

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, NE, 2nd Floor
Washington, DC 20002

PETITIONER,
on behalf of STUDENT,¹

Date Issued: December 9, 2016

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2016-0234

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Hearing Dates: November 21-22, 2016

Respondent.

Office of Dispute Resolution, Room 2006
Washington, D.C.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the Petitioner or MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In her due process complaint, Petitioner alleges that Student was denied a free appropriate public education (FAPE) by Respondent District of Columbia Public Schools’ (DCPS) failure to conduct timely special education assessments, failure to develop appropriate Individualized Education Programs (IEP), and failure to fully implement Student’s IEP when he was in Youth Services Center (YSC) detention.

¹ Personal identification information is provided in Appendix A.

Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on September 29, 2016, named DCPS as respondent. The undersigned Hearing Officer was appointed on September 30, 2016. The parties met for a resolution session on October 20, 2016 and were unable to reach an agreement. My final decision in this case is due by December 13, 2016. On October 21, 2016, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other procedural matters.

The due process hearing was held before the undersigned Impartial Hearing Officer on November 21 and 22, 2016 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner participated in person, and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

The Petitioner testified and called as witnesses INDEPENDENT S-L PATHOLOGIST, LICENSED PSYCHOLOGIST, EDUCATIONAL ADVOCATE 1, EDUCATIONAL ADVOCATE 2 and HEAD OF SCHOOL. DCPS called SOCIAL WORKER 1, SOCIAL WORKER 2, DC S-L PATHOLOGIST and SPECIAL EDUCATION TEACHER as witnesses. Petitioner's Exhibits P-1 through P-42, with the exception of Exhibit P-35, were admitted into evidence without objection. Exhibit P-35 was withdrawn. DCPS' Exhibits R-1 through R-22 were admitted into evidence without objection. Counsel for Petitioner made an opening statement. At the conclusion of Petitioner's case-in-chief, DCPS' Counsel made an oral motion for a determination that Petitioner failed to make a *prima facie* showing that DCPS' IEP placement for Student was not appropriate. I denied the motion. There was no request to file post-hearing briefs.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The following issues for determination were certified in the October 21, 2016

Prehearing Order:

- a. Whether DCPS failed to propose or provide an individualized education program (IEP) or placement/location of service, that was reasonably calculated to enable the student to make progress in the general education setting at the meeting on or about August 29, 2016, because the IEP team did not provide placement in a separate, therapeutic, special education day school in light of the student's lack of educational progress and ongoing behavior problems;
- b. Whether DCPS denied student a FAPE when it failed to develop an appropriate IEP for the student, on or about August 29, 2016, and through the present time, in that the IEP failed to discuss, determine and indicate on the IEP what the appropriate LRE was for student and the type of placement student needed on the continuum of alternative placements;
- c. Whether DCPS denied student a FAPE when it failed to develop an appropriate IEP for the student at the IEP meeting on or about March 15, 2016 in that the IEP team reduced Student's speech-language services from 2 hours per month outside of general education to 60 minutes per month of consultation;
- d. Whether DCPS has denied the student a FAPE since the beginning of the 2015-2016 school year, by failing to evaluate him in all areas of suspected disability and/or failing to conduct a Speech-Language Evaluation, Functional Behavior Assessment and a Comprehensive Psychological Assessment to address ongoing behavior concerns and academic concerns;
- e. Whether DCPS failed to provide Student a FAPE by failing to complete a triennial reevaluation of Student in a timely manner since May 2013 and
- f. Whether DCPS failed to fully implement Student's March 15, 2016 IEP when it failed to provide the specified hours of specialized instruction and behavioral support services outside the general education setting while Student was attending Youth Services Center.

For relief, the parent requests that DCPS be ordered to ensure that an

appropriate IEP is developed for Student to include the determination that Student's least restrictive environment is a therapeutic separate special education day school; that DCPS be ordered to fund Student's placement in a separate therapeutic special education day school (Nonpublic School 2), or in the alternative, that DCPS be ordered to convene an IEP meeting to determine an appropriate placement; that DCPS be ordered to fund an Independent Educational Evaluation (IEE) comprehensive psychological evaluation, speech-language evaluation, and functional behavior assessment of Student. The parent also seeks an award of compensatory education for the denials of FAPE alleged in the due process complaint.

FINDINGS OF FACT

After considering all of the evidence, as well as the argument of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student an AGE youth resides in the District of Columbia. He was recently released from the DC Department of Youth Rehabilitation Services Youth Services Center (YSC) and, as of the hearing date, it was not established where his ongoing residence would be. Testimony of Mother, Testimony of Educational Advocate 2. Student is currently enrolled in GRADE at CITY HIGH SCHOOL 2, to which he returned on the day before the hearing. Testimony of Special Education Teacher, Exhibit P-33.
2. Student is eligible for special education and related services as a student with an Emotional Disturbance (ED). Exhibit P-9.
3. Student's last comprehensive psychological evaluation was conducted on December 3, 2008, when he was a student at PUBLIC CHARTER SCHOOL. His performance on cognitive testing was in the Low Average range, with a Full-Scale IQ score of 81. His processing speed skills were significantly lower than his other skill

performances. Student's academic skills were in the Average range for reading and mathematics and in the Low Average range for Written Language. No learning disabilities were detected, but Student's reading comprehension and written language were measured at approximately two years below age and grade expectations.

Clinically, Student was reported to have experienced considerable trauma and upset in his life. Within the school environment, he reportedly displayed aggressive (and sometimes very serious) disengaged and avoidant behaviors on a daily basis. He also was reported to place himself and others in potential harmful situations by leaving his class without permission and then hiding. The evaluating psychologist diagnosed Student with Adjustment Disorder with Disturbance of Conduct and Post-Traumatic Stress Disorder. She recommended that Student appeared to qualify to receive special education services as a student who was displaying behaviors consistent with ED. She recommended that given the frequency and severity of Student's behaviors, he may benefit for having access to therapeutic support throughout the day. Exhibit P-13.

4. Student has had an IEP since he was in █ grade. Testimony of Mother. From █ grade through █ grade, DCPS placed Student at NONPUBLIC SCHOOL 1. Student's 2012-2013 school year IEP at Nonpublic School 1 provided that he was to receive weekly 27.5 hours of Specialized Instruction, 1 hour of speech therapy, 1 hour of behavioral support and 30 minutes of occupational therapy (OT). Exhibit P-16.

5. A meeting was convened at Nonpublic School 1 on February 12, 2013 to discuss Student's least restrictive environment, current progress and needs, with a view toward his transitioning out of Nonpublic School 1 due to his age. It was reported at the meeting that Student was aggressive in school, had many learning and processing issues, and tended to shut down when confronted with hard work. Student's reading

was reported to be at the 4th grade level for comprehension and the 5th grade level for fluency. He was writing at a 4th grade level. His mathematics skills were at a 3rd grade level. The meeting participants agreed that when he left Nonpublic School 1, Student would continue to need a lot of individual support. Exhibit P-20.

6. In May 2013, a DCPS school psychologist conducted an educational evaluation of Student and administered the Wechsler Individual Achievement Test, 3rd Edition (WIAT-III). Student's scores on the WIAT-III were in the Below Average to Average range for oral language, reading, mathematics and written expression, with a total achievement score in the Below Average range. The evaluator did not conduct any formal behavioral or emotional assessments. Student's teacher reported that Student had difficulty focusing in class for more than 5 minutes at a time; that he occasionally made noises during instruction; that he became oppositional when asked to complete a task or when his behavior was redirected; that he often came to class in a bad mood and responded poorly to redirection and that he produced his best work when he received 1:1 attention. Socially, Student appeared to be age appropriate. He had friends in the class and was able to maintain relationships with staff members. Exhibit P-16.

7. In the intervening school year, before enrolling in City High School 2 for the 2014-2015 school year, Student attended CITY HIGH SCHOOL 1. This was not a successful school year for him. Student's English/Social Studies teacher reported to Educational Advocate 2 that Student's behavior was terrible in her class. He was unfocused, disrespectful and not cooperative. He did not complete his assignments. The Math/Science teacher reported that she did not have major problems with Student. Exhibit P-22. Mother decided to enroll Student in City High School 2 for the 2014-2015

school year because she did not want Student to attend the public high school for her neighborhood. Testimony of Mother.

8. Student's October 7, 2014 City High School 2 IEP provided that he would receive 26 hours per week of Specialized Instruction, 2 hours per month of Speech-Language Pathology and 120 minutes per month of Behavioral Support Services, all outside of the general education setting. Exhibit P-17.

9. At City High School 2, Student was placed in the Behavior Education Support (BES) classroom, a self-contained classroom. Testimony of Social Worker 2.

10. Student's case manager at City High School 2 prepared an Evaluation Summary Report on Student in February 2015. No psychological or formal educational reevaluations were conducted. Based upon classroom tests and teacher and staff input, it was reported that Student tested on a basic (3rd grade) level in math and below basic to basic level in Reading. The speech-language therapist reported that Student continued to require speech therapy to increase his overall language skills and vocabulary skills. She reported that while Student was able to follow oral and written directions when he chose to, he was often very self-centered when working with peers, had difficulty waiting, taking turns and thinking of the needs of others, that he was easily frustrated when his needs were not immediately met, and that he was very impulsive and distracted while working in a group. The social worker reported that Student's inability to manage his impulsive behavior prevented him from successfully accessing the general education curriculum, that he had a difficult time remaining in assigned areas and adhering to school rules, that he frequently roamed the halls and had a difficult time responding to redirection when asked to complete his work. Exhibit P-16.

11. In April 2015, Social Worker 2 conducted a Functional Behavioral Assessment (FBA) of Student. She concluded that the function of Student's problematic behavior was multifaceted – attention seeking, social status, self-indulgence, defensive reaction, power/control and revenge. Student's behavior was also seen as a means of escaping from classroom assignments and adults and attention-seeking from peers and adults. School Social Worker noted that the FBA Profiler indicated that Student displayed some characteristics of ADHD-combined type, Conduct Disorder, Oppositional Defiant Disorder and Anxiety Disorder. Exhibit P-18. On March 15, 2016, the City High School 2 IEP team developed a Behavior Intervention Plan (BIP) for Student. The primary goal of the BIP was for Student to maintain on task behavior in the classroom throughout the school day. As incentives/reinforcers to encourage Student to maintain on-task behavior, Student would be offered breaks, field trips and snacks. Exhibit P-19.

12. On May 13, 2015, Student's MDT/IEP team convened to review his special education eligibility and for his annual IEP review. Student's ED special education eligibility was confirmed. For the revised IEP, Student's Present Levels of Academic Achievement and Functional Performance (PLOP) were based on testing administered in October 2013 (Mathematics), August and October 2013 (Reading), and May 2013 (Written Expression). The IEP provided for Student to receive 20 hours per week of Specialized Instruction, 2 hours per month of Speech-Language Pathology and 120 minutes per month of Behavioral Support Services. Exhibit P-6. All of Student's instruction was in the self-contained special education setting, except for art class every other day. Exhibit P-7.

13. For the 2014-2015 school year, Student's grades in core academic subject

classes were all D's. Exhibit R-5.

14. Student returned to City High School 2 for the 2015-2016 school year. Student's IEP team convened on March 15, 2016 for the annual IEP review. For PLOPs, the IEP team continued to rely on Student's WIAT-III scores from May 2013. According to a Brigance Diagnostic Inventory of Basic Skills administered in October 2015, Student's reading and writing skills were on a 3rd grade, 5th month level. On the meeting date, Student's math grade was F. At the IEP meeting, Mother expressed her concern that Student was not attending class. School Social Worker confirmed that Student had missed 35 days of school for the year. The IEP team determined that Student would be provided full time, 27.5 hours per week, Specialized Instruction outside general education and 120 minutes per month of Behavioral Support Services. Student's direct speech-language services were curtailed and replaced with 60 minutes per month of classroom consultation. Exhibit P-9. The reason for terminating direct speech-language services was that Student did not want to participate. Testimony of Educational Advocate 2.

15. For the 2015-2016 school year, Student received Ds in Reading Workshop and English, D plus in Spanish, C minus in Biology and Geometry Part A, B in Extended Literacy and F's in Geometry Part B and World History. Exhibit R-5. As the school year progressed, Student was part of a group of students who would come to school appearing to be under the influence of cannabis, which affected Student's attendance and focus. Testimony of Special Education Teacher. On IEP progress reports, Special Education Teacher reported in June 2016 that due to lack of attendance, Student had not made any academic progress. Exhibit 15.

16. In late August 2016, Student was placed by a District of Columbia court at

YSC. Exhibit P-12. After being released in September 2016, Student allegedly violated the terms of his release and was returned to YSC. Testimony of Educational Advocate 2. At YSC, Student was enrolled in high school classes. Exhibit R-1. Student did well in the school program at YSC. His motivation appeared to be to earn his release from YSC. Exhibit P-33; Testimony of Social Worker 1. Student returned to classes at City High School 2 on the day before the due process hearing. Testimony of Special Education Teacher.

17. City High School 2 convened an MDT meeting for Student on August 29, 2016. Student was brought to the meeting from YSC. At the meeting, Educational Advocate 1 expressed that Student needed a nonpublic placement because he had not been successful at City High School 2. However, Mother agreed that Student would return to City High School 2 and the MDT would reconvene after the first advisory to discuss his placement. Exhibits R-1, P-12. Student was retained at YSC for most of the fall and did not actually return to City High School 2 until November 20, 2016.

Testimony of Special Education Teacher.

18. On February 16, 2016, Petitioner, through her attorneys, made a written request to DCPS for Student to be reevaluated for special education. Exhibit P-37. The requested reevaluation was not done. Testimony of Mother.

19. Although Student told Mother that at YSC, he was not pulled out of class for special education and related services, Mother had no first hand knowledge of this fact. Testimony of Mother. Social Worker 1 testified that it was not true that Student did not receive his IEP services and that she met with him weekly to provide behavioral support services. DC S-L Pathologist testified that she provided consultation speech-language services for Student at YSC. I find that it is more likely than not that Student

did receive his IEP services while in the YSC program.

CONCLUSIONS OF LAW

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

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by DCPS, the District shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the District. The burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

Analysis

1. Evaluations

Did DCPS deny Student a FAPE since the beginning of the 2015-2016 school year, by failing to evaluate him in all areas of suspected disability and/or failing to conduct a Speech-Language Evaluation, Functional Behavior Assessment and a Comprehensive Psychological Assessment to address ongoing behavior concerns and academic concerns?

Did DCPS deny Student a FAPE by failing to complete a triennial evaluation of the student in a timely manner since May 2013?

Petitioner alleges, and DCPS does not dispute, that DCPS has failed to conduct a comprehensive IDEA psychological evaluation of Student since May 2013. Further, in

February 2016, Petitioner, through her attorneys made a formal written request for Student to be reevaluated, however DCPS did not comply with the request.

The IDEA requires that a reevaluation of each student with a disability be conducted at least once every three years and sooner, if the student's parent or teacher requests a reevaluation or if the LEA determines that the needs of the student warrant a reevaluation. *See* 34 CFR § 300.303. As the U.S. District Court recently pronounced in *James v. District of Columbia*, Case No. 14-CV-02147, 2016 WL 3461185 (D.D.C. June 21, 2016), "a reevaluation requires the local education agency to review not only existing information about the child, [20 U.S.C.] § 1414(c), but also to conduct additional testing to determine the child's abilities and needs, *see id.* § 1414(a)(2)(A)(ii) (providing that, if the child's parents or teacher requests an evaluation, it must be conducted in accordance with § 1414(b), which directs the local education agency to use 'a variety of assessment tools and strategies' and 'not use any single measure or assessment as the sole criterion for determining whether a child' has a disability). Among other testing requirements, the local education agency must 'use technically sound instruments that may assess the relative contribution of cognitive and behavior factors, in addition to physical or developmental factors.' *Id.* § 1414(b)(2)(C)." *James, supra.*

DCPS last conducted a comprehensive psychological evaluation of Student in 2008. In May 2013, a DCPS school psychologist administered the Wechsler Individual Achievement Test (WIAT-III) as part of an educational evaluation of Student. The evaluation did not include formal cognitive or behavioral measures. Student's May 2015 and March 2016 IEPs cite the 2013 WIAT-III scores for Student's *present* levels of academic performance. A DCPS eligibility team confirmed Student's continued eligibility for special education in May 2015. However, as was the case in *James*, DCPS

relied on reviews of existing data rather than conducting new cognitive, educational and behavioral assessments.

The purpose of a reevaluation is equip the IEP team “to determine the educational needs of the child and to contribute to the development of a sound IEP.”

James, supra (citing Harris v. District of Columbia, 561 F.Supp.2d 63, 67

(D.D.C.2008). I find that considering the facts in this case, notably that Student has an ED disability based upon diagnoses of ADHD-combined type, Conduct Disorder, Oppositional Defiant Disorder and Anxiety Disorder and that Student has been consistently reported to display out of control behaviors in school which impede his educational progress, DCPS’ failure since 2008 to conduct a comprehensive psychological evaluation of Student, including a formal behavioral and emotional assessment,² violated the IDEA’s reevaluation requirements.

In addition to not conducting a psychological evaluation of Student since 2008, DCPS does not appear to have conducted a formal speech-language assessment since the 2008 evaluation cycle. Petitioner’s expert, Independent S-L Pathologist opined that Student requires an updated speech-language assessment. Her opinion was not contested by DCPS and I found it to be credible.

Parent also alleges that DCPS denied Student a FAPE by not conducting an updated functional behavioral assessment (FBA). Student’s last FBA was conducted on April 23, 2015 and his Behavior Intervention Plan (BIP) developed on March 15, 2016.

² A DCPS document entitled “Confidential Psychological,” dated April 26, 2012, was admitted as Exhibit P-15. The full content of this 5-page document cannot be determined because only the first and last pages were tendered with the exhibit. On its face this document is subtitled “Data Evaluation Review” and does not appear to be a comprehensive psychological evaluation.

Petitioner offered no competent evidence that Student requires an updated FBA at this time.

The failure to conduct a required evaluation is a procedural violation of the IDEA. *See, e.g. G.G. ex rel. Gersten v. District of Columbia., supra*, 924 F. Supp. 2d at 280 (school district's failure to adequately evaluate student was a procedural error that effectively prevented development of an IEP reasonably calculated to provide student with a meaningful educational benefit.) Procedural violations may only be deemed a denial of FAPE 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 CFR § 300.513(a)(2). *See also, e.g., Brown v. District of Columbia*, 179 F. Supp. 3d 15, 25–26 (D.D.C. 2016). I find that Petitioner has met her burden of persuasion that DCPS' failure to ensure that Student was appropriately reevaluated with a comprehensive psychological evaluation and speech-language assessment since May 2013 (the earliest date claimed by the parent that a reevaluation was required) has impeded the parent's opportunity to meaningfully participate in IEP meetings. Further, it has impeded Student's right to a FAPE, because without an updated psychological evaluation and speech-language assessment, Student's IEP teams and the parent lacked sufficient data to appropriately revise Student's IEP to address his lack of educational progress. *Compare N.K. v. N.Y. City Dep't of Educ.*, 961 F.Supp.2d 577, 586 (S.D.N.Y.2013) (holding that the IEP team had sufficient evaluative data despite the failure to conduct an evaluation). This was a denial of FAPE.

2. Individualized Education Program

- Did DCPS deny Student a FAPE when it failed to develop an appropriate IEP at the IEP meeting on or about March 15, 2016 in that the IEP team reduced Student's speech-language services from 2 hours per month outside of general education to 60 minutes per month of consultation?
- Did DCPS fail to propose or provide an IEP or placement/location of service, that was reasonably calculated to enable the student to make progress in the general education setting at the meeting on or about August 29, 2016, because the IEP team did not provide placement in a separate, therapeutic, special education day school in light of the student's lack of educational progress and ongoing behavior problems?
- Did DCPS deny student a FAPE when it failed to develop an appropriate IEP for the student, on or about August 29, 2016, and through the present time, in that the IEP failed to discuss, determine and indicate on the IEP what the appropriate LRE was for student and the type of placement student needed on the continuum of alternative placements?

Petitioner alleges that since March 2016, DCPS has failed to ensure that Student was offered appropriate IEPs because the March 15, 2016 IEP curtailed direct speech-language services and because DCPS failed change Student's placement to a more restrictive environment at an August 29, 2016 multidisciplinary team (MDT) meeting. DCPS maintains that the March 15, 2016 IEP was appropriate when it was developed and that at the August 29, 2016 MDT meeting (which was not an IEP team meeting), Mother agreed that Student should remain at City High School 2.

In *Moradnejad v. District of Columbia*, 177 F. Supp. 3d 260 (D.D.C. 2016), the Court adopted the Report and Recommendation of U.S. Magistrate Judge G. Michael Harvey, which explained how a court or a hearing officer must assess an IEP:

The Supreme Court explained in [*Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)] that a court's assessment of an IEP involves two inquiries:

First, has the State complied with the procedures set forth in the [IDEA]? And second, is the [IEP] developed through the [IDEA's] procedures reasonably calculated to enable the

child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Rowley, 458 U.S. at 206–07, 102 S.Ct. 3034. Courts have consistently underscored that the “appropriateness of an IEP is not a question of whether it will guarantee educational benefits, but rather whether it is reasonably calculated to do so.” *K.S. v. Dist. of Columbia*, 962 F.Supp.2d 216, 221 (D.D.C.2013) (citing *Thompson R2–J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148–49 (10th Cir.2008)); *Rowley*, 458 U.S. at 200, 102 S.Ct. 3034 (finding that the IDEA does not require that IEPs “maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children,” only that they be “reasonably calculated to enable the child to receive educational benefits”); *N.T. v. Dist. of Columbia*, 839 F.Supp.2d 29, 33 (D.D.C.2012) (“While the District of Columbia is required to provide students with a public education, it does not guarantee any particular outcome or any particular level of education.”).

Moradnejad, supra at 274–75.

With respect to the March 15, 2016 IEP, Petitioner has not alleged that DCPS failed to comply with the IDEA’s IEP procedural requirements. Therefore, I turn to the second prong of the *Rowley* inquiry – was the IEP team’s decision to curtail Student’s direct speech-language services, in favor of 60 minutes per month of consultation, reasonably calculated to enable Student to receive educational benefits? I agree with Petitioner that it was not.

An IEP must be “tailored to the unique needs” of each child. *See Maynard v. District of Columbia*, 701 F. Supp. 2d 116, 121 (D.D.C. 2010) (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)). The IDEA regulations require that in revising a student’s IEP, the IEP team must, *inter alia*, consider the academic, developmental, and functional needs of the student, including specifically the student’s communication needs. *See* 34 CFR §§ 300.324(a)(1)(iv), (a)(2)(iv). At the March 15, 2016 IEP meeting, the IEP team decided to curtail Student’s direct speech-language services solely because Student did not want to go to the therapy

sessions. If a student refuses to attend speech-language services required by his IEP, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. *See* 34 CFR § 300.324(a)(2)(i). An IEP team may not curtail direct speech-language services or other IEP services, absent an informed determination that the student no longer needs the services. *Cf.* 34 CFR § 300.305(e) (LEA must evaluate a child with a disability before determining that the child is no longer a child with a disability.) There was no specific evidence in this case that the March 15, 2016 IEP team made a determination that Student no longer needed direct speech-language services. I find, therefore, that DCPS has not met its burden of persuasion that the curtailment of direct speech-language services in Student's March 15, 2016 IEP was appropriate.

Petitioner's remaining IEP claims concern (1) the failure of the August 29, 2016 MDT team to change Student's placement from the self-contained BES classroom at City High School to a separate, therapeutic, special education day school in light of the student's lack of educational progress and ongoing behavior problems and (2) the failure of the August 29, 2016 MDT team to state on an IEP what the appropriate least restrictive environment (LRE) was for student and the type of placement student needed on the continuum of alternative placements.

Turning to the second of these claims, in *Brown v. District of Columbia, supra*, 179 F. Supp. 3d at 27 (D.D.C. 2016), the U.S. District Court held that because the student's IEP did not discuss his LRE, as well as appropriate alternative placements, the IEP was legally deficient.³ This holding from the *Brown* decision does not apply to the

³ *But see*, U.S. Dept. of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46662 (August 14, 2006):

present case because no IEP was proposed or developed at the August 29, 2016 MDT meeting.

With regard to the MDT team's not changing Student's placement to a separate special education day school, I find that the MDT team did not have authority to move Student to a more restrictive placement because the August 29, 2016 meeting was not an IEP team meeting and there was no prior written notice that a change of Student's placement would be considered at the meeting. *See* 34 CFR § 503(a)(1) (LEA must give written notice to the parents of a child with a disability a reasonable time before the LEA proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.)

Notwithstanding, Student's IEP must be reviewed and revised, as appropriate, to address his lack of academic progress, his behavior issues, and the results of new evaluations. *See, e.g., D.S. v. District of Columbia*, 699 F.Supp.2d 229, 234 (D.D.C.2010) (IEP must be regularly revised in response to new information regarding the child's performance, behavior, and disabilities.) In order for the City High School 2 IEP team to consider changes to Student's IEP and educational placement, Student

While public agencies have an obligation under the [IDEA] to notify parents regarding placement decisions, there is nothing in the Act that requires a detailed explanation in children's IEPs of why their educational needs or educational placements cannot be met in the location the parents' request. We believe including such a provision would be overly burdensome for school administrators and diminish their flexibility to appropriately assign a child to a particular school or classroom, provided that the assignment is made consistent with the child's IEP and the decision of the group determining placement.

71 Fed. Reg. 46588. Hence, "[t]he issue was not what the IEP said or did not say for its own sake; the issue is whether there was evidence that a critical part of implementing the LRE mandate had been carried out, even when one looks beyond the IEP itself to the full record." *H.L. v. Downington Area School District*, 65 IDELR 223 (3rd Cir. June 11, 2015).

must first be reevaluated. As noted above, Student's last psychological evaluation was conducted in 2008. Licensed Psychologist testified that without a comprehensive reevaluation of Student, it cannot be determined how his psychological diagnoses are affecting him and she opined that Student needs a comprehensive psychological evaluation in order for his IEP team to make an informed decision as to his least restrictive placement. *See K.S. v. District of Columbia*, 962 F. Supp. 2d 216, 220 (D.D.C. 2013) (The IDEA requires that children with disabilities be placed in the least restrictive environment so that they can be educated in an integrated setting with children who do not have disabilities to the maximum extent appropriate.) DCPS has apparently not conducted a formal speech-language evaluation of Student since 2008. Therefore a speech-language reassessment must also be completed so that the IEP team will be able to make an informed decision regarding Student's ongoing need, if any, for speech-language services.

3. Implementation of IEP at Youth Services Center

Lastly, Petitioner alleges that DCPS failed to fully implement Student's March 15, 2016 IEP because Student was not provided the specified hours of specialized instruction and behavioral support services when he was confined at Youth Services Center beginning in late August 2016. Petitioner did not meet her burden of persuasion on this issue. Petitioner testified that Student told her he was not pulled out of his YSC classroom for services. However, she did not have first-hand knowledge of this fact. Social Worker 1, who provided Behavioral Support Services to Student at YSC and observed him in the classroom, testified that it was not true that Student did not receive his IEP services. DC S-L Pathologist also testified that she provided speech-language consultation services in Student's YSC classroom. I find that Petitioner did not establish

by a preponderance of the evidence that Student was not provided his IEP services at YSC.

Remedy

Because DCPS failed to reevaluate Student when requested by the parent in February 2016, even though Student had not been comprehensively evaluated since 2008, I will order DCPS to fund IEE psychological and speech-language reevaluations of Student. *See* 30 CFR § 300.502(d). (Authority of hearing officer to request an independent educational evaluation as part of a due process hearing.) Once the reevaluation reports are received, DCPS must convene Student's IEP team to review and revise his IEP and educational placement as appropriate. Petitioner's request that DCPS be ordered to fund Student's prospective enrollment at Nonpublic School 2 is denied, because as Licensed Psychologist explained, the comprehensive psychological evaluation must be completed in order for a placement decision for Student to be made.

Petitioner also requests compensatory education for Student. Compensatory education is intended "to put a student . . . in the position he would be in absent the FAPE denial." *B.D. v. District of Columbia*, 817 F.3d 792, 798 (D.C. Cir. 2016). Although DCPS has not comprehensively reevaluated Student since 2008, Student has been served in a full-time behavior support classroom since the beginning of the 2015-2016 school year. He was also offered speech-language services until the March 15, 2016 IEP team meeting. It is not possible to determine from the evidence in this case what position Student would now be in, absent DCPS' failures to comprehensively reevaluate him or to offer him direct speech-language services after March 2016. Accordingly, I will deny without prejudice Petitioner's request for a compensatory education award. Petitioner shall not be precluded from filing a new due process

request to seek compensatory education relief for the denials of FAPE found in this decision, if warranted by the results of Student's reevaluations and future revisions to his IEP.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED:

1. Within 10 business days of the date of this decision DCPS shall issue funding authorization for Petitioner to obtain IEE comprehensive psychological and speech-language reevaluations of Student. Upon receipt of the completed evaluation reports, DCPS shall promptly convene Student's IEP team to review and revise, as appropriate, his IEP including his educational placement, in conformity with 34 CFR § 300.320, *et seq.* and with this decision;
2. Pending IEP team's review and revision of Student's IEP, DCPS shall, within 10 school days, resume offering Student 2 hours per month of direct Speech-Language Pathology related services;
3. Petitioner's request for compensatory education for Student for the denials of FAPE found in this decision is denied without prejudice; and
4. All other relief requested by the Petitioner herein is denied.

Date: December 9, 2016

s/ Peter B. Vaden
Peter B. Vaden, 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).

**cc: Counsel of Record
Office of Dispute Resolution
Chief Hearing Officer
OSSE Division of Specialized Education
DCPS Resolution Team**