

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

Office of Dispute Resolution
1050 First Street, N.E., Third Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
April 08, 2019

<i>Student</i> , ¹)	Case No.: 2018-0340
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 4/8/19
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Date: 3/25/19 & 3/26/19
("DCPS"),)	ODR Hearing Room: 423
Respondent.)	
)	

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 provided an appropriate Individualized Education Program ("IEP"), had not been observed in *Public School* and Parent had not been provided all education records. DCPS responded that the IEP was appropriate and it had properly acted on the other issues.

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.").

At the beginning of the due process hearing, Respondent's counsel challenged the jurisdiction of a Hearing Officer to address Issue 1(d) concerning whether an additional disability classification should have been added. The undersigned denied the challenge and determined that he does have jurisdiction. *See, e.g., Smith v. Dist. of Columbia*, 2018 WL 4680208 (D.D.C. 9/28/18) (exercising jurisdiction over disputed disability classifications).

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

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Procedural History

Following the filing of the due process complaint on 12/24/18, the case was assigned to the undersigned on 12/26/18. On 1/8/19, Respondent filed both a response and amended response and did not challenge jurisdiction. The resolution meeting (“RSM”) occurred on 2/8/19, but did not resolve the case or shorten the 30-day resolution period, which ended on 1/23/19. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by an agreed upon 30-day continuance, which requires a Hearing Officer Determination (“HOD”) by 4/8/19.

The due process hearing took place on 3/25/19 and 3/26/19 and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner was present throughout the hearing.

Petitioner’s Disclosures, submitted on 3/18/19, contained documents P1 through P89, which were admitted into evidence without objection. Respondent’s Disclosures, submitted on 3/18/19, contained documents R1 through R17, which were admitted into evidence without objection.

Petitioner’s counsel presented 2 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Educational Advocate* (qualified without objection as an expert in Special Education Programming and Placement)
2. Parent

Respondent’s counsel presented 3 witnesses in Respondent’s case (*see* Appendix A):

1. *Special Education Coordinator* at Public School (qualified without objection as an expert in Special Education Programming and Placement)
2. *Special Education Teacher* at Public School (qualified without objection as an expert in Special Education Programming and Placement)
3. *Social Worker* at Public School (qualified without objection as an expert in Special Education Programming and Placement and Social Work)

Petitioner’s counsel presented Parent as the sole rebuttal witness.

The issues² to be determined in this Hearing Officer Determination are:

² The first issue listed in the Prehearing Order was withdrawn by Petitioner without prejudice at the beginning of the due process hearing, which was “Whether DCPS denied Student a FAPE by failing to conduct a comprehensive reevaluation that included (a) an

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Issue 1: Whether DCPS denied Student a Free Appropriate Public Education (“FAPE”) by failing to develop an appropriate IEP in November 2018, when (a) Student needed more instructional services due to poor academic performance, but DCPS reduced instructional services, (b) DCPS did not include needed Extended School Year (“ESY”), (c) DCPS failed to recognize behavioral issues and increase Behavioral Support Services (“BSS”), but instead reduced BSS, and (d) DCPS failed to classify Student as disabled based on Other Health Impairment (“OHI”) due to Attention Deficit Hyperactivity Disorder (“ADHD”), in addition to Specific Learning Disability (“SLD”). *Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.*

Issue 2: Whether DCPS denied Student a FAPE by refusing to allow Parent’s advocate to observe Student in the classroom. *Petitioner has the burden of persuasion on this issue.*

Issue 3: Whether DCPS denied Student a FAPE by failing to provide Parent access to Student’s education records. *Petitioner has the burden of persuasion on this issue.*

The relief requested³ by Petitioner is:

1. A finding that Student was denied a FAPE.
2. DCPS shall provide compensatory education for any denial of FAPE.⁴
3. Within 10 school days, DCPS shall convene the IEP team to develop an appropriate IEP with (a) sufficient hours of specialized instruction and BSS, (b) ESY services and transportation, and (c) classification of Student as a child with a disability based on OHI due to ADHD.

occupational therapy evaluation, (b) a speech-language evaluation, and (c) an adaptive functioning assessment.”

³ The second paragraph of requested relief in the Prehearing Order was withdrawn by Petitioner without prejudice at the beginning of the due process hearing, which was “DCPS shall conduct a comprehensive evaluation, including (a) an occupational therapy evaluation, (b) a speech-language evaluation, and (c) an adaptive functioning assessment.” In addition, Petitioner made an election and withdrew without prejudice the second half of what had been the third paragraph of relief in the Prehearing Order; the withdrawn language was “reserve compensatory education until all required evaluations, along with a compensatory education evaluation, are completed.”

⁴ 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 to be prepared to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

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4. DCPS shall permit an educational advocate of Parent's choice to observe Student in the classroom for at least 90 minutes.
5. DCPS shall provide Parent access to all of Student's education records from 2016/17⁵ to the present. Due to lack of Parent's access to documents, a claim for failure to fully implement Student's IEP in 2018/19 shall be reserved.
6. Any other just and reasonable relief.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact⁶ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁷ Student is *Age*, *Gender* and in *Grade* at Public School, after attending *Prior School* for the preceding 3 years.⁸ Student is likable, pleasant, and sociable, with lots of friends.⁹

2. Classification. Student has been eligible for special education services for several years with the classification of SLD; each of the 3 IEPs in the record list only the classification SLD.¹⁰ Based on medical data, Student also meets the qualification for OHI due to ADHD.¹¹ As of 2/8/19, the parties agreed that Student's disability classification was Multiple Disabilities ("MD"), with SLD and OHI, and the IEP will be updated to reflect the classification.¹²

⁵ All dates in the format "2016/17" refer to school years.

⁶ 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.

⁷ Parent.

⁸ Parent; P9-7.

⁹ Special Education Coordinator.

¹⁰ P15-1, P16-1; P18-1.

¹¹ P9-20; P18-4 (current IEP noted that Student was diagnosed with ADHD); P21-3 (ADHD impacts Student's processing abilities); Parent.

¹² P29-3. The parties disputed at the hearing whose fault it was that another IEP meeting had not yet been held, as Petitioner's counsel purportedly refused to combine the RSM with an IEP meeting (even though everyone would be gathered) while Parent testified that a meeting had been set for 3/22/19, the Friday prior to the due process hearing on Monday, with which DCPS failed to proceed (P29-2; Special Education Coordinator; Parent).

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3. Cognitive. A 12/9/15 comprehensive psychological evaluation (“2015 evaluation”) found, based on the Wechsler Intelligence Scale for Children – Fifth Edition (“WISC-V”), that Student’s Full Scale IQ (“FSIQ”) was 80 (standard score), with components ranging from a low in Working Memory of 72 to highs of Fluid Reasoning at 91 and Processing Speed at 92.¹³ A 1/11/19 comprehensive psychological evaluation (“2019 evaluation”) did not include a composite IQ score, providing only the Verbal Intelligence Index at 62 (standard score) based on the Reynolds Intellectual Assessment Scales, 2nd Ed. (“RIAS-2”), and separate measures from the Cognitive Assessment Systems-2 (“CAS-2”) (average and slightly below average on 2 subtests), Test of Nonverbal Intelligence – Fourth Edition (“TONI-4”) (average), as well as the Comprehensive Test of Phonological Processing (“CTOPP”) (average to poor on multiple subtests) for reading-related phonological processing skills.¹⁴

4. Achievement. Considering Student’s achievement, the 2015 evaluation included 25 clusters and subtests from the Woodcock-Johnson IV (“WJ-IV”) in which Student ranged from standard scores of 62 to 89 with nearly all percentile ranks in the single digits; the 2019 evaluation showed significant improvement in the WJ-IV with clusters/tests ranging from standard scores of 77 to 126, with most in the 80s.¹⁵

5. Student’s overall MAP math score on 8/29/18 was a 197, years below where Student should be.¹⁶ Student’s Lexile reading scores have been inconsistent, but are years below the level at which Student should be reading.¹⁷ Special Education Coordinator stated that the scores depend a lot on effort, and children with ADHD may not test well.¹⁸ Parent was very concerned about Student reading five years below grade level and felt she did a “disservice” to Student by trusting DCPS, which resulted in Student being “pushed through” school.¹⁹

6. Student’s final report card for 2016/17 showed 6 “Fs” out of 8 final grades (the other 2 were a “D” and a “C”); Student’s final report card for 2017/18 showed 9 final grades with 2 “Fs,” 3 “Ds” and 4 “Cs.”²⁰ At Public School, Student’s report card for 2018/19 Term 1 showed 8 grades with 1 “F,” 2 “Ds,” 3 “Cs” and 2 “Bs”; for Term 2 Student was reported to be failing 2 classes as of 1/2/19, but ended up with improvement over Term 1, although the

¹³ P5-2,10.

¹⁴ P9-6,12,13,14,15,16,17,20 (the “DRAFT” notation on the evaluation was a typographical error according to a 3/15/19 HOD at R10-5); P13-2 (Petitioner sought an independent educational evaluation (“IEE”) based on alleged shortcomings of the 2019 evaluation); R10 (3/15/19 HOD upheld the 2019 evaluation and rejected an IEE at public expense).

¹⁵ P5-13,14; P9-11,19 (evaluator noted “marked improvement” on WJ-IV).

¹⁶ P42-1,2; P18-5; Educational Advocate.

¹⁷ Lexile score of 633 as of Sept. 2015 (P15-6); 521 as of Dec. 2015 (P15-6); 463 as of 5/25/16 (P53-3); 433 as of Sept. 2016 (P15-6); 587 as of Sept. 2017, a 3rd grade level (P16-5; P47-5); 712 as of 1/17/18 (P54-3); 617 as of 6/5/18 (P49-4); 534 as of 9/4/18, a 3rd grade level at the 1st percentile (P57-5; P41-1).

¹⁸ Special Education Coordinator.

¹⁹ P27-9; Parent.

²⁰ P53-1,2 (ignoring plusses and minuses); P54-1,2 (ignoring plusses and minuses).

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report card was not produced by DCPS.²¹ Special Education Coordinator viewed the improvement as showing Student's success in the inclusion environment.²² In Term 2, the Biology teacher stated that Student is able to complete the work when focused and works hard every day and had a grade of "B."²³ Special Education Teacher testified that based on working with Student, she considers Student "close" to grade level and "doing fine."²⁴

7. In PARCC testing for ELA in 2014/15 Student scored better than 28% of students in DC; in 2015/16 Student scored better than 13%; in 2016/17 Student scored better than 5%; in 2017/18 Student scored better than 28%: Student was at Level 1 (lowest) in ELA in 2015/16 and improved to Level 2 in 2017/18.²⁵ In PARCC testing for math in 2014/15 Student scored better than 1% of students in DC; in 2015/16 Student scored better than 33%; in 2016/17 Student scored better than 27%; in 2017/18 Student scored better than 17%; Student was at Level 2 in math in 2015/16 and Level 1 in 2017/18.²⁶

8. IEPs. Student's 1/11/17 IEP provided for 15 hours/week of specialized instruction inside general education, divided between reading (7.5 hours), math (5 hours) and written expression (2.5 hours), along with 240 minutes/month of BSS inside general education.²⁷ Student's 12/6/17 IEP provided for 10 hours/week of specialized instruction inside general education and 2.5 hours/week of specialized instruction outside general education, plus 90 minutes/month of BSS outside general education.²⁸ A draft IEP on 11/19/18 provided for 4 hours/week of reading inside general education and 4 hours/week of math inside general education, plus 90 minutes/month of BSS outside general education.²⁹ Student's 11/19/18 IEP provided for 5 hours/week of reading inside general education and 5 hours/week of math inside general education, plus 90 minutes/month of BSS outside general education.³⁰

9. Behavior. In Term 3 of 2017/18, Student struggled when redirected and often walked away without permission when angry.³¹ In Term 4 of 2017/18, Student exhibited extreme behavioral outbursts and "frequently" threatened teachers when they attempted to assist or redirect Student.³² At Public School, Student had 2-3 fights early in 2018/19, for which Student was suspended.³³ According to self-reports, Student got angry, lost temper, worried a lot, sometimes fought a lot; Student needed to work on self-control and making

²¹ P57-1 (ignoring plusses and minuses); P9-7; Special Education Coordinator; Special Education Teacher; Administrative Notice.

²² Special Education Coordinator.

²³ P28-2.

²⁴ Special Education Teacher.

²⁵ P39-1,2; P40-1,2.

²⁶ P39-3,4; P40-3,4.

²⁷ P15-1,11.

²⁸ P16-1,11.

²⁹ P17-1,9.

³⁰ P18-1,11.

³¹ P48-7.

³² P49-3.

³³ P9-7 (3 fights); Special Education Coordinator (2 altercations).

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better choices.³⁴ Student completed the Strengths and Difficulties Questionnaire (“SDQ”) on 9/6/18 and was Very High risk in behavioral difficulties, High risk in difficulties in getting along with other children, and High risk in impact of any difficulties in child’s life; Student’s SDQ the prior year (September 2017) was average in each of those categories.³⁵

10. Student began taking medication daily for ADHD symptoms in September 2018, which has helped Student.³⁶ The day Student fought at school and was suspended, Parent took Student straight to the doctor and received medication.³⁷ Student’s aggressiveness has declined a lot with the ADHD medication; Parent can tell if Student forgets to take the medication, as Student is hyperactive and aggressive and will respond that Student “doesn’t care” about school.³⁸ Student was also told to “go find someone [Student] trusts” if at “wits end”; Student has been doing that, seeking out the school psychologist with whom a positive relationship has developed.³⁹

11. Student’s altercations at the beginning of 2018/19 have not recurred, nor have there been behavior incidents; Student has progressed so it was reasonable for the IEP to include only 90 minutes/month of BSS, rather than being increased.⁴⁰ The IEP team concluded that Student continued to need 90 minutes/month of BSS; Student was doing fine with BSS, so there was no reason to increase or decrease what had been provided previously.⁴¹

12. Specialized Instruction. Parent’s advocates were frustrated by the difficulties in obtaining an explanation about how Student’s IEP was being implemented at Public School, as well as the challenges of obtaining Student’s education records.⁴² Parent’s advocates were not able to find out until late November 2018 how many hours of specialized instruction were being provided.⁴³ Following the 11/19/18 IEP team meeting, Educational Advocate sent a 11/20/18 “dissent letter” seeking more hours of specialized instruction and an increase in BSS to 240 minutes/month; concerns included Student’s MAP math scores being well below grade level and Student’s Lexile reading level, which was still at a 3rd grade level, many years below Student’s grade.⁴⁴

13. Educational Advocate initially had sought more specialized instruction by adding pull-out.⁴⁵ The school psychologist noted on 1/9/19 that Student was not happy about the change of schedule and setting proposed and felt “purposefully excluded” by the adults from

³⁴ P20-4.

³⁵ P18-8,9; P45-7.

³⁶ P9-7; Parent.

³⁷ Parent.

³⁸ *Id.*

³⁹ Parent; Special Education Coordinator.

⁴⁰ Special Education Coordinator.

⁴¹ P18-9; Special Education Teacher.

⁴² P12-1,2; Educational Advocate.

⁴³ Educational Advocate.

⁴⁴ P12-1.

⁴⁵ Educational Advocate.

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decision-making.⁴⁶ Parent refused pull-out because Student did not want pull-out, so the goal shifted to inclusion for ELA and all core classes.⁴⁷ Special Education Coordinator testified that 3 general education teachers told him that Student had the ability to be successful academically and that there was no need for inclusion for all academic classes, much less adding self-contained classes.⁴⁸

14. In 2018/19, Student was initially in a self-contained math class at Public School and had a 95% average so it was determined that Student could handle a co-taught, inclusion class.⁴⁹ Student wanted general education with support in order to be with peers.⁵⁰ Parent was getting Student to work harder by agreeing that Student would not be pulled-out into self-contained classes if grades improved.⁵¹ Student can't be co-taught for all classes at Public School, as inclusion is only offered for math and English.⁵²

15. With Student reading on a 3rd grade level, Parent sought inclusion for all core academic classes, which would require 20 or more hours/week, rather than the 15 hours Educational Advocate initially suggested.⁵³ DCPS stated in the 1/9/19 meeting that inclusion was not possible for History or Science at Public School, but that Student could have full inclusion by changing to *Proposed School*, which is Student's neighborhood school.⁵⁴ Parent refused the neighborhood school when enrolling Student out of concern about the safety of the neighborhood.⁵⁵ Parent got Student into Public School through the lottery system and is unwilling for Student to leave Public School.⁵⁶ Student also has 2 cousins who attend Public School.⁵⁷

16. Special Education Coordinator asserted that Parent had agreed with the 11/19/18 IEP at the time it was developed by the team, and in particular agreed with the amount of specialized instruction.⁵⁸ Special Education Coordinator explained that there were no separate services listed in the IEP for written expression because at Student's grade there are not separate written instruction classes.⁵⁹ Special Education Coordinator thought there was agreement by Parent's team, but Educational Advocate later requested more services.⁶⁰

⁴⁶ P13-3.

⁴⁷ Educational Advocate.

⁴⁸ Special Education Coordinator.

⁴⁹ P12-1; P27-6; Special Education Coordinator; Educational Advocate.

⁵⁰ Special Education Teacher.

⁵¹ Parent.

⁵² Special Education Teacher.

⁵³ Educational Advocate.

⁵⁴ Educational Advocate; Special Education Coordinator.

⁵⁵ Parent.

⁵⁶ *Id.*

⁵⁷ P9-9; Parent.

⁵⁸ Special Education Coordinator.

⁵⁹ *Id.*

⁶⁰ *Id.*

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17. Special Education Coordinator testified that 10 hours/week of inclusion is sufficient if Student applies self; Student has the ability to do well and there is no reason Student can't be successful.⁶¹ Student does not need 20 hours/week of inclusion classes, but that Public School was willing to help that happen in another setting (outside Public School) if Parent strongly wanted it.⁶² Special Education Coordinator and Special Education Teacher both sought to ensure that Parent was on board with decisions and that final decisions were not being made by advocates in place of Parent.⁶³

18. Special Education Coordinator credibly testified that the 11/19/18 IEP was appropriate and that Student was accessing the curriculum at Public School and making appropriate progress in Student's circumstances.⁶⁴ Special Education Teacher also agreed with the entire 11/19/18 IEP and considered it appropriate; Special Education Teacher felt the IEP was sufficient for Student to access the general education curriculum at Public School.⁶⁵ The Term 1 2018/19 IEP Progress Report noted that Student was progressing on every academic goal; Term 2 was not in the record.⁶⁶

19. ESY. Each of Student's 3 IEPs in the record indicated that ESY was not required for a FAPE.⁶⁷ Poor or failing grades result in the need for summer school (apart from ESY).⁶⁸ Even if Student regressed over breaks and was years behind grade, Special Education Coordinator believed ESY was not appropriate because Student could be retaught and recoup skills in a reasonable amount of time.⁶⁹ At a meeting with Parent's advocates, Special Education Coordinator wrote on a blank ESY Eligibility Worksheet only that Student "does not meet the criteria" for ESY services, without completing the worksheet.⁷⁰ DCPS asserted on 2/8/19 that ESY could be revisited during a forthcoming IEP meeting; Public School has until 5/31/19 to decide on ESY and amend the IEP to include ESY for the summer of 2019, if needed.⁷¹

20. Special Education Coordinator testified that 4 teachers stated that Student could be retaught after a break and recoup anything lost in a reasonable amount of time, with 2 of the teachers in a November meeting and 2 in a January meeting; Special Education Coordinator also testified that there was not a sufficient break in service prior to the sole IEP meeting on 11/19/18 to determine the need for ESY.⁷²

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Special Education Teacher.

⁶⁶ P45-6,7; Administrative Notice.

⁶⁷ P15-14; P16-14; P18-14.

⁶⁸ P52-1; P51-1.

⁶⁹ P27-10,11.

⁷⁰ P37-1; Educational Advocate.

⁷¹ P29-3.

⁷² Special Education Coordinator; Thanksgiving was on 11/22/18 (Administrative Notice).

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21. Based on the Lexile scores in the record, Student regressed in reading over the summer of 2016 and the summer of 2018, with insufficient data to determine other summers.⁷³ As of 11/1/17, Student regressed in math according to an IEP Progress Report.⁷⁴ Based on how Student was doing, Special Education Teacher did not feel Student needed ESY.⁷⁵

22. Education Records. Petitioner's counsel formally requested Student's education records by letter dated 10/12/18 listing 21 categories of documents, with a follow-up letter on 11/19/18 listing 27 categories.⁷⁶ Petitioner's counsel sent detailed letters listing what had been received and what was outstanding.⁷⁷ Special Education Coordinator provided Student's entire cumulative file at the end of the 11/28/18 AED team meeting; Petitioner's counsel signed to indicate receipt of the documents.⁷⁸ Special Education Coordinator also printed and provided every document about Student from SEDS.⁷⁹

23. Special Education Coordinator told Petitioner that she must contact multiple individuals at Public School to obtain Student's education records directly from them, which Petitioner attempted to do.⁸⁰ Petitioner sought records directly from Prior School on 11/1/18 and received some records on 11/13/18 at 10:32 AM, more records on 11/13/18 at 11:26 AM, and additional records on 3/12/19.⁸¹ Student's 2016 IEP never was provided.⁸² Prior School asked why the request wasn't made directly to Public School; Petitioner's counsel explained that Public School stated that it did not have the old records.⁸³

24. On 2/8/19, DCPS stated that the documents Parent requested had been provided; if there were any specific documents that Parent or counsel knew or assumed existed to request the specific documents.⁸⁴ All education records from Term 2 of 2018/19 were missing, including Student's report card, IEP Progress Report, other progress reports, behavior reports, incident reports, and any standardized testing.⁸⁵ Special Education

⁷³ Student's Lexile score of 463 as of 5/25/16 (P53-3) dropped to 433 as of Sept. 2016 (P15-6); Student's Lexile score of 617 as of 6/5/18 (P49-4) dropped to 534 as of 9/4/18, a 3rd grade level, at the 1st percentile (P57-5; P41-1); Student's IEP Progress Report on 1/26/18 stated that Student's reading level "continued to regress" since 2015/16 (P47-5).

⁷⁴ P46-2.

⁷⁵ Special Education Teacher.

⁷⁶ P71; P79.

⁷⁷ P34-5,6 (11/27/18 letter noting receipt of specified documents and reiterating the request for documents); P74 (2/22/19 letter listing 54 documents received and seeking lists of documents not received).

⁷⁸ P28-1,4,6.

⁷⁹ Special Education Coordinator.

⁸⁰ Special Education Coordinator; P27-1; P78-2; P82; P83; P84; P85.

⁸¹ P66-1; P68-1; P69-1 (follow up concerning 2016 IEP).

⁸² Educational Advocate.

⁸³ P68-2.

⁸⁴ P29-3.

⁸⁵ Educational Advocate.

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Coordinator testified that Parent in due course would have been sent Student's report card and IEP Progress Report for Term 2 of 2018/19, which reportedly ended on 1/22/19; no explanation was provided about why they were not given to Parent in response to her repeated requests for education documents.⁸⁶

25. Observation. Educational Advocate is not legal counsel and does not and cannot provide legal advice to Parent.⁸⁷ At the time a request to observe Student at Public School was made, there was no litigation pending between the parties.⁸⁸ On advice of counsel, Special Education Coordinator prevented Educational Advocate from observing Student at Public School due to Educational Advocate being employed by Petitioner's counsel's law firm and there being the possibility of litigation; Parent was invited to observe instead.⁸⁹ Based on the language of the statute and Educational Advocate having professional expertise in special education, Petitioner's counsel objected to the observation refusal.⁹⁰

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.'" *Endrew 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." *Endrew 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, Respondent 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); *Endrew 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

⁸⁶ Special Education Coordinator; Administrative Notice.

⁸⁷ Educational Advocate.

⁸⁸ *Id.*

⁸⁹ P30-3; P28-3; P29-3.

⁹⁰ P33-2.

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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.” *Endrew F.*, 137 S. Ct. at 1001. The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support 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 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.” *Endrew F.*, 137 S. Ct. at 1001.

In addition, the LEA 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; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori ex rel. A.M. v. Dist. of Columbia*, 2018 WL 4623572, at *3 (D.D.C. 9/26/18).

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); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 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 by failing to develop an appropriate IEP in November 2018, when (a) Student needed more instructional services due to poor academic performance, but DCPS reduced instructional services, (b) DCPS did*

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not include needed ESY, (c) DCPS failed to recognize behavioral issues and increase BSS, but instead reduced BSS, and (d) DCPS failed to classify Student as disabled based on OHI due to ADHD, in addition to SLD. (Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.)

Petitioner established a prima facie case on this issue, shifting the burden to Respondent, which met its burden of persuasion, as discussed below, with the caveat that ESY is to be considered prior to summer.

The applicable legal standard for analyzing the appropriateness of the IEP at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. As the Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* “raised the bar on what counts as an adequate education under the IDEA,” requiring more than “merely some” educational benefit. *See also Damarcus S.*, 190 F. Supp. 3d at 51 (IEP must be “reasonably calculated to produce meaningful educational benefit”).

The measure and adequacy of the IEP is determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). Moreover, the analysis is not about achieving a perfect IEP, but one reasonably calculated to enable Student to make appropriate progress. *Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (the IDEA “stops short of requiring public schools to provide the best possible education”). *See also Hill*, 2016 WL 4506972, at *21, *quoting Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015). The appropriateness of Student’s IEP is analyzed by considering the specific concerns raised by Petitioner, which are considered below in turn.⁹¹ *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(a) Specialized Instruction. Petitioner is correct that the level of specialized instruction on Student’s IEPs has decreased slightly across the 3 IEPs in the record, from the 1/11/17 IEP providing 15 hours/week of specialized instruction inside general education (divided between reading, math and written expression), to the 12/6/17 IEP providing 10 hours/week of specialized instruction inside general education and 2.5 hours/week of specialized instruction outside general education, and the current 11/19/18 IEP which provides 5 hours/week of specialized instruction for reading and 5 hours/week of specialized instruction for math, both inside general education.

At the same time, it appears that Student’s need for specialized instruction may have diminished, as Student showed marked improvement in achievement between the WJ-IVs in the 2015 evaluation and the 2019 evaluation. In addition, Student’s report cards show

⁹¹ A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), *quoting Rowley*, 458 U.S. at 206-07. No specific procedural violations were alleged in this case, apart from Issues 2 and 3 involving school observation and education records.

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significant improvement in Student's grades over time as well. Student's final grades for 2016/17 were 6 "Fs," a "D" and a "C," while Student's final grades for 2017/18 were 2 "Fs," 3 "Ds" and 4 "Cs." At Public School, Student's grades for Term 1 of 2018/19 improved to 1 "F," 2 "Ds," 3 "Cs" and 2 "Bs." Student's Term 2 grades reportedly improved over Term 1, but were not provided in response to Parent's request for education records, so the accuracy and specifics of DCPS's claim of improvement cannot be verified. Special Education Coordinator viewed the improvement as showing Student's success in the inclusion environment, with which the undersigned does not disagree.

Results from PARCC testing indicate that Student was only at Levels 1 and 2 in prior years, and Student's scores compared to other DC students were quite variable, with the most recent scores showing that Student did better than 17% of other DC students in math and better than 28% in ELA. Considering other standardized scores, Student's overall MAP math score on 8/29/18 was a 197, years below where Student should be. Further, Student's Lexile reading scores are inconsistent, but also years below where Student should be, with the 9/4/18 score at a 3rd grade level. Special Education Coordinator explained that the scores depend a lot on effort, and children with ADHD may not test well. This would help explain how Student can be improving class grades despite more difficult material, even as Student's nominal reading level has not significantly improved. Special Education Teacher has worked with Student and considers Student close to grade level and "doing fine."

Thus, at the end of the analysis, this Hearing Officer is persuaded by the improving grades and Student's motivation to work especially hard to remain in general education and inclusion classes, and concludes that 10 hours/week of specialized instruction inside general education is working for Student and that there was no denial of FAPE due to lack of specialized instruction in the 11/19/18 IEP.

(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. 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, there is some evidence of regression in past summers in reading, which remains at an unacceptably low level. However, it is not possible to determine from the record whether it is the lengthy break that is impacting Student's meaningful progress in reading (or other areas). Special Education Coordinator testified that 4 teachers were convinced that Student could recoup anything lost in a reasonable period, but Special Education Coordinator also asserted that there was not a sufficient break in service prior to the sole IEP meeting on 11/19/18 to determine the need for ESY.

Given that there is not sufficient evidence in the record from which to make an ESY

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determination at this time and another IEP meeting is contemplated in the near future between the parties in any case, the undersigned orders below that the parties consider ESY at an IEP meeting by 5/31/19 and make a thoughtful determination about Student's need for ESY this summer.

The undersigned finds no FAPE violation based on ESY at this point and, in any case, there clearly has been no harm to date to Student from not receiving ESY services in the upcoming summer of 2019.

(c) BSS. Petitioner asserts that DCPS decreased the amount of BSS despite Student's need for increased behavior support, but in fact DCPS simply kept BSS steady at 90 minutes/month in the current IEP, the level at which it had been in the prior 12/6/17 IEP (although the earlier 1/11/17 IEP had provided 240 minutes/month of BSS). Student's behaviors were certainly worrisome toward the end of 2017/18 and then early in 2018/19 at Public School, with Student suspended for fighting. But at that point, Student began taking ADHD medication that resulting in a significant decline in aggressiveness, so the fighting has not recurred and there have not even been behavior incidents, according to Special Education Coordinator. Moreover, Student learned to go find someone trusted when very frustrated, which Student has been doing by helpfully seeking out the school psychologist.

With this significant behavioral progress, the undersigned concurs in the IEP team's conclusion that Student was doing fine with BSS and there was no reason to increase it above 90 minutes/month in the 11/19/18 IEP. If a greater amount of BSS is not actually needed, it is certainly better for Student to have more time in Student's academic classes.

(d) ADHD Classification. As for adding a disability classification for Student, LEAs are not required to classify children by their disability as long as they have been found eligible to receive the special education and related services they need. *See* 20 U.S.C. § 1412(a)(3)(B); 34 C.F.R. § 300.111(d). It is a student's identified needs, not the disability category, that determine the services that must be provided to the child. 34 C.F.R. § 300.320(a)(2)(i); *Letter to Anonymous*, 48 IDELR 16 (OSEP 2006); *Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (the "IDEA charges the school with the responsibility of developing an appropriate education, not with coming up with a proper label"). This analysis is bolstered by *Smith v. Dist. of Columbia*, 2018 WL 4680208 (D.D.C. 9/28/18), which highlights the importance of proper disability classification when needed to provide for the unique needs of each student. In *Smith*, the Court held that placing a student in a Specific Learning Support ("SLS") classroom if the child was known to be classified as having an Emotional Disturbance ("ED") was a denial of FAPE, for the classroom needs to be tailored to the student's needs. *Id.* at *6-7, *citing Z.B.*, 888 F.3d at 523. Here, Petitioner does not urge the addition of the ADHD classification as the foundation for seeking a new or different type of special education services but is seeking additional services in subsections (a), (b) and (c), above, which are not dependent on an ADHD classification.

Further, it appears from the record that there may not even be an actual dispute between the parties over adding this classification, but it may just be a matter of timing. It was reported that at the RSM on 2/8/19 the parties agreed that Student's disability

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classification was MD, with SLD and OHI, and that Student's IEP is to be updated to reflect that classification. During the due process hearing there was sharp disagreement about why an additional IEP meeting had not yet been held, with DCPS blaming Petitioner for refused to combine the RSM with an IEP meeting and Petitioner blaming DCPS for scheduling a meeting immediately prior to the due process hearing but failing to proceed at that time. In any case, for the reasons above, the undersigned concludes that there was no IDEA violation and no denial of FAPE due to delay in adding OHI as a disability classification.

In sum, considering Petitioner's challenges to the 11/19/18 IEP both individually and as a whole, the undersigned concludes that the IEP was reasonably calculated to enable Student to make appropriate progress in Student's circumstances, with the caveat that DCPS and Petitioner shall meet and carefully consider by 5/31/19 whether Student needs ESY for the upcoming summer.

Issue 2: *Whether DCPS denied Student a FAPE by refusing to allow Parent's advocate to observe Student in the classroom. (Petitioner has the burden of persuasion on this issue.)*

Parent has met her burden on this issue, for the law has now been clear for several years in the District of Columbia that parents and their designees have the right to observe proposed educational settings, pursuant to the Special Education Student Rights Act of 2014, D.C. Code §38-2571.03.⁹² In this case, Parent sought to designate Educational Advocate to observe Student at Public School, but was blocked by Special Education Coordinator upon advice of counsel for reasons the undersigned does not find persuasive.

DCPS objects based on the statutory limitation preventing observation if the designee is representing the child at issue in litigation and because Educational Advocate is employed by Petitioner's counsel's law firm. Here, however, there was no litigation between the parties at the time the observation was requested, so there was no way that Educational Advocate could have been representing Student in litigation (or had a financial interest in litigation, which was not raised as a concern by DCPS), for there was no litigation at that time. But beyond that, even if litigation had been pending, Educational Advocate is not a lawyer so could not have represented Student in litigation. Limitations on the

⁹² D.C. Code § 38-2571.03 provides in relevant part:

(5)(A) Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child's current or proposed special educational program:

(i) The parent of a child with a disability; or

(ii) A designee appointed by the parent of a child with a disability who has professional expertise in the area of special education being observed or is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent; provided, that the designee is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation.

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designee's employer are not found in the statute, although the statute does state that the "LEA shall not impose any conditions or restrictions on such observation" that are not stated in the statute, which DCPS is attempting to do here. Pursuant to the plain statutory language, Educational Advocate, who was qualified at the due process hearing as an expert in Special Education Programming and Placement (without objection by DCPS), was and is entitled to observe Student's program at Public School.

This case is very similar to *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 147-48 (D.D.C. 2018), in which the Court found a denial of FAPE due to DCPS not permitting the educational advocate of a law firm to observe the student, without any analysis of whether or not litigation was pending. *See also N.W. v. Dist. of Columbia*, 253 F. Supp. 3d 5, 20 (D.D.C. 2017) (educational advocate should not have been excluded from observation of proposed placement at public school).

Thus, this Hearing Officer concludes that Petitioner met her burden of proving that DCPS improperly prevented her designee from observing Student's educational program as permitted by statute. While not being able to observe Student in the school setting is a procedural violation, in this case it significantly impeded Parent's ability to participate in decision-making relating to Student's IEP and special education services pursuant to 34 C.F.R. § 300.513(a)(2). *See Middleton*, 312 F. Supp. 3d at 148 (unlawful conditioning of educational advocate's observation significantly impeded parent's opportunity to participate in the decision-making process, so denied student a FAPE).

Observation of Student in the school setting conceivably could have changed the course of this proceeding by revealing that the situation was not as bad as Parent feared and might have eased the conflict and scope of litigation. On the other hand, observation might have helped Parent to articulate her concerns to DCPS to obtain desired special education services for Student. In these circumstances where there is a notable possibility that actions and outcomes might have been different with the observation, this Hearing Officer not only orders observation in the future, if desired, but provides compensatory education based on the denial of the observation, as discussed below. *See 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").

Issue 3: *Whether DCPS denied Student a FAPE by failing to provide Parent access to Student's education records. (Petitioner has the burden of persuasion on this issue.)*

Parent met her burden on the issue of education records as to the narrow category of education records for Term 2 of 2018/19 ("Term 2"). As a general matter, parents of a child with a disability have the right to examine all education records that pertain to the identification, evaluation, and educational placement of the child, and provision of a FAPE. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a); 34 C.F.R. § 300.613(a) (parents must be permitted to inspect and review any education records relating to their child that are collected, maintained, or used by an agency); *Jalloh ex rel. R.H. v. Dist. of Columbia*, 535 F.

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Supp. 2d 13, 21 (D.D.C. 2008) (“parents have the right to examine records and [the LEA] must give parents the opportunity to inspect, review, and copy records”).

Here, a great deal of effort was expended by Parent in trying to obtain, and DCPS in trying to provide, Student’s education records, with evident frustration for all involved. Yet at the due process hearing, Petitioner neither withdrew the issue nor offered convincing evidence that existing education records had not been provided, apart from the lack of any documents from Term 2. Special Education Coordinator testified that Parent would have been sent in due course the report card and IEP Progress Report for Term 2, but there was no explanation about what happened and whether Parent had in fact received the documents. However, the undersigned is much more troubled by why the Term 2 documents were not provided in response to repeated requests by Petitioner’s counsel for all listed education records. DCPS could not provide any explanation.

Documents for Term 2 clearly existed, for Special Education Coordinator testified about the improvement in Student’s grades in Term 2. Term 2 information could have been crucial for Parent and Petitioner’s counsel in working with DCPS to try to obtain the specialized instruction and IEP needed by Student, and then if necessary for addressing Issue 1, above, at the due process hearing. While failure to provide documents (or access to documents) would normally be a mere procedural violation, the undersigned concludes that in the circumstances of this case, the failure of DCPS to provide Term 2 documents rises to the level of a denial of FAPE because it significantly impeded Parent’s opportunity to adequately participate in the decision-making process regarding Student’s IEP and the special education services needed. 34 C.F.R. § 300.513(a).

The undersigned does credit Public School with providing Student’s full cumulative file and all documents concerning Student from SEDS, but is troubled by requiring Parent to gather documents from a variety of individuals at Public School and expecting Parent to go to Prior School to obtain DCPS documents from prior years. However, Petitioner’s counsel pursued all these sources and, based on DCPS’s reasonable argument that it cannot provide documents that it does not have, this Hearing Officer limits this violation to the Term 2 documents discussed above. Thus, DCPS is ordered below to provide Petitioner copies of or access to all education records of Student from Term 2.

In these circumstances where there is a significant possibility that actions and outcomes might have been different – even in this HOD – if the Term 2 documents had been provided, this Hearing Officer takes the unusual step of providing compensatory education based on the lack of documents, as discussed next. *See Letter to Kohn*, 17 IDELR 522 (an impartial hearing officer has the authority to grant any relief deemed necessary).

Remedy

In determining compensatory education for denials of FAPE, there is often “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. v. Dist. of Columbia*, 817 F.3d 792, 799 (D.C. Cir. 2016), but 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

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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).

Here, Educational Advocate’s Compensatory Education Proposal suggested remedies that are adjusted by this Hearing Officer to take into account the specific denials of FAPE found herein and the need to provide some remedy in order to address the serious concerns. Based on all the evidence and the various factors discussed in this case, this Hearing Officer has determined that 100 hours of academic tutoring with independent tutors chosen by Parent (with input from her advocates) would be an appropriate remedy, as “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 ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005).

ORDER

Petitioner has prevailed on the claims in this case, as set forth above. Accordingly, **it is hereby ordered that:**

1. No later than 5/31/19, DCPS shall convene an IEP team meeting to determine whether Student qualifies for ESY for the summer of 2019 and, if so, to amend Student’s IEP appropriately.

2. DCPS shall provide letter(s) of authorization within 10 business days after Petitioner’s request(s) for a total of 100 hours of academic tutoring from independent providers chosen by Petitioner.

3. DCPS shall permit an educational advocate or other designee of Petitioner’s choice with suitable professional expertise to observe Student in the classroom for at least 90 minutes.

4. Within 10 business days, DCPS shall provide Petitioner copies of or access to all education records of Student from Term 2 of 2018/19.

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

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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).

Copies to:

Counsel of Record (Appendix A, by email)

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