District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
810 First Street, NE, 2nd Floor, Washington, DC 20002
(202) 698-3819 www.osse.dc.gov

Parent, on behalf of Student,[1]	)	**Room: 2006 (12/6, 12/8), 2004 (12/16)**
Petitioner,	)	**Hearings: 12/6, 12/8, 12/16 (2016)**
	)	**HOD Due: December 23, 2016**
v.	)	**Hearing Officer: Michael Lazan**
	)	**Case No.: 2016-0222**
District of Columbia Public Schools,	)	**Issue Date: December 23, 2016**
	)	
Respondent.	)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving a student who is currently eligible for services as a student with Specific Learning Disability. (the "Student")

A Due Process Complaint ("Complaint") was received by District of Columbia Public Schools ("DCPS" or "Respondent") pursuant to the Individuals with Disabilities Education Act ("IDEA") on September 16, 2016. On September 28, 2016, Respondent filed a response. The resolution period expired on October 16, 2016.

II. Subject Matter Jurisdiction

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

[1]Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

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

III. Procedural History

On November 1, 2016, this Hearing Officer held a prehearing conference after a non-appearance for the prehearing conference scheduled for October 21, 2016. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order issued on November 9, 2016, summarizing the rules to be applied in this hearing and identifying the issues in the case.

The original HOD date is November 30, 2016, and a hearing date had been scheduled on November 22, 2016. On November 11, 2016, Petitioner notified Respondent and myself that a key witness could not make the hearing on November 22, 2016. There was no opposition to adjourning the hearing date. Thereafter, through Motion to Extend HOD Due Date, Petitioner sought to reschedule the hearing to December 6, 2016. Respondent moved for a continuance without objection from Petitioner. On November 28, 2016, Chief Hearing Officer Dietrich granted an Interim Order on Continuance Motion changing the HOD date to December 23, 2016.

There were three hearing dates in this case, December 6, 2016, December 8, 2016, and December 16, 2016. This was a closed proceeding. Petitioner was represented by Attorney A, Esq., and Attorney C, Esq. Respondent was represented by Attorney B, Esq. Petitioner moved into evidence Exhibits 1-91. Respondent objected to Exhibits 1-4, 47, and 86-88 on the grounds of irrelevance, hearsay, and improper submission of caselaw. The objections to Exhibits 86-88 were sustained. The other Student objections were overruled. Exhibits 1-85, 89-91 were admitted. Respondent moved in Exhibits 1-3.

There were objections to pages 72-76 of Exhibit 2 on relevance grounds. These objections were overruled. Exhibits 1-3 were admitted. Both sides submitted written statements after the hearing on December 16, 2016, which were received on December 20, 2016.

Petitioner presented as witnesses: Witness E, a speech and language pathologist (expert: speech and language pathology); Witness C, an advocate; Petitioner; Witness F, head of school, School B; Witness G, an advocate (expert: special education with regard to IEP and placement); and Witness H, a psychologist (expert: clinical psychology and reviewing evaluations of students in the school setting). Respondent presented as witnesses: Witness A, Social Worker; Witness B, a psychologist (expert: psychology); and Witness D, a speech and language pathologist (expert: speech and language pathology).

IV. Credibility.

Most of the witnesses in this case testified credibly. I felt that the parent was well-intentioned, but confused about some of the issues and the proceedings generally. For instance, the parent testified that the school district offered sixteen hours of specialized instruction at the February, 2016 meeting, which is clearly not the case. The other witnesses were credible and testified consistently with the documents.

V. Issues

As identified in the Prehearing Conference Summary and Order and in the Due Process Complaint, the issues to be determined are as follows:

1. Did DCPS fail to conduct a triennial evaluation of the Student in 2015? If so, did DCPS violate 34 CFR 300.303(b)? If so, did DCPS deny the Student a FAPE?

2. Did DCPS fail to conduct annual reviews of the Student during the 2014-2015 and 2015-2016 school years? If so, did DCPS violate 34 CFR Sect. 300.324(b)(1)? If so, did DCPS deny the Student a FAPE?

3. Did DCPS fail to comprehensively evaluate the Student in speech and language in connection to the evaluation conducted in the summer, 2016? If so, did DCPS fail to assess the Student in all areas of suspected disability? If so, did DCPS violate 28 U.S.C. Sect.1414(b)(3), 34 C.F.R. Sect.300.304(c), and related provisions? If so, did DCPS deny the Student a FAPE?

4. Did the Student's IEP dated August, 2016 provide insufficient specialized instruction hours and provide for an inappropriate placement? If so, did DCPS violate 34 CFR Sect. 300.320, 34 CFR Sect. 300.17, 34 CFR Sect. 300.324, and act in contravention of some of the principles in such cases as Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

As relief, Petitioner previously sought compensatory education in the form of tutoring, counseling and/or speech and language therapy, and a new school. Petitioner also sought an increase in special education hours, speech and language therapy, a speech and language evaluation, and a revised IEP.

VI. Findings of Fact.

1. The Student is currently eligible for services as a student with specific learning disability. The Student currently attends School C, a non-public school in the District of Columbia, which is being paid for by a long-running scholarship which Petitioner refers to as the Washington Scholarship Fund. ("the scholarship") (Testimony of Parent; P-15)

2. The Student's learning disability extends to all subject matter areas. In math, the Student has a significant weakness and has been characterized as being in the "very low" range based on psychological testing. The Student has significant weaknesses in regard to basic multiplication and division, and the Student needs repeated and extensive practice to increase automaticity, endurance, and accuracy. In reading, the Student is significantly below grade level, in the "low" range, and there are deficits in decoding, comprehension, and oral reading. In written expression, the Student has shown some recent improvement but still struggles with organization of ideas. (R-2)

3. The Student has been eligible for special education services since 2008, when testing revealed a full-scale IQ of 89. In December, 2008, the Student was offered an IEP providing for fifteen hours of services. The Student, however, did not access these services and enrolled in a non-public school through the scholarship. (Testimony of Parent; P-34)

4. In or about 2012, the parent contacted the DCPS Private and Religious Office ("PRO"), which provides "equitable" special education services for students who have elected to go to non-public schools. DCPS proceeded to evaluate the student through a psychological evaluation and a speech and language evaluation. The testing found that the Student had a full-scale IQ of 73, in the borderline range, and achievement testing found that the Student had standard scores in the low average range, with subtests as low as 59 in the ability to write sentences. However, the student was not wearing glasses during the evaluation. A speech and language evaluation of the Student was conducted by DCPS on June 26, 2012. This evaluation found that the Student had moderate to severe deficits with respect to communication skills and determined that

these deficits may impact the Student's ability to function in the general education curriculum. Speech and language therapy was strongly recommended. (P-29-2; P-34; P-37-2-3; P-44-6; P-45; R-1-26)

5. As a result of this evaluation, the Student was offered 240 minutes per month of speech and language services through the PRO for the 2012-2013 school year. This offer was extended to the Student again for the 2013-2014 school year. (P-26-2; P-28-3; P-29-3)

6. For the 2014-2015 school year, the Student attended School A, a non-public school which was paid for by the scholarship. Both the Student and Petitioner were not happy with the education at School A and sought help from the PRO, specifically requesting Wechsler Intelligence Scale for Children testing and other educational assessments. (Testimony of Parent; P-17-1)

7. A meeting was then held in February 2016 with the parent, DCPS, and representatives from School A. At this meeting, DCPS decided the Student did not need to be evaluated because the Student was already eligible for services. Also at this meeting, a teacher from School A said that the Student's motivation was the real reason behind her difficulties at the school. (Testimony of Witness A; Testimony of Witness B; Testimony of Parent; P-21-2)

8. On or about June, 10, 2016, the parent's lawyer sent a letter to DCPS asking for evaluations. This request was further to special education services offered through DCPS directly. This request was not directed to the PRO office. DCPS acknowledged the letter and scheduled another meeting, which was held on or about June 30, 2016. During this meeting, the parent told DCPS that the reason the Student wanted

the WISC evaluation and the educational evaluation was because the Student wanted to attend School B, another non-public school. According to the parent, School B required the evaluation prior to admission at the school. (Testimony of Petitioner; Testimony of Witness A; P-16; P-72)

9. Testing was then conducted by Witness B. The psychological evaluation conducted of July 29, 2016 found that, on the WASI-II Intelligence test, the Student scored an 87, which is at the 19th percentile. Achievement testing found that the Student was in the very low range in reading (standard score of 68), and writing skills were in the average to low range, with a standard score of 78. Broad math scores were in the very low range, with a standard score of 55. (P-37-5-7)

10. After an eligibility meeting in early August, 2016, an IEP meeting was held on August 31, 2016. Attending the IEP meeting were representatives from School A in addition to the parent, the Student, and the parent's advocate, Witness C. The School A staff told the team that the Student was not getting twenty-five hours specialized instruction. Also during the meeting, the Student indicated an interest in having general education classes. Also during the meeting, the parent told the team the Student wanted to go to School B and did not have any genuine interest in the DCPS schools. The parent was told that the location of services could be at the local school, which is School D. The parent was told that School D could implement the IEP, which was disputed by the parent's advocate, Witness C. (Testimony of Witness C; Testimony of Witness A; Testimony of Witness B; P-10-1; P-11-1; P-12-3-5)

11. The August 31, 2016 IEP that resulted contains present levels and goals in math, reading, written expression, emotional, social, and behavioral development.

Eighteen hours of specialized instruction per week were recommended, outside general education, with 240 minutes per month of behavioral support services. The IEP contained accommodations including extended time for tests, and a transition plan was included that focused on results from the Casey Life Skills Assessment. The specialized instruction on the IEP would have allowed the Student to receive resource room instruction in math, writing, and reading. The team felt that the Student would be able to attend the social studies and science classes with general education peers. (Testimony of Witness A; P-13; R-2-63)

12. The parent did not accept the terms of the IEP. Instead, after a short time at another non-public school, the Student enrolled at School C, another non-public school located in the District of Columbia. The Student remains at this school, and the parent is happy with this school, which provides the Student with specialized reading. This school is being paid for by the Student's scholarship. The parent has not requested any services from the PRO office while at School C. It is noted that the School C website does not indicate that it offers any specialized instruction. (Testimony of Petitioner; Testimony of Witness A)

13. In November, 2016, after the parent consented, Witness D from DCPS conducted a speech and language evaluation of the Student. Witness D observed the Student at School C, interviewed the Student, and tested the Student. The Student had issues with inferencing, a trait of a student with a specific learning disability. The Student also showed receptive language issues and issues with phonemes. The evaluator also found that the Student sometimes had trouble organizing ideas and holding on to information. Testing was consistent with these observations. In oral language, the

student scored in the below average/borderline range in all composite index areas except speaking. The Student grammar, semantics, spoken language, organizing, and listening were all considered borderline/below average. The Student was, however, average in pragmatic judgment and taking meaning from context. The evaluator recommended an auditory processing screening, an evidence based reading program, classroom strategies, but did not find the Student had a disabling condition. (P-36)

VII. Conclusions of Law

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

DCPS has the burden of persuasion on the appropriateness of the existing or proposed IEP or placement, though Petitioner must establish a prima facie case before the burden of persuasion falls on DCPS. The burden of persuasion shall be met by a preponderance of the evidence. D.C. Code Sect. 38-2571.03. Otherwise, the burden of proof in a special education due process hearing lies with the party seeking relief. 5-EDCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005). In this connection, it is important to recall the language of Judge O'Connor in Schaffer: "(I)n truth, however, very few cases will be in evidentiary equipoise." 546 U.S. at 58.

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 CFR Sect. 300.513(a).

1. Did DCPS fail to conduct a triennial evaluation of the Student in 2015? If so, did DCPS violate 34 CFR 300.303(b)? If so, did DCPS deny the Student a FAPE?

2. Did DCPS fail to conduct annual reviews of the Student during the 2014-2015 and 2015-2016 school years? If so, did DCPS violate 34 CFR Sect. 300.324(b)(1)? If so, did DCPS deny the Student a FAPE?

Both these claims refer to time periods when the Student was at School A, as paid for by the scholarship. There is nothing in the record to indicate that the parent or Student ever requested an IEP from DCPS during this time period. In fact, there is nothing in the record to suggest that the parent or Student ever requested an IEP from DCPS going all the way back to 2008, when an IEP was developed for the Student and rejected by the parent.

These facts are important, since a parent of a student in a private school *must* evince a desire for an IEP before DCPS can be held liable for any concomitant violations. In District of Columbia v. Vinyard, 971 F. Supp.2d 103 (D.D.C. 2013), Judge Kollar-Kotelly was presented with a case where parents were seeking a finding of a FAPE denial for a particular school year. In dismissing this claim – in effect on jurisdictional grounds – the court referenced a "Questions and Answers" document that was created by the Office of Special Education and Rehabilitation Services, or OSERS. This document states, in part:

> Question B-5
>
> Does the LEA where the private school is located have an obligation to make an offer of a free appropriate public education (FAPE)?
>
> Answer
>
> The LEA where the Student attends private school is responsible for ensuring equitable participation. If a parentally placed private school child

> also resides in that LEA, then the LEA would be responsible for making FAPE available to the child, **unless the parent makes clear his or her intent to keep the child enrolled in the private elementary or secondary school located in the LEA.** If a parentally placed private school child resides in a different LEA, the district in which the private elementary or secondary school is located is not responsible for making FAPE available to that child, but the LEA of the child's residence would be responsible for making FAPE available to that child.

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, Office of Special Education and Rehabilitative Services, 111 LRP 32532 (April 1, 2011)(emphasis added).

Here, the parent made clear her intent to keep the Student in private school from 2008 until June, 2016. Any contacts with DCPS were made through the PRO Office. Petitioner does not argue otherwise. It was only when Petitioner requested an evaluation in June, 2016, that DCPS was obligated to offer an IEP to the parent.

Petitioner suggests that the PRO office is obligated to evaluate a student on its own. This is at least arguably true. As per 34 CFR Sect. 300.132-300.139, "a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part." 34 CFR Sect. 300.132(b). However, the only kind of "equitable services" case that can be brought before a Due Process hearing officer like myself is a case involving "child find" pursuant to 34 CFR Sect. 300.300 through 300.311. See 34 CFR Sect. 300.140. Otherwise, as the United States Department of Education has pointed out, "equitable services" issues should be resolved through the state complaint process. In comments to the 2006 regulations, the Department stated:

> While there may be legitimate issues regarding the provision of services to a particular parentally-placed private school child with a disability an LEA has agreed to serve, the due process provisions in section 615 of the Act and §§ 300.504 through 300.519 do not apply to these disputes, because there is no individual right to these services under the Act. Disputes that arise about these services are properly subject to the State complaint procedures under §§ 300.151 through 300.153.

71 Fed. Reg. 46597 (Aug. 14, 2006).

The only question here, then, is whether Respondent can be deemed to have violated "child find" by allegedly not evaluating the student. The "child find" provisions of the IDEA require each State to have policies and procedures in effect to ensure that "[a]l1 children with disabilities residing in the State ... who are in need of special education and related services, are identified, located, and evaluated." 20 U.S.C. Sect. 1412(a) (3) (A); 34 C.F.R. Sect. 300.111(a). Child find must include any children "suspected of being a child with a disability under Section 300.8 and in need of special education, even though they are advancing from grade to grade." 34 C.F.R. Sect. 300.111(c) (1).

Petitioner, however, is not alleging violations of "Child Find." Petitioner is alleging violations of 34 CFR Sects. 303(b) and 324(b)(1), which relate to evaluations that must be conducted by a school District in connection to the creation of an IEP. There is no reference to Child Find in the prehearing order. Respondent is therefore correct that I have no jurisdiction over these claims. They must accordingly be dismissed.

3. Did DCPS fail to comprehensively evaluate the Student in speech and language in connection to the evaluation conducted in the summer, 2016? If so, did DCPS fail to assess the Student in all areas of suspected disability? If so, did DCPS violate 28 U.S.C. Sect.1414(b)(3), 34 C.F.R. Sect.300.304(c), and related provisions? If so, did DCPS deny the Student a FAPE?

An LEA is required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining (i) whether the child is a child with a disability; and (ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities. The LEA should not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child, and use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 28 U.S.C. Sect. 1414(b)(2); 34 C.F.R. Sect. 300.304(b).

The LEA must also ensure that the assessment and evaluation materials that are utilized to assess the child are selected and administered so as not to be discriminatory on a racial or cultural basis; are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; are used for purposes for which the assessments or measures are valid and reliable; are administered by trained and knowledgeable personnel; and are administered in accordance with any instructions provided by the producer of such assessments. The LEA is further required to ensure that the child is assessed in all areas of suspected disability and that the chosen assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. 28 U.S.C. Sect.1414(b)(3); 34 C.F.R. Sect.300.304(c).

Petitioner contended that the Student required a speech assessment after the Student requested an evaluation of the Student in June 2016. Pretty much all the credible evidence on this subject supports this view, which was also the view of Petitioner's credible expert in speech and language pathology, Witness E. Indeed, the Student received – or at least was slated to receive -- 240 minutes per month of speech and language through the PRO office just two years earlier. This mandate was consistent with the recommendations of the speech and language evaluation by DCPS on June 26, 2012. That evaluator found that the student had "moderate to severe deficits" with respect to communication skills and *strongly* recommended speech therapy for the school environment.

This point is also supported by the evaluation and testimony of Witness D, the DCPS speech therapist. This witness evaluated the student just last month, and her evaluation also found that the Student had speech deficits. The report indicated that the Student had a weakness in, *inter alia*, receptive language, phonemes, organizing ideas and holding on to information. In oral language, the student scored in the below average/borderline range in all composite index areas except speaking. The Student's grammar, semantics, spoken language, organizing, and listening were all considered borderline/below average. While this evaluator said the Student should not be eligible for services as a Student with speech and language impairment, she suggested that the Student should in fact get speech as a related service during cross-examination.

The only remaining question is whether the failure to assess the student in speech and language therapy can be considered a procedural violation. However, this was a failure to assess that clearly led to the absence of speech on the IEP. An omission that

directly relates to the delivery of services should not be viewed as procedural in nature. Nor has DCPS shown that the absence of speech on the IEP can be characterized as *de minimus* in any way. I find that DCPS denied the Student educational benefit, and therefore a FAPE, by failing to evaluate the Student in speech and language after the request to evaluate in June, 2016.

4. Did the Student's IEP dated August, 2016 provide insufficient specialized instruction hours and provide for an inappropriate placement? If so, did DCPS violate 34 CFR Sect. 300.320, 34 CFR Sect. 300.17, 34 CFR Sect. 300.324, and act in contravention of some of the principles in such cases as Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

An IEP developed through the Act's procedures is reasonably calculated to enable the child to receive additional benefits. Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982) The IEP should be both comprehensive and specific and targeted to the Student's "unique needs." McKenzie v. Smith, 771 F.2d 1527, 1533, D.C. Cir. 1985); N.S. ex rel. Stein v. District of Columbia, 709 F.Supp.2d 57, 60 (D.D.C. 2010); 34 CFR Sect. 300.320(a)(2)(B) (the IEP must contains goals that meet each of the child's educational needs that result from the child's disability); 34 CFR Sect. 300.324(a)(1)(iv)(the IEP must address the academic, developmental, and functional needs of the child).

In S.S. ex rel. Shank v. Howard Road Academy, 585 F. Supp.2d 56, 66-67 (D.D.C. 2008), the Court found that the measure and adequacy of an IEP decision must be determined as of the time it was offered to the student. Citing to Circuit court decisions, the Court found that an IEP should be judged prospectively to avoid "Monday morning quarterbacking." See Thompson R2-J Sch. Dist. v. Luke P., 540 F.3d 1143,

1149 (10th Cir. 2008); Adams v. Oregon, 195 F.3d 1141, 1149 (9th Cir. 1999); Carlisle Area Sch. V. Scott P., 62 F.3d 520, 530 (3d Cir. 1995); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990).

Petitioner's claim is that the school district offered the Student with an inadequate number of special education hours. In this connection, Petitioner pointed to the School A "IEP," which is not an official IEP but a document that the private school created for the purposes of outlining an educational plan for the Student. I do not agree with Petitioner's contentions. First, the School A "IEP" was not a credible document. All the testimony from witnesses, including the parent, suggested that School A did not do a very good job educating the Student. In fact, at the IEP meeting in August, 2016, representatives from the school indicated that the school did not even meet the mandate of the School A IEP, suggesting that the number of hours on the IEP may have been inflated. Moreover, the parent has now placed the Student at School C, which is a private school that apparently has no specialized instruction whatsoever – at least according to its website. The parent is happy with the school, and so is the Student -- a position that is totally at odds with Petitioner's position at the hearing to the effect that this is a Student that needs "full-time" special education.

Moreover, I agree with the District that the eighteen hours of specialized instruction was a reasonable choice in view of the student's deficits. The Student, in fact, expressed a preference for this sort of arrangement, and it can be appropriate for a school district to factor in a Student's preferences when creating a program. There is nothing in the record to suggest that the Student could not handle "specials" without specialized instruction. The District has a mandate to place the Student in the Least

Restrictive Environment, which is what they did by giving the Student a full three hours of specialized instruction per day and also allowing the Student to mix with non-disabled peers. It is noted that the parent initially agreed with the District's proposal of eighteen hours until the Student advocate advised her not to agree.

This claim is dismissed.

VIII. Relief.

In Petitioner's closing statement, she modified her requests for relief as stated in the prehearing order. Petitioner has stated that the Student is satisfied with the Student's placement at School C, and Petitioner has not suggested that the Student requires anything more to supplement the Student's education there. Accordingly, I find any request to revise the IEP or to order a new placement to be moot and/or withdrawn by the parent.

Petitioner also seeks compensatory education. In regard to compensatory education, courts and hearing officers may award "educational services to be provided prospectively to compensate for a past deficient program." Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F. 3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to craft an award 'tailored to the unique needs of the disabled student").

A Petitioner need not "have a perfect case" to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011). Under the IDEA, if a Student is denied a FAPE, a hearing officer may not "simply refuse" to grant one. Henry v. District of Columbia, 55 IDELR 187 (D.D.C. 2010). Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

Since I ruled only that the IEP was deficient with respect to speech and language services, I will only consider the request for compensatory services in this area. Witness G suggested 72 hours of speech and language services, but does not explain how this number corresponds to the deprivation. Moreover, it is unclear how severe the deprivation here is, given that the parent was never really interested in a DCPS school to begin with. She certainly is not interested in a DCPS school now, with the Student happily at School C. Nevertheless, this is a student who does need speech and language therapy according to both experts. The Student has certainly received none for the 2016-2017 school year. Accordingly, I will award the Student with thirty-six hours of compensatory speech and language therapy, to be delivered by a licensed speech and language therapist. However, I decline to order that the Student's IEP be revised because of the parent's statement that she is currently content with the services at School C. If the parent seeks speech and language therapy for the Student while the Student is at School C, she is encouraged to consult the PRO office.

IX. Order

As a result of the foregoing:

1. Respondent is deemed to have denied the Student a FAPE;

2. The Student is awarded thirty-six hours of compensatory speech and language therapy, to be provided by a licensed speech and language therapist;

3. Petitioner's other requests for relief are denied.

Dated: December 23, 2016

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
Attorney C, Esq.
OSSE Division of Specialized Education
Contact.resolution@dc.gov
Chief Hearing Officer

X. Notice of Appeal Rights

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: December 23, 2016

Michael Lazan
Impartial Hearing Officer