAPE, so the Proposal's recommendation of 84 hours of independent tutoring and 42 hours of mentoring has been reduced accordingly.

As a result of these factors, DCPS is ordered below to provide funding for 40 hours of mentoring from an independent provider chosen by Petitioner. Mentoring is considered critical by the undersigned to attempt to get Student engaged in Student's education, and Student had already rejected the tutoring offered by Public School. All hours are to be used within 18 months in order to ensure that the remedial services that Student needs are obtained without undue delay, along with minimizing any administrative burdens on Respondent which may result from compensatory education awards stretching over excessively long timeframes.

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**ORDER**

Petitioner has prevailed on certain claims, as set forth above. Accordingly, **it is hereby ordered that:**

- (1) Within 15 business days, DCPS shall increase the BSS in Student’s IEP from 120 minutes/month to 180 minutes/month.
- (2) Within 30 days, DCPS shall complete an FBA of Student and develop a suitable BIP.
- (3) As compensatory education for the denials of FAPE found above, DCPS shall provide a letter of authorization for 40 hours of mentoring from an independent provider chosen by Petitioner, with such letter to be provided within 10 business days after Petitioner’s request. All hours are to be provided and used within 18 months; any unused hours will be forfeited.
- (4) Any delays caused by Parent or Student shall result in day-for-day extensions of DCPS’s deadlines in this Order.

Any and all other claims and requests for relief are **dismissed with prejudice.**

**IT IS SO ORDERED.**

Dated in Caption

*/s/ Keith Seat*

Keith L. Seat, Esq.  
Hearing Officer

**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).

Copies to:

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