

**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
August 25, 2020

<i>Student</i> , ¹)	Case No.: 2020-0110
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 8/25/20
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Date: 8/10/20 & 8/20/20
("DCPS"),)	Video Platform: Microsoft Teams
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”) due to lack of a full-time Individualized Education Program (“IEP”) to address academic and behavior needs, lack of comprehensive evaluation, and lack of all education records. DCPS responded that there was no denial of FAPE as the IEP and its other actions were appropriate.

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 5/29/20, the case was assigned to the undersigned on 6/1/20. Respondent filed a response on 6/10/20, and did not challenge jurisdiction. A resolution meeting was held on 6/11/20, which did not resolve the dispute or shorten the 30-day resolution period, which ended on 6/28/20. A final decision in this

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

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matter must be reached no later than 45 days following the end of the resolution period, as extended by two 10-day continuances, which requires a Hearing Officer Determination (“HOD”) by 9/1/20.

The prehearing conference was held on 7/2/20 and the Prehearing Order issued that same day, addressing the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 8/10/20 and 8/20/20 and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner was present for much of the hearing.

Petitioner’s Disclosures, submitted on 8/3/20, contained documents P1 through P36, which were admitted into evidence without objection. Respondent’s Disclosures, submitted on 8/3/20, contained documents R1 through R25, which were admitted into evidence without objection.²

Petitioner’s counsel presented 3 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Occupational Therapist* (qualified without objection as an expert in Occupational Therapy)
2. *Educational Advocate* (qualified without objection as an expert in School Psychology and Special Education Programming)
3. Parent

Respondent’s counsel presented one witness in Respondent’s case (*see* Appendix A): *Director* of Specialized Instruction at *Public School* (qualified over objection as an expert in Special Education Programming and School Psychology)

Petitioner’s counsel did not present any rebuttal witnesses.

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

Issue 1: Whether DCPS denied Student a FAPE by failing to allow Parent access to education records despite numerous written requests. (*Petitioner has the burden of persuasion on this issue.*)

Issue 2: Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement and/or location of services for 2019/20³ to present by failing to provide (a) a full-time setting outside general education for all academic courses, with inclusion support for “specials,” (b) an appropriate level of Behavior Support Services

² Citations herein to the parties’ documents begin with a “P” (for Petitioner) or “R” (for Respondent) and the exhibit number followed by a “p” (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits).

³ All dates in the format “2019/20” refer to school years.

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(“BSS”), and/or (c) appropriate and measurable academic and behavioral goals and baselines and a “PBIS” (Positive Behavior Interventions and Supports) notation. *(Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.)*

Issue 3: Whether DCPS denied Student a FAPE by failing to comprehensively and timely evaluate Student following Parent’s 3/26/20 written request, or in 2017/18 (from 5/29/18), 2018/19 or 2019/20 based on Student’s needs, by providing (a) a comprehensive psychological evaluation, and/or (b) an occupational therapy (“OT”) evaluation. *(Petitioner has the burden of persuasion on this issue.)*

The relief requested⁴ by Petitioner is:

1. A finding that Student was denied a FAPE.
2. DCPS shall convene a meeting to develop an IEP for Student, including: (a) appropriate and measurable goals and baselines for academic and social-emotional sections, and occupational therapy goals and services; (b) appropriate services, including specialized instruction outside general education for all academic courses, and inclusion for all specials; and (c) 240 minutes/month of BSS.
3. DCPS shall provide compensatory education for any denial of FAPE; additional compensatory education is reserved until completion of evaluations DCPS has agreed to conduct.⁵
4. DCPS shall provide all requested education records to Parent.
5. Any other just and reasonable relief.

⁴ Petitioner withdrew the third paragraph of relief requested as set forth in the Prehearing Order, which was “DCPS shall conduct or fund (a) a comprehensive psychological evaluation, with cognitive testing and social-emotional testing to include broad band and narrow measures, and (b) an occupational therapy evaluation.” On 8/3/20, DCPS provided Parent with authorization for IEEs for the two evaluations Petitioner sought (*see* R23).

⁵ So far as Petitioner’s request for compensatory education depends on the findings of assessments that may be carried out in the future, that portion of the compensatory education claim is reserved pending the completion of Student’s assessments and a determination of eligibility for additional special education and related services.

With regard to any request for compensatory education to be awarded in the HOD, Petitioner’s counsel was put on notice at the prehearing conference that, at the due process hearing, 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 at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE were found.

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Findings of Fact

After considering all the evidence, as well as the arguments of 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.⁸ Student is described as "intelligent, articulate, extroverted, humorous, engaging, playful, confident, and outspoken..."⁹

2. IEPs. Student was initially evaluated in 2011 and found eligible for special education services as a child with Other Health Impairment ("OHI") based on behaviors resembling Attention Deficit Hyperactivity Disorder ("ADHD"); the disability classification of OHI due to Attention Deficit Disorder ("ADD")/ADHD has continued to the present.¹⁰

3. In 2013/14, Student was receiving 5 hours/week of specialized instruction and 60 minutes/week (240 minutes/month) of BSS.¹¹ In 2016/17, Student was receiving 8 hours/week of specialized instruction outside general education and 120 minutes/month of BSS.¹² The 2 IEPs at issue in this case are dated 1/9/19 and 1/3/20 and each provided 5 hours/week of specialized instruction outside general education and 120 minutes/month of BSS; neither had the "PBIS" box checked affirmatively indicating that Student's behavior impeded Student's learning or that of other children.¹³

4. Specialized Instruction. Educational Advocate testified that Student needs more specialized instruction due to lack of progress over past years.¹⁴ Student's 1/3/20 IEP noted that Student works better during pull-out instruction as opposed to whole group instruction; Student was very interested in classwork and loved answering questions, but struggled to complete any work and pay attention during whole group instruction.¹⁵ Director reported

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 *Id.*

⁹ P8p66,69.

¹⁰ P9p73; P21p178.

¹¹ P4p34.

¹² P5p44.

¹³ P14p109-10,116; P21p178-79,187.

¹⁴ Educational Advocate.

¹⁵ P21p182.

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that teachers said that Student was not performing to capacity; Director was “absolutely” certain that Student didn’t need a full-time setting.¹⁶

5. BSS. Student was often engaged for a few minutes in BSS sessions and then would leave; Student was not interested in therapy.¹⁷ Director testified that if the 1/3/20 IEP had been finalized a couple of weeks later, it would have included more BSS due to Student’s serious behavior incidents that occurred at that time; Director volunteered that the IEP is a “living document” that can be adjusted as needed.¹⁸ The 12/20/19 Functional Behavioral Assessment-Level II (“FBA-II”) noted the importance of BSS to address Student’s self-regulation and poor social skills.¹⁹ Student’s 1/3/20 IEP noted Student’s continued need for BSS.²⁰

6. Goals and Baselines. Student’s 1/9/19 IEP math goals stated in detail what Student “can complete” and “can solve” as measured by an assessment given on 1/9/19 (the date of the IEP), but did not include any goals for the year.²¹ Student’s 1/9/19 math baselines stated only that Student is performing below basic level or grade level.²² Student’s 1/9/19 IEP reading goal stated what Student “can comprehend” as measured by an assessment given on 1/9/19, but did not include goals for the year; the baseline provided no information that would permit progress to be measured.²³ Student’s 1/9/19 IEP written expression goal stated that Student “has developed” and “demonstrates skills” as measured by an assessment given on 1/9/19, but did not include any goals for the year; the baseline of being “able to edit and revise grade level assignments” could be appropriate (depending on the actual goal) if true.²⁴ Student’s 1/9/19 IEP behavioral development goals were appropriate and measurable, as Director testified; the baselines were appropriate.²⁵

7. Student’s 1/3/20 IEP math goals were appropriate and measurable, as Director testified; the baselines were weak as they only stated that Student is 5 years below Grade in math.²⁶ Student’s single 1/3/20 IEP reading goal was appropriate and measurable; Director testified it contains a lot and could be broken down to be bite-sized; Educational Advocate emphasized the need for more than one reading goal; the baseline was appropriate.²⁷ Student’s 1/3/20 IEP written expression goal was appropriate and measurable, as Director

¹⁶ Director.

¹⁷ P8p68; P29p261,262,264,265,267 (Student often walked out of BSS).

¹⁸ Director.

¹⁹ P8p70.

²⁰ P21p185.

²¹ P14p111.

²² P14p111-12; Educational Advocate.

²³ P14p113; Educational Advocate.

²⁴ P14p114.

²⁵ P14p115; Director.

²⁶ P21p181; Director; Educational Advocate.

²⁷ P21p189; Director; Educational Advocate.

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testified; the baseline was fine.²⁸ Student's 1/3/20 IEP behavioral development goals were appropriate and measurable, as Director testified; the baselines were good.²⁹

8. PBIS. The IEPs stated that Student's behavior interferes with Student's ability to access academic instruction; Student's inability to attend to tasks and inability to self-regulate also prevent Student from accessing the general education setting.³⁰ Student's behavior can be so problematic that it interferes with Student's ability to learn.³¹ Student engages in disruptive behaviors in the classroom about 50% of the time.³² PBIS is important to note additional support and include Behavioral Intervention Plans ("BIPs").³³

9. Cognitive Ability. Student had a Full Scale IQ ("FSIQ") of 80 on 3/8/11 based on the Wechsler Preschool and Primary Scale of Intelligence – Third Edition ("WPPSI-III").³⁴ In the 5/19/14 reevaluation, Student scored an 88 on the FSIQ based on the Wechsler Abbreviated Scale of Intelligence ("WASI").³⁵

10. Academics. Student's overall academic skills are "extremely low," so Student will have challenges accessing the general education curriculum.³⁶ Based on the Wechsler Individual Achievement Test – Third Edition ("WIAT-III") in 2014, Student was in Below Average ranges for both Basic Reading Composite and Mathematics Composite.³⁷ In the 2/8/17 reevaluation, Student was found overall to have very low abilities in reading, low abilities in writing, and low abilities in math.³⁸ Student's 1/30/17 Woodcock-Johnson IV Tests of Achievement ("WJ-IV ACH") found Student scored Very Low on 11 clusters/tests, Low on another 12, and higher than that on only 3.³⁹ In 2016/17, Student's TRC reading level was an "N," which Student should have achieved in 2014/15; Student's iReady math score on 2/8/17 was 436, a 24-point gain, but was below grade level.⁴⁰

11. Student's 1/9/19 IEP stated that Student's present levels of performance ("PLOPs") for math indicated that Student was at the 2015/16 level, 3 years below Student's grade.⁴¹

²⁸ P21p184-85; Director.

²⁹ *Id.*

³⁰ P14p111,115; P21p181,183,186.

³¹ P8p68.

³² P14p115; P21p186.

³³ Educational Advocate.

³⁴ P4p35.

³⁵ P4p36,38.

³⁶ P9p78.

³⁷ P4p42.

³⁸ P5p52.

³⁹ P5p51-52; P13p106 (3 years behind on many clusters/tests based on age equivalency).

⁴⁰ P5p48.

⁴¹ P14p111.

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Student's 1/3/20 IEP stated that Student's PLOP for math was at the 2014/15 level based on both WJ-IV ACH and iReady scores, which is 5 years below Grade.⁴²

12. Student's 1/9/19 IEP stated that Student's PLOP for reading indicated that Student was at the 2014/15 level, 4 years below Student's grade.⁴³ Student's 1/3/20 IEP stated that Student's PLOP for reading was still at the 2014/15 level, 5 years below Grade.⁴⁴ Student's 1/3/20 IEP stated that Student's PLOP for written expression was at the 2014/15 level, which is 5 years below Grade.⁴⁵

13. Student's WJ-IV ACH on 12/4/19 revealed that Student scored Low or Extremely Low on all 14 clusters/tests, except 1 (Math Facts Fluency); Student was 4-5 years behind based on age equivalency.⁴⁶ At the 1/3/20 IEP team meeting, DCPS's notes reflect that Student's IEP Case Manager noted that Student is reading, writing, and performing math on a 2014/15 level, which is 5 years below Grade.⁴⁷

14. Behavior. Student has an extensive history of noncompliance, opposition, fighting, impulsivity, physical and verbal aggression, low frustration tolerance, emotional dysregulation, and distractibility, which negatively impacts curriculum access.⁴⁸ Student's behaviors can be severe and have resulted in school suspensions and detentions, failing grades, disruption of the learning environment, and academic disengagement.⁴⁹ Student engages in reckless behaviors, physical altercations, has difficulty following directives and staying in location, but responds well to positive attention, praise and rewards.⁵⁰

15. Student had "extreme" disruptive behaviors in school – Student was expelled from aftercare in elementary school – and maladaptive behaviors at home going back to 2011.⁵¹ In 2016/17, Student had 21 office referrals, with 1 in-school suspension.⁵² Student's behavior worsened during 2019/20 as verbal redirection or reprimands became suspensions of 5 and then 6-10 days.⁵³ On 1/3/20, Student and others pulled a peer's pants down and taunted him, which was determined to be sexual harassment.⁵⁴ On 2/24/20, Student

⁴² P21p180.

⁴³ P14p112.

⁴⁴ P21p182-83.

⁴⁵ P21p183-84.

⁴⁶ P9p76-77; P7p62.

⁴⁷ P22p199.

⁴⁸ P9p78; P8p66.

⁴⁹ P8p66.

⁵⁰ P9p72.

⁵¹ P9p73; P12p95.

⁵² P5p49.

⁵³ P9p78.

⁵⁴ P30p270-72.

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repeatedly punched a teacher, which a Manifestation Determination Review (“MDR”) found was not a manifestation of Student’s disability.⁵⁵

16. Student is more focused when working with a teacher; Student constantly talks, sings and dances during instruction; Student’s negative behaviors impede academic performance.⁵⁶ Student works better with headphones and on the computer to block out all distractions.⁵⁷ Parent sought ADHD medication for Student, but was told Student did not need it.⁵⁸ When Student was on medication in 2018/19 Student tended to do much better in the classroom; Student’s untreated ADHD is increasingly worsening.⁵⁹ Student sometimes makes “bad choices,” but over 10 years exhibited a pattern of needs not being adequately addressed.⁶⁰

17. FBA, BIPs. A BIP Level-I (“BIP-I”) was developed on 10/1/19 to address Student walking out of class, being disruptive to the class environment, and physical aggression.⁶¹ An FBA-II was conducted on 12/20/19 based on Student being off-task, verbal aggression, and noncompliance.⁶² A BIP-II purportedly was created on 9/17/19; an undated BIP-II focused on Student being off-task, verbal aggression, and noncompliance.⁶³ Another BIP-I was developed on 4/22/20 to address walking out of class and physical and verbal aggression. DCPS developed a daily tracker for Student with 5 categories to be rated for each class daily.⁶⁴

18. Progress Reports. Student’s IEP Progress Report for Term 1 2019/20 stated that Student was not doing any work in math and was highly disruptive; Student made no progress on behavioral development goals then, with Terms 2 and 3 much the same.⁶⁵

19. Grades. Student’s final grades were an “F” in 2018/19 in Science, Spanish I, and Introduction to Communication.⁶⁶ Student’s final grades were unclear in 2019/20 due to Covid-19; in Term 3, Student had “Fs” in Science, Math, Reading Support, and U.S. History & Geography.⁶⁷ Director felt that Student’s poor grades in 2019/20 were due to lack of engagement and not lack of ability.⁶⁸

⁵⁵ P23p204; P30p274,276,277.

⁵⁶ P9p75.

⁵⁷ P18p163.

⁵⁸ P9p75; P22p199.

⁵⁹ P8p68.

⁶⁰ Occupational Therapist.

⁶¹ P6p59; P19p166.

⁶² P8p64.

⁶³ P18p160; P10p82.

⁶⁴ R7p46.

⁶⁵ P26p218,222,227,232.

⁶⁶ P27p235-37.

⁶⁷ P27p247-48.

⁶⁸ Director.

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20. Evaluations. Student's initial evaluation was in March 2011, with psychological triennial reevaluations in May 2014 and February 2017.⁶⁹ On 3/4/20, Parent was still waiting on the psychological evaluation from February 2020 for which Parent gave consent on 9/20/19; Parent received the 3/9/20 report on 4/2/20.⁷⁰ On 5/26/20, Educational Advocate emailed DCPS about the evaluation not being comprehensive due to lack of a cognitive assessment since 2011, and also urged the inclusion of behavior rating scales, suggesting particular assessments.⁷¹

21. On 3/26/20, Petitioner formally requested reevaluation of Student, seeking a comprehensive psychological evaluation including specific listed assessments, and an OT assessment.⁷² DCPS did not refuse the 3/26/20 request but noted that it couldn't move forward until school resumed on campus.⁷³ DCPS is still not conducting evaluations, as it is not back in its usual facilities and children are not coming to school yet, but since independent providers are able to conduct evaluations, DCPS authorized independent educational evaluations ("IEEs") for the requested assessments on 8/3/20.⁷⁴

22. Occupational Therapy. Occupational Therapist persuasively testified that an OT assessment of Student is appropriate and that there were "red flags" extending back for years.⁷⁵ Student's aggressive behavior may be an OT issue rather than ADHD, if Student simply cannot control Student's body.⁷⁶ If Student is struggling to regulate self, it may be an OT issue rather than just being "bad."⁷⁷ Throughout the 2014 evaluation, Student was constantly moving, touching a stimulus book, tapping on the table.⁷⁸ Student has had consistent visual-perception needs from 2011.⁷⁹ Student's FBA-II on 12/20/19 found that one motivation of Student's behavior was "sensory seeking."⁸⁰ An OT assessment is needed to determine whether OT services were needed in the past or are needed going forward.⁸¹

23. Documents. Petitioner's initial document request on 2/11/20 sought 2 years of education records; only the current year was sent by the school.⁸² On 3/24/20 Educational Advocate sent a list of "missing" records going back to 2016/17, with 41 numbered

⁶⁹ P9p73.

⁷⁰ P23p204; P33p315.

⁷¹ P33p320.

⁷² P32p308-10.

⁷³ Director.

⁷⁴ Director; R23p111.

⁷⁵ Occupational Therapist.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ P4p36.

⁷⁹ Occupational Therapist; P4p38 (Student may have difficulty with directionality in relation to Student's own body).

⁸⁰ P8p65,66.

⁸¹ Occupational Therapist.

⁸² P31p283-84,285; P24p208.

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categories.⁸³ Director responded on 3/25/20 noting that distance learning had begun and that she had limited access to technology, but promising to fill the request by 4/1/20.⁸⁴ Educational Advocate followed up on the document request on 5/12/20.⁸⁵ DCPS provided a link to access the list of files on 6/15/20.⁸⁶

24. Records in DCPS's SEDS database could be accessed remotely and were turned over to KH.⁸⁷ Behavior records could only be accessed from within the school building, which was not generally accessible during the pandemic; Director noted on 7/9/20 in response to a 7/9/20 request for disciplinary records/behavior referrals that it might take extra time to retrieve information that could only be accessed from school.⁸⁸ Director was planning to go to school on 7/13/20 and could obtain information from school at that time.⁸⁹

25. Compensatory Education. Parent is concerned about Student falling behind peers and believes Student needed more support.⁹⁰ Educational Advocate's Compensatory Education Proposal calculated extra hours of specialized instruction across 180 school days for 2019/20, which would total an extra 180 hours of specialized instruction based on this Hearing Officer's conclusion that Student needed an extra 5 hours/week (or 1 hour/day).⁹¹ Similarly, Educational Advocate's calculation of BSS was over 9 months for 2019/20, which with the extra 60 minutes/month found appropriate for Student by the undersigned (180 rather than 120 minutes/month) would amount to an extra 9 hours for 2019/20.⁹² Educational Advocate proposed 50 hours of Cognitive Behavioral Therapy and 20 hours of mentoring, as well as reserving additional compensatory education until completion of the OT assessment and comprehensive psychological evaluation.⁹³ Absent the denial of FAPE, Student should have made one year of progress each year, based on Student's abilities.⁹⁴

26. On 8/3/20, DCPS authorized an independent comprehensive psychological evaluation and an independent OT assessment for Student; DCPS also authorized 100 hours of tutoring and 20 hours of counseling as independent services for Student; neither authorization by DCPS was contingent on settlement or any other action by Petitioner.⁹⁵

⁸³ P32p299-300.

⁸⁴ P32p302.

⁸⁵ P33p317.

⁸⁶ P34p329-332.

⁸⁷ Director.

⁸⁸ Director; P24p209; P34p334-35.

⁸⁹ P34p336; Director.

⁹⁰ Parent.

⁹¹ P36p363.

⁹² *Id.*

⁹³ P36p363-64.

⁹⁴ Educational Advocate.

⁹⁵ R24p111,113.

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27. Tutoring. After-school tutoring was explained to Parent and offered for Student, but she needed to work out transportation.⁹⁶ Student is willing to work with a tutor and is eager to work to reduce educational deficits, of which Student is aware.⁹⁷

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, 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); *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 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

⁹⁶ P9p75; P22p199,202 (Director to follow up with transportation).

⁹⁷ Educational Advocate; Parent (Student has experience working with tutor).

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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, 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; *Andrew 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*, No. 17-cv-2455, 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 allow Parent access to education records despite numerous written requests. (Petitioner has the burden of persuasion on this issue.)*

Parent did not meet her burden of persuasion on the issue of access to education records. 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). *See also Jalloh ex rel. R.H. v. Dist. of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) (“parents have the

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right to examine records and DCPS must give parents the opportunity to inspect, review, and copy records”).

Here, there was confusion as Petitioner’s initial 2/11/20 document request sought 2 years of education records, but DCPS sent only the current year and Petitioner’s counsel asserted that there had been no time limitation. On 3/24/20 Educational Advocate sent a list of “missing” records going back to 2016/17, seeking documents in dozens of categories. Director responded the next day, noting that distance learning had recently begun and that she had limited access to technology, but promising to fulfill the request within a week. Educational Advocate later followed up on the document request and DCPS provided access to a lengthy list of files on 6/15/20. Petitioner made no further request for documents that DCPS had not provided.

Importantly, records in DCPS’s key SEDS database could be accessed remotely and were turned over to Petitioner’s counsel. On the other hand, behavior records could only be accessed from within the Public School building, which was not generally accessible during the pandemic, as Director noted in her 7/9/20 response to Petitioner’s 7/9/20 request for disciplinary records/behavior referrals. But Director was willing to make the extra effort to go to the school building where she could access the documents. In short, DCPS showed good faith efforts in cooperating with Parent even in difficult times, while Petitioner’s counsel did not demonstrate failure by DCPS to provide any necessary education records. Accordingly, the undersigned finds no violation based on education records.

Issue 2: *Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement and/or location of services for 2019/20 to present by failing to provide (a) a full-time setting outside general education for all academic courses, with inclusion support for “specials,” (b) an appropriate level of BSS, and/or (c) appropriate and measurable academic and behavioral goals and baselines and a “PBIS” notation. (Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.)*

Petitioner established a prima facie case through expert testimony and documents on much of this issue, including the need for more specialized instruction, but not on the need for a full-time setting, inclusion support for “specials,” or inappropriateness of placement/location of services at Public School for 10 hours/week of specialized instruction. *See, e.g., St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 527, 113 S. Ct. 2742, 2758, 125 L. Ed. 2d 407 (1993) (“a prima facie case only requires production of enough evidence to raise an issue for the trier of fact”). Where a prima facie case is established, the burden shifts to DCPS, which failed to meet its burden of persuasion as to additional specialized instruction and BSS, certain goals and baselines, and the PBIS designation, as discussed below.

The applicable legal standard for analyzing the appropriateness of the IEPs at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether they were “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

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some” educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be “reasonably calculated to produce meaningful educational benefit”). The measure and adequacy of each 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). The appropriateness of Student’s IEPs are analyzed by considering the specific concerns raised by Petitioner, which are considered in turn.⁹⁸ *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(a) Specialized Instruction. To begin, the first question is whether 5 hours/week of specialized instruction outside general education is sufficient for Student. Student received at least this level of support for many years, although Student’s triennial review in 2016/17 records that Student received 8 hours/week of specialized instruction at that time. Despite that level of support, Student has made very little progress. Student’s 1/9/19 IEP noted that in math Student was performing 3 years below Student’s grade level, while the 1/3/20 IEP noted that for math Student was performing 5 years below Grade. In reading the 1/9/19 IEP indicated Student was performing 4 years below Student’s grade level, while the 1/3/20 IEP for reading found Student was 5 years below Grade. Similarly, the 1/3/20 IEP stated that in written expression Student was 5 years below Grade.

Indeed, Student’s IEP Case Manager acknowledged at the 1/3/20 IEP team meeting that Student was reading, writing, and performing math at a level 5 years below Grade, but DCPS took no steps to increase Student’s 5 hours/week of specialized instruction outside general education to provide more support in an effort to enable Student to make appropriate progress. The undersigned is persuaded by Educational Advocate’s expert testimony that Student needs more specialized instruction due to lack of progress over the years. At the same time, the undersigned does give weight to the expert testimony of Director who was “absolutely” certain that Student didn’t need a full-time setting and noted that Student prefers the general education setting. Notably, the 1/3/20 IEP recorded that Student works better during pull-out instruction as opposed to whole group instruction and that Student was very interested in classwork, but struggled to complete any work during whole group instruction.

Carefully considering these various factors, the undersigned is clear that the existing 5 hours/week of specialized instruction outside general education on Student’s IEPs was insufficient to enable Student to make appropriate progress in the circumstances, but that a jump to full-time specialized instruction would not be appropriate, and thus concludes that doubling to 10 hours/week of specialized instruction outside general education would be reasonable, which is ordered below. *See Damarcus S.*, 190 F. Supp. 3d 35; *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013). Given the impact that insufficient specialized instruction had on Student’s education, the undersigned certainly views this as a substantive violation and a denial of FAPE. This denial of FAPE is addressed in the award

⁹⁸ 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. Procedural violations are discussed herein.

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of compensatory education below, which is covered in part by tutoring hours authorized on 8/3/20 by DCPS.

(b) Behavior Support Services. Student's IEPs have consistently provided 120 minutes/month of BSS, at least to the extent records are available since 2013/14 when Student's IEP included 60 minutes/week (240 minutes/month) of BSS. The question is whether 120 minutes/month of BSS in Student's recent IEPs was reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances, so that Student was able to access the curriculum to advance toward meeting Student's annual goals pursuant to 34 C.F.R. § 300.320(a)(4). Related services such as BSS must be provided if required to assist a student with a disability in benefiting from special education. *See* 34 C.F.R. § 300.34(a); *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883, 890, 104 S. Ct. 3371, 82 L. Ed. 2d 664 (1984).

Here, Student has had an extensive history of behavioral issues, including noncompliance, opposition, physical and verbal aggression, and emotional dysregulation, which negatively impacted access to the curriculum. Student's behaviors could be severe and resulted in school suspensions and detentions, failing grades, and academic disengagement, which worsened over time. The 12/20/19 FBA-II noted the importance of BSS to address Student's self-regulation and poor social skills, while the 1/3/20 IEP emphasized Student's continuing need for BSS.

Director testified that if the 1/3/20 IEP had been finalized just a few weeks later, it would have included more BSS due to additional behavior incidents. Student sexually harassed a peer on 1/3/20 – the date of the IEP – and later punching a teacher repeatedly. Director also emphasized in her testimony that an IEP is a “living document” that can be adjusted as needed, but DCPS did not adjust the level of BSS for Student in 2020 or in prior years. It is true that in 2019/20 Student was often engaged in BSS sessions for only a few minutes before leaving and had not been interested in therapy. But Student's needs are increasingly urgent and this Hearing Officer is hopeful that the counseling authorized herein and by DCPS – plus an extra year of maturity – will help Student gain traction and benefit from BSS and education.

Considering these factors, DCPS failed to meet its burden of persuasion that 120 minutes/month of BSS was sufficient for Student. The undersigned concludes that Student needed more BSS on both the 1/9/19 and 1/3/20 IEPs, which should have been increased from 120 to 180 minutes/month to provide support without pulling Student out of the classroom too much. Given the serious impact that behavior had on Student's academics and education, the undersigned views this as a substantive violation and a denial of FAPE. This denial of FAPE is addressed in the award of compensatory education below, which is covered in part by counseling (and tutoring) hours already authorized by DCPS.

(c) Goals, Baselines, and PBIS. The final portion of this issue addresses goals and baselines, along with PBIS. IEPs are required to contain measurable annual goals pursuant to 34 C.F.R. § 300.320(a)(2). The IDEA does not expressly require “baselines” in IEPs, although it does require a description of how progress toward meeting a student's IEP goals will be measured in 34 C.F.R. § 300.320(a)(3). That measurement is typically in the form

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of baselines stating the level at which a student begins so one can determine whether the special education services provided were sufficient to bring about the desired improvement. Due to the practicalities of drafting goals with suitable baselines, however, the bar is not high. *See Hill v. Dist. of Columbia*, 14-CV-1893, 2016 WL 4506972, at *22 (D.D.C. 2016) (a broad reading score was a sufficient reading baseline without even saying whether student was able to read independently, for “IEP baselines need not be so detailed”).

Here, analysis by the undersigned reveals that the academic goals in Student’s 1/9/19 IEP were not appropriate, as the nominal goals stated in detail what Student “can complete” and “can solve” (for math), “can comprehend” (for reading), and “has developed” (for written expression), with each area measured by an assessment purportedly given on 1/9/19 (the date of the IEP). If true, these might have made excellent baselines, but the IEP failed to include any actual academic goals for the year. For baselines, the 1/9/19 IEP stated only that Student was performing below basic level or below grade level in math and provided no information that would permit reading progress to be measured. The written expression baseline of being “able to edit and revise grade level assignments” could be appropriate (depending on the actual goal when developed), but could hardly be true if Student was several years below grade level in both reading and writing. On the other hand, the 1/9/19 IEP behavioral development goals were appropriate and measurable, as Director testified, and the baselines were appropriate.

Turning to the 1/3/20 IEP, as Director testified the math goals, the reading goal, the written expression goal, and the behavioral development goals were all appropriate and measurable, although the reading goal contained a lot and could have been broken down to more “bite-size” goals. The math baselines were weak as they stated only that Student was 5 years below Grade in math, but all the other baselines were better and are found acceptable by the undersigned.

As for PBIS, 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 (PBIS), and other strategies, to address that behavior. 34 C.F.R. § 300.324(a)(2)(i). Notwithstanding Director’s testimony, the record was clear that Student’s behavior interfered with Student’s own ability to learn and that Student engaged in disruptive behaviors in the classroom about 50% of the time, which clearly interfered with others. The undersigned has no doubt that Student’s behavior was a significant issue at Public School which should have been reflected in the 1/9/19 and 1/3/20 IEPs by checking the affirmative PBIS box, both because of the behavior impeding Student’s own learning and because of Student’s behavior impeding the learning of other children. DCPS did conduct an FBA and develop BIPs during 2019/20, which is key here.

Considering the goals, baselines and PBIS together, the undersigned concludes that there was a violation of the IDEA and a denial of FAPE here due to the lack of any academic goals in the 1/9/19 IEP, the insufficiency of baselines noted above, and the failure to include PBIS in the IEPs. On balance, there was educational harm to Student which contributes to the compensatory education below. *See* 34 C.F.R. § 300.513(a).

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Placement. As for placement or location of services, the IDEA requires “school districts to offer placement/location of service in a school and in programming that can fulfill the requirements set forth in the student’s IEP.” *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 143 (D.D.C. 2018), *citing O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008). *See also Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013) (DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP”). Here, the undersigned concludes that 5 hours/week of specialized instruction outside general education in the IEPs at issue was not sufficient for Student’s needs. But there is no indication that Public School could not have provided Student with 10 hours/week or even more specialized instruction outside general education. Thus, the undersigned determines that maintaining Student at Public School would have afforded Student the opportunity to make appropriate progress in Student’s particular circumstances. *See N.W. v. Dist. of Columbia*, 253 F. Supp. 3d 5, 17 (D.D.C. 2017), *quoting James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016).

FAPE. In carefully considering the concerns raised above individually and as a group, the undersigned is cognizant of the fact that the analysis is not about achieving perfection. Instead, an IEP and placement simply need to be reasonably calculated to enable Student to make appropriate progress in the circumstances. *Andrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA “stops short of requiring public schools to provide the best possible education”). *See also Hill v. Dist. of Columbia*, No. 14-cv-1893, 2016 WL 4506972, at *21 (D.D.C. 2016), *quoting Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015). However, on balance, this Hearing Officer concludes that overall Student’s challenged IEPs were not reasonably calculated to enable Student to make appropriate progress in Student’s circumstances, which contributes to the compensatory education ordered below.

Issue 3: *Whether DCPS denied Student a FAPE by failing to comprehensively and timely evaluate Student following Parent’s 3/26/20 written request, or in 2017/18 (from 5/29/18), 2018/19 or 2019/20 based on Student’s needs, by providing (a) a comprehensive psychological evaluation, and/or (b) an OT evaluation. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden of persuasion on the issue of both the comprehensive psychological evaluation which was needed a few months earlier and the OT evaluation which was needed years earlier than the IEEs that were authorized on 8/3/20.

(a) Comprehensive Psychological Evaluation. Considering first the comprehensive psychological evaluation, The IDEA requires a reevaluation of each student with a disability at least once every three years, or sooner if the student’s parent or teacher requests a reevaluation, or if DCPS determines that the needs of the student warrant reevaluation. 34 C.F.R. § 300.303. Decisions on the areas to be assessed are to be made based on the suspected needs of the child. *Z.B.*, 888 F.3d at 518; Office of Special Education and Rehabilitative Services, U.S. Department of Education, *Analysis of Comments and Changes*, 71 Fed. Reg. 46643 (2006).

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Here, Student's initial evaluation was on 3/8/11, with psychological triennial reevaluations in May 2014, February 2017 and 3/9/20. On 3/26/20, Petitioner formally requested reevaluation of Student, seeking a comprehensive psychological reevaluation including specific listed assessments, as well as an OT assessment. On 5/26/20, Educational Advocate raised concerns about the 3/9/20 reevaluation not being sufficiently comprehensive due to lack of a cognitive assessment since 2011, even though there had been a cognitive assessment in the 2017 psychological triennial evaluation. Educational Advocate also urged the inclusion of behavior rating scales, suggesting particular assessments. Although Petitioner initially was fine with DCPS conducting the evaluations, under 34 C.F.R. § 300.502(b), with certain limitations Parent has a right to seek an IEE at public expense if she disagrees with a public agency evaluation. *See Taylor v. Dist. of Columbia*, 770 F. Supp. 2d 105, 109 (D.D.C. 2011); *Letter to Baus*, 115 LRP 8855 (OSEP 2/23/15).

DCPS did not refuse the 3/26/20 request but noted that it couldn't move forward with evaluations until school resumed on campus. Director explained at the hearing that DCPS was still not conducting evaluations, as school has not resumed in its usual facilities yet. But since independent providers are able to conduct evaluations, DCPS proceeded to authorize IEEs for the requested assessments on 8/3/20. Compensatory education based on the IEE comprehensive psychological evaluation would be appropriate if there are additional special education or related services found appropriate for Student following the IEE, in which case the period of compensatory education would be from 3/9/20 when the DCPS report was completed until the date of the IEE report.

(b) Occupational Therapy Assessment. As for OT, it is not yet clear whether Student needs OT services. The question here is whether an assessment is required now and should have been conducted earlier. Occupational Therapist persuasively testified that an OT assessment of Student is appropriate now and that there were "red flags" extending back for years. Occupational Therapist explained in her testimony that Student's aggressive behavior may be an OT issue rather than ADHD if Student simply cannot control Student's body. Similarly, if Student is struggling to regulate self, it may be an OT issue rather than Student just being "bad." This is not a new issue. Among other examples, Student has had consistent visual-perception needs from 2011, and Student was constantly moving, touching things, and tapping on the table throughout the 2014 evaluation. The FBA-II on 12/20/19 found that one motivation for Student's behavior was "sensory seeking."

It is clear to the undersigned that an OT assessment has been needed for years to determine whether OT services were required for a FAPE. If the independent OT assessment authorized by DCPS on 8/3/20 determines that OT services are needed, compensatory education would be appropriate going back two years. As indicated in footnote 5 above, compensatory education is reserved for any delay in receiving services needed based on the comprehensive psychological evaluation or OT assessment, as an appropriate compensatory education award depends on whether or not Student is found to need additional services, which cannot be determined until the assessments are completed and reports prepared.

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Remedies

Having analyzed and resolved the issues in this case, what remains is to consider appropriate remedies that will compensate for the denials of FAPE. One remedy is that DCPS is ordered below to revise Student's IEP by (a) increasing specialized instruction outside general education from 5 to 10 hours/week, (b) increasing BSS from 120 to 180 minutes/month, (c) ensuring that the IEP contains appropriate goals and baselines, and (d) checking the affirmative PBIS box (on page 2 of typical DCPS IEPs).

Beyond that, compensatory education is awarded to make up for the denials of FAPE found above, although DCPS on 8/3/20 authorized some of services that Petitioner is seeking as compensatory education, authorizing 100 hours of tutoring and 20 hours of counseling. In determining the amount of compensatory education for the 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 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, a significant amount of academic tutoring is required to make up for the failure to provide the specialized instruction needed by Student, as well as the impact from lack of BSS, with the goal of restoring Student to the position in which Student would be but for the denials of FAPE. In addition to tutoring, the restoration of Student to the proper position may also be aided by counseling and/or mentoring, which is to be determined by Parent with her advisors. The undersigned also has taken into account the tutoring and counseling already authorized by DCPS.

Educational Advocate testified that the compensatory education hours sought in her Compensatory Education Proposal would put Student in the position Student would have been but for the denials of FAPE in this case. However, Educational Advocate's proposal needed to be adjusted significantly as it was based on full-time specialized instruction, which the undersigned did not find appropriate, resulting in fewer missed specialized instruction hours. On the other hand, the undersigned did not consider the tutoring and counseling hours authorized by DCPS to be sufficient. Thus, based on the experience and judgment of the undersigned, the Order below awards an additional 150 hours of academic tutoring and a total of 50 hours that can be allocated by Parent and her advisors between additional counseling and/or mentoring.

These determinations by the undersigned have been carefully considered and specifically tailored to address Student's unique needs as a matter of equity, 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). All compensatory education hours are to be used within

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18 months to avoid administrative burdens on Respondent, although the undersigned encourages Parent to get Student engaged as quickly as possible to ensure that the remedial services that Student needs are obtained without undue delay.

ORDER

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

- (1) Within 10 business days, DCPS shall convene an IEP meeting to revise Student's IEP by including (a) 10 hours/week of specialized instruction outside general education, (b) 180 minutes/month of BSS, (c) appropriate goals and baselines, and (d) check the affirmative PBIS box.
- (2) As compensatory education for the denials of FAPE found herein, within 10 business days after request by Petitioner, DCPS shall provide a letter(s) of authorization for (a) 150 hours of academic tutoring, and (b) 50 hours total of counseling and/or mentoring in the ratio chosen by Petitioner, all from independent providers chosen by Petitioner; all hours are to be used within 18 months and any unused hours shall be forfeited.
- (3) Petitioner has already received authorization from DCPS for partial compensatory education, as discussed above, for tutoring (100 hours) and counseling (20 hours), which authorization shall be extended to 18 months from the date of this HOD.
- (4) Claims for compensatory education based on the future completion of (a) an independent comprehensive psychological evaluation, and (b) an independent occupational therapy assessment shall be reserved for subsequent resolution.

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).

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Copies to:

Counsel of Record (Appendix A, by email)

OSSE-SPED (due.process@dc.gov)

ODR (hearing.office@dc.gov)

██████████@k12.dc.gov

██████████@k12.dc.gov