

**District of Columbia  
Office of the State Superintendent of Education**

Office of Dispute Resolution  
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<b>Parent, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b>Hearing: July 2, 2018</b>
	)	<b>Date: August 8, 2018</b>
	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No.: 2018-0134</b>
<b>District of Columbia Public Schools,</b>	)	
	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving a student who is currently eligible for services as a student with Developmental Disabilities (the “Student”).

A Due Process Complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on May 25, 2018. The Complaint was filed by Petitioner, who is the parent of the Student. On June 4, 2018, Respondent filed a response. The resolution period expired on June 24, 2018.

**II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Improvement Act (“IDEIA”), 20 U.S.C. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of

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<sup>1</sup> Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

### **III. Procedural History**

On June 20, 2018, the Hearing Officer held a prehearing conference. Attorney A, Esq., counsel for Petitioners, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on June 26, 2018, summarizing the rules to be applied in this hearing and identifying the issues in the case.

There was one hearing date: July 2, 2018. This was a closed proceeding. Petitioner was represented by Attorney A, Esq. Respondent was represented by Attorney B, Esq. Petitioner moved into evidence Exhibits 1-28. There were no objections. Exhibits 1-28 were admitted. Respondent moved into evidence Exhibits 1-10. There were no objections. Exhibits 1-10 were admitted.

Petitioner presented as witnesses: Petitioner; Witness A, an advocate; and Witness B, a psychologist. Respondent presented as witnesses: Witness C, a social worker; and Witness D, a special education coordinator.

### **IV. Issues**

As identified in the Prehearing Conference Summary and Order and in the Due Process Complaint, the Free Appropriate Public Education (“FAPE”) issues to be determined are as follows:

1. Did DCPS fail to offer the Student a FAPE in its Individualized Education Program (“IEP”) dated May 7, 2018? If so, did DCPS act in contravention of 34 CFR 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), and

Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

Petitioner indicated that the IEP did not provide the Student with appropriate present levels of performance and baseline data, or with Extended School Year services, and that the Student's eligibility category was incorrect, the Student was denied transportation, and the IEP was not based on sufficient testing.

2. In the months prior to the IEP dated May 7, 2018, did DCPS fail to create/revise the Student's Functional Behavior Assessment ("FBA") and/or Behavioral Intervention Plan ("BIP")? If so, did DCPS violate 34 CFR 300.324(a)(2)(I) and related provisions? If so, did DCPS deny the Student a FAPE?

3. In the months prior to the IEP dated May 7, 2018, did DCPS fail to evaluate the Student in all areas of suspected disability? If so, did DCPS violate 34 CFR Sect. 300.304 and related provisions? If so, did DCPS deny the Student a FAPE?

Petitioner contended that the Student required adaptive testing, a comprehensive psychological evaluation, an occupational therapy evaluation, a speech and language evaluation, and an FBA.

4. Did DCPS fail to provide Petitioner with educational records in or about March, 2018? If so, did DCPS violate 34 CFR Sect. 300.501 and related provisions? If so, did DCPS deny the Student a FAPE?

5. Did DCPS fail to authorize an Independent Educational Evaluation ("IEE") for the Student after Petitioner asked for an IEE on May 18, 2018? If so, did DCPS violate 34 CFR Sect. 300.502 and related provisions? If so, did DCPS deny the Student a FAPE?

Issue # 5 was withdrawn at the hearing.

## **V. Findings of Fact**

1. The Student is an X-year-old who is eligible for services as a student with Developmental Delay. The Student has difficulty with transitions, a short attention span, is distractible, impulsive, hyperactive, and needs continuous redirection. The Student is also very aggressive at times. The Student needs structure and support to maintain attention and behavior in class. The Student also requires an explicit phonics-based program to assist with reading and direct instruction in math. Additionally, the Student requires sensory interventions to address behavioral issues. (P-3-6-7; P-8-7; Testimony of Witness A)

2. The Student was determined to be eligible for special education in June, 2015, when the Student was at School A PCS. The Student was deemed to be a student with a Developmental Disability and received two hours per week of specialized instruction inside general education, with thirty minutes per week of behavioral support services and sixty minutes per week of occupational therapy. Because the Student had behavioral issues, a dedicated aide was assigned. A BIP was created for the Student at School A PCS, providing for redirection, incentives for good behavior such as “little toys,” and consequences for poor behavior such as getting a “time out.” (P-3-1; P-5; P-17; Testimony of Petitioner)

3. For the 2016-2017 school year, the Student moved to School B and continued to receive two hours per week of specialized instruction inside general education. The Student’s IEP also added seventy-five minutes per month of specialized instruction outside general education. (P-6)

4. Compared to the Student's performance at School A PCS, the Student did not function as well at School B. For the 2016-2017 school year, the Student demonstrated impulsivity in class. The Student's May, 2017, IEP therefore added services. The Student was recommended for two hours per week of specialized instruction inside general education and three hours per week of specialized instruction outside general education, with sixty minutes of behavioral support services per month and 120 minutes of occupational therapy per month. The IEP also again recommended a dedicated aide for the Student. (P-7; Testimony of Petitioner)

5. These services were not enough to help the Student make appropriate gains. During the 2017-2018 school year, the Student often daydreamed in class and had difficulty with school work. The Student had particular difficulty solving problems and understanding concepts in math, and also reading grade-level text. The Student was functioning well behind the class target goal for reading; the Student was at "Level B" of the Fountas and Pinnell measure when the goal for the Student's grade was "Level G." During the first two reporting periods, the Student received the lowest grades possible in math, reading, and writing. The Student also made little progress on the i-Ready and DIBELS measures. (P-3-2-4; Testimony of Witness A)

6. The Student had difficulty with behavior during the 2017-2018 school year. The Student demonstrated difficulty in the areas of self-management, emotional regulation, sustained attention, and peer relationships. The Student was particularly weak during transitions. The Student engaged in four major "infractions" during the school year. The Student also scored "very high" in a measure that tested the Student's stress level, hyperactivity, and concentration, and was considered to be at a high risk for a

behavioral disorder. These issues compromised the Student's ability to receive instruction. The Student's behavior also impeded other students. Interventions were tried during the school year, including "proximity control," verbal prompts, and positive reinforcement, including the use of specific incentives. These measures did not work, and the Student became reluctant to go to school. The Student's attendance accordingly suffered. (P-8-2, 6, 7; Testimony of Petitioner; Testimony of Witness D)

7. Petitioner requested a variety of educational records from Respondent in March, 2018. Additionally, in March, 2018, Petitioner requested the following evaluations: a speech and language evaluation, an occupational therapy evaluation, a comprehensive psychological evaluation, and an FBA and BIP. (P-23; P-24; Testimony of Witness A)

8. The Student was evaluated in February, 2018. Testing on the Woodcock-Johnson Tests of Achievement, 4<sup>th</sup> Edition, indicated that the Student functioned in the low average range in broad reading and broad written language, and in the average range in math. However, the Student scored in the very low range in academic fluency, and in the low range in reading fluency. The Student was not tested for intelligence, which made it difficult to assess whether the Student had a learning disability. (P-3-2-4; Testimony of Witness B)

9. DCPS responded to the document request on April 10, 2018, providing some of the documents requested. However, some of the Student's records were hard to obtain because School A PCS had closed. DCPS did not provide all of the documents that were requested. (P-25-4)

10. Petitioner subsequently sent DCPS a correspondence pointing out that many of the documents requested were not provided, including the Student's IEP progress reports from 2017-2018. (P-25-9)

11. An IEP meeting was held for the Student in May, 2018. The IEP team noted that the Student did not master the emotional, social, and behavioral goals from the prior IEP. Petitioner requested more behavior support services, more specialized instruction outside general education, and an evaluation to determine whether the Student had Attention Deficit Hyperactivity Disorder ("ADHD"). DCPS indicated that it would not conduct any further evaluations. With respect to behavioral evaluations, DCPS indicated that there was no need to conduct such evaluations because the Student's behavioral issues were minor and did not escalate until May, 2018. To write the Student's IEP, DCPS relied on testing conducted in the Student's psychological evaluation of February, 2018, as well as Beginning of Year ("BOY") and Middle of Year ("MOY") data. Petitioner continued to seek educational records during this meeting. (Testimony of Witness A; Testimony of Witness C; Testimony of Witness D; P-9; P-10)

12. In the May, 2018, IEP, the Student was recommended to receive five hours per week of specialized instruction outside general education. There were no changes to the recommendations for behavioral support services or occupational therapy except for thirty minutes per month of behavior support services as "consultation." The Student continued to be recommended for a dedicated aide. (P-8-8)

13. DCPS subsequently agreed to conduct an FBA and BIP, a speech and language evaluation, a comprehensive psychological evaluation, and an occupational therapy evaluation for the Student. (Testimony of Witness C; R-1)

## VI. Conclusions of Law

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

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.

See D.C. Code § 38-2571.03(6)(A)(i)

Issue #1 involves a challenge to the Student's existing or proposed IEP or placement. Accordingly, should Petitioner establish a *prima facie* case on this issue, Respondent shall bear the burden of persuasion. The other issues in this case do not directly relate to the Student's existing or proposed IEP or placement. For those issues, the burden of persuasion lies with Petitioner. Schaffer v. Weast, 546 U.S. 49 (2005).

**1. Did DCPS fail to offer the Student a FAPE in the IEP dated May 7, 2018? If so, did DCPS act in contravention of 34 CFR 300.320, Andrew F. v. Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?**

Petitioner indicated that the IEP did not provide the Student with appropriate present levels of performance, baseline data, or Extended School Year services, and that the Student's eligibility category was incorrect, the Student was denied transportation,



and the IEP was not based on sufficient testing.

There was virtually no meaningful testimony or evidence put forth on the sub-issue of the Student's eligibility category or the Student's transportation issues. Witness A did say that the Student needed Extended School Year services, but this testimony was conclusory. Accordingly, Petitioner did not meet her burden to present a *prima facie* case on these sub-issues.

A FAPE is offered to a student when (a) the school district complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits. While school districts are required to comply with all IDEA procedures, not all procedural errors render an IEP legally inadequate under the IDEA. Pursuant to the IDEA, when procedural violations are alleged, an administrative officer may find that a child did not receive a FAPE only if the procedural inadequacies (a) impeded the child's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or (c) caused a deprivation of educational benefits. 20 U.S.C. Sect. 1415(f)(1)(E)(ii); 34 C.F.R. Sect. 300.513(a)(2).

An IEP developed through the Act's procedures must be reasonably calculated to enable the child to receive additional benefits. Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982). The IEP should be both comprehensive and specific, and targeted to the Student's "unique needs." McKenzie v. Smith, 771 F.2d 1527, 1533, D.C. Cir. 1985); N.S. ex rel. Stein v. District of Columbia, 709 F.Supp.2d 57, 60 (D.D.C. 2010); 34 CFR Sect. 300.320(a)(2)(B)(the IEP must contains goals that meet each of the

child's educational needs that result from the child's disability); 34 CFR Sect. 300.324(a)(1)(iv)(the IEP must address the academic, developmental, and functional needs of the child). In 2017, the Supreme Court addressed a split amongst the circuit courts regarding what the IDEA means when it requires school districts to provide an "appropriate" level of education to children with disabilities. Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-I, 137 S. Ct. 988 (2017). In Endrew F., the Court held that an IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Id. at 1001. The Court made clear that the standard is "markedly more demanding than the 'merely more than de minimis' test" applied by many courts. Id. at 1000.

In S.S. ex rel. Shank v. Howard Road Academy, 585 F. Supp.2d 56, 66-67 (D.D.C. 2008), the Court found that the measure and adequacy of an IEP decision must be determined as of the time it was offered to the student. Citing to circuit court decisions, the Court found that an IEP should be judged prospectively to avoid "Monday morning quarterbacking." See Thompson R2-J Sch. Dist. v. Luke P., 540 F.3d 1143, 1149 (10<sup>th</sup> Cir. 2008); Adams v. Oregon, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999); Carlisle Area Sch. V. Scott P., 62 F.3d 520, 530 (3d Cir. 1995); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1<sup>st</sup> Cir. 1990).

The record does not indicate that DCPS engaged in any meaningful "calculation" with respect to the Student's program in the May, 2018, IEP. The IEP itself indicated that the Student demonstrated difficulties with self-management, emotional regulation, sustained attention, and peer interactions, and also that the interventions that had been tried had not worked. As pointed out in the body of the IEP itself, the Student needed

structure and support to maintain attention and behavior in class. (P-8-7) However, the IEP provided the Student *with no services at all* in the general education setting, which reduced the Student's services inside general education compared to the prior year. It is noted that the Student was to be in a general education setting throughout the school day (except for one hour per day).

Additionally, the IEP did not propose any changes to the Student's services with respect to behavior except for thirty minutes per month of "consultation" services, which are not clearly explained in the record. There was no recommendation for an increase in behavioral support services as "related services," and no BIP was written to address the Student's persistent behavioral issues. DCPS's argument that the Student's behavioral issues were minor and that the Student did not require a BIP were unpersuasive. In DCPS's own IEP of May, 2018, a checked box indicated that the Student's behavioral issues affected the Student and the Student's peers. Additionally, the Student's behaviors occurred even though the Student was assigned a dedicated aide throughout the year.

Moreover, DCPS's own psychological evaluation indicated that the Student needed an explicit phonics-based program to assist with reading and direct instruction in math. There was no mention of any such services in the IEP. Finally, as indicated, *infra*, DCPS did not provide the Student with evaluations that were needed with respect to intelligence testing, speech and language testing, occupational therapy testing, and behavior testing. As a result, DCPS did not have the required information at hand to be able to create appropriate present levels of performance and goals, which must therefore be considered invalid.

As a result of the foregoing, DCPS denied the Student a FAPE through its May, 2018, IEP.

**2. In the months prior to the IEP dated May 7, 2018, did DCPS fail to create/revise the Student's FBA and/or BIP? If so, did DCPS violate 34 CFR 300.324(a)(2)(I) and related provisions? If so, did DCPS deny the Student a FAPE?**

**3. In the months prior to the IEP dated May 7, 2018, did DCPS fail to evaluate the Student in all areas of suspected disability? If so, did DCPS violate 34 CFR Sect. 300.304 and related provisions? If so, did DCPS deny the Student a FAPE?**

Since these two issues overlap considerably, they should be addressed together.

A Local Educational Agency ("LEA") is required to ensure that a child is assessed in all areas of suspected disability, and that the chosen assessment tools and strategies are provided to present relevant information that directly assists persons in determining the educational needs of the child. 28 U.S.C. Sect.1414(b)(3); 34 C.F.R. Sect.300.304(c).

Courts in the District of Columbia have held that it is "essential" for the LEA to develop an FBA for a child with behavioral problems. The FBA's role is to determine the cause, or "function," of the behaviors and then the consequences of that behavior. Harris v. Dist. of Columbia, 561 F. Supp. 2d 63, 68 (D.D.C. 2008); see also Long v. Dist. of Columbia, 780 F. Supp.2d 49 (D.D.C. 2008)(in ruling the school district failed to provide an FBA/BIP for a student, the court stated that "the quality of a student's education is inextricably linked to the student's behavior"); Shelton v. Maya Angelou Charter School, 578 F.Supp.2d 83 (D.D.C. 2008)(FBA/BIP required where learning disabled student was suspended). The FBA should focus on the antecedents to the behaviors, on the theory that a change in the antecedents can lead to a change in the behaviors. C.F. ex rel. R.F. v. New York City Dep't of Educ., 2011 WL 5130101 at \*9

(S.D.N.Y. 2011); R.K. ex rel. R.K. v. New York City Dep't of Educ., 2011 WL 1131492 at \*19 (S.D.N.Y. 2011). The information gleaned from an assessment is central to formulating an IEP tailored to the needs of individual disabled children. Harris, 561 F. Supp. 2d at 68.

In addition to an FBA, if the behavior of a student impedes the student's learning or the learning of other students, the IEP team shall consider the use of positive behavioral supports and other strategies to address that behavior in conformance with the IDEA and its implementing regulations. 20 U.S.C. Sect. 1414(d)(3)(B)(i); 34 C.F.R. Sect. 300.324(a)(2)(i). According to DCMR Sect. 5-3007.3, if a student's behavior impedes the child's learning or the learning of others, the IEP team shall consider strategies, including positive behavioral intervention, strategies, and supports, to address that behavior. An individual behavior plan shall be developed and incorporated into the IEP. A copy of that individual behavior plan shall be provided to the child's parents and to each teacher and service provider.

The record indicates that the Student has considerable sensory needs, and has been recommended for occupational therapy. However, there is nothing in the record to indicate that the Student has been formally assessed by an occupational therapist. Nor is there any evidence that the Student has been formally assessed by a speech and language therapist. The Student has had trouble listening in class, and, as noted by Witness B, testing should be conducted to determine, at least, if the Student has any weaknesses in receptive language. Witness B also convincingly testified in support of the need to test the Student's IQ to determine whether the Student has a learning disability. Finally, as already indicated, *supra*, the Student had behavioral issues during the 2017-2018 school

year, resulting in an IEP that required a full-time dedicated aide. DCPS checked a box in the IEP indicating that the Student's behavior impeded the learning of him/herself or others. The IEP indicated that the Student had difficulties with self-management, emotional regulation, sustained attention, and peer interactions, and that the interventions that had been tried had not worked. The Student required an FBA, and corresponding BIP, to address these issues. It is noted that DCPS appeared to concede that the Student's evaluation was inadequate, since, in addition to the testimony of Witness D, it offered an occupational therapy evaluation, a speech and language evaluation, and a comprehensive psychological evaluation for the Student in its correspondence dated May 31, 2018.

As a result of the foregoing, DCPS denied the Student a FAPE.

**4. Did DCPS fail to provide Petitioner with educational records? If so, did DCPS violate 34 CFR Sect. 300.501 and related provisions? If so, did DCPS deny the Student a FAPE?**

20 U.S.C. Sect. 1232g(a)(1)(A) requires each educational agency or institution to grant parents access to the educational records of their children no more than forty-five days after the request. The IDEA regulations provide in pertinent part: "(t)he parent of a child with a disability must be afforded, in accordance with the procedures of Sects. 300.613 through 300.621, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child." 34 C.F.R. Sect. 300.501(a). The term "education records" means the type of records covered under the definition of "education records" in 34 C.F.R. Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Sect. 1232g (FERPA)). 34 C.F.R. Sects. 300.611-300.625. Education records as defined under FERPA are "directly related to a student"

and “maintained by an educational agency or institution or by a party acting for the agency or institution.” The term does not include “records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.” “Record” means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche. 34 C.F.R. Sect 99.3.

Through her attorney, Petitioner requested a wide variety of educational records in or about March, 2018. DCPS provided Petitioner with some of the records in April, 2018, but did not provide all the records, at least in part because School A PCS was no longer operating. This excuse does not explain why DCPS did not send records relating to the Student’s IEP progress reports for the 2017-2018 school year, or other records compiled when the Student was at School B. Still, Petitioner bears the burden on this claim and failed to show how the withholding of records caused any substantive harm to the Student. Respondent’s response to Petitioner’s requests for records was, at most, a procedural violation, which should not be the basis of a finding of FAPE denial. Lesesne ex rel. B.F. v. D.C., 447 F.3d 828, 834 (D.C. Cir. 2006); see also Kruvant v. District of Columbia, 99 Fed. App’x. 232, 233 (D.C. Cir. 2004). Accordingly, this claim must be dismissed.

### **RELIEF**

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs a court to “grant such relief as [it] determines is appropriate.” School

Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confer broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be "appropriate." 20 U.S.C. Sect. 1415(i)(2)(C)(iii).

Petitioner seeks compensatory education in the form of 240 hours of tutoring and sixty hours of counseling. Petitioner also seeks to reserve an additional award after evaluations of the Student are conducted. However, DCPS denied the Student a FAPE during a relatively brief period of time. The Student's IEP was created in May 7, 2018, and the Student did not go to school during the summer. While the period of FAPE denial should be deemed to extend until the Student's evaluations are completed and a new IEP is written, the period of FAPE denial in this case amounts to, at most, approximately four months of missed services. Under the circumstances, this Hearing Officer finds the request for compensatory education to be in excess of what is required per the Reid standard. Accordingly, the Student will be awarded eighty hours of tutoring and twenty hours of behavior support services, to be provided by a qualified and licensed provider at the prevailing rate in the community. Petitioner provided no clear rationale for the proposition that an additional compensatory education award should be ordered after the completion of the Student's evaluations.

DCPS has already agreed to provide the Student with a speech and language evaluation, an occupational therapy evaluation, and a comprehensive psychological evaluation. Testimony from Witness D indicated that DCPS has also agreed to conduct an FBA for the Student. These evaluations must be completed within thirty school days of the issuance of this order. Then, within fifteen school days of the completion of the



evaluations, DCPS must complete a BIP for the Student and revise the Student's IEP in light of the evaluations.

As suggested by Witness B, it is not appropriate for this Hearing Officer to order an increase in specialized instructional services until the Student's evaluations are complete. Still, it is apparent from the record that this Student requires more specialized instruction than previously recommended. If the Student is to be placed in a general education setting for academic classes, "inclusion" classes (i.e., classes with a special education teacher and a general education teacher in the room) seem likely to be appropriate.

## **VII. Order**

As a result of the foregoing:

1. Within thirty school days of the date of this order, the IEP team shall ensure the completion of the following evaluations of the Student: a speech and language evaluation; an occupational therapy evaluation; a comprehensive psychological evaluation; and an FBA. Such evaluations may be conducted by DCPS staff or by independent contractors at the "OSSE rate;"
2. Within fifteen school days of the completion of the Student's evaluations, DCPS shall create a new IEP and BIP for the Student, incorporating the data from the evaluations;
3. The Student is hereby awarded eighty hours of compensatory tutoring and twenty hours of behavior support services, to be provided by a qualified, certified provider, at the usual and customary rate in the community;
4. All of Petitioner's other requests for relief are denied.

Dated: August 8, 2018

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Petitioner's Representative: Attorney A, Esq.  
Respondent's Representative: Attorney B, Esq.  
OSSE Division of Specialized Education  
Contact.resolution@dc.gov

### **XIII. Notice of Appeal Rights**

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 USC §1415(i).

Dated: August 8, 2018

*Michael Lazan*  
Impartial Hearing Officer