

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Dispute Resolution  
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<b>Parent, on behalf of Student,<sup>1</sup></b>	)	<b>Room: 2003 (12/12), 2006 (12/21)</b>
<b>Petitioner,</b>	)	<b>Hearings: 12/12, 12/21 (2016)</b>
	)	<b>HOD Due: December 24, 2016</b>
<b>v.</b>	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No.: 2016-0235</b>
<b>District of Columbia Public Schools,</b>	)	<b>Issue Date: December 24, 2016</b>
	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving a student who is currently eligible for services as a student with 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 30, 2016. On October 11, 2016, Respondent filed a response. The resolution period expired on October 30, 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

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

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

### **III. Procedural History**

On October 21, 2016, this Hearing Officer held a prehearing conference. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order issued on October 26, 2016, summarizing the rules to be applied in this hearing and identifying the issues in the case.

There were two hearing dates in this case, December 12, 2016, and December 21, 2016. This was a closed proceeding. Petitioner was represented by Attorney A, Esq. Respondent was represented by Attorney B, Esq. Petitioner moved into evidence Exhibits 1-55. There were no objections. Exhibits 1-55 were admitted. Respondent moved in Exhibits 2-11, 13-27, and 29. There were no objections. Exhibits 2-11, 13-27, and 29 were admitted. Both sides submitted oral closings after the hearing on December 21, 2016.

Petitioner presented as witnesses: Witness F, an Advocate; Witness D, an advocate; Witness C, Expert in Special education as it relates to compensatory education and programming; and herself. Respondent presented: Witness E, a teacher at School A; Witness B, a psychologist and Expert in psychology; and Witness A, a manager at School B.

### **IV. Credibility.**

All the witnesses in this case testified with at least some credibility. The parent presented herself in a measured and thoughtful fashion, and I agreed with many of the conclusions of Witness C. Witness A, from DCPS, testified with strong detail and was

credible throughout in her description of the Student's current placement at School B. I did not find any major inconsistencies between witness testimony and documentation, nor was any such inconsistency pointed out to me.

## **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 violate "Child Find" by failing to evaluate and identify the Student during the 2014-2015(following end of first advisory) and/or 2015-2016 school year? If so, did DCPS violate 20 U.S.C. Sect. 1412(a) (3) (A), 34 C.F.R. Sect. 300.111(a) and related provisions of the IDEA? If so, did DCPS deny the Student a FAPE?

Petitioner contends that DCPS failed to evaluate the Student as of late 2014, and then failed to identify the student as eligible after the request for evaluations in February, 2016, and the meeting in May, 2016.

2. Did DCPS fail to assess the Student in all areas of disability, in particular with regard to speech and language and occupational therapy, during the evaluation of the Student in or about May through September, 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?

3. Did DCPS fail to allow the parent to meaningfully participate in the IEP meeting of September, 2016? If so, did DCPS violate 34 CFR Sect. 300.501(b) and 34 CFR Sect. 300.321? If so, did DCPS deny the Student a FAPE?

4. Did DCPS provide an IEP in September, 2016 that provided inappropriate and insufficient goals, inadequate occupational therapy and speech services, inadequate interventions in reading and writing, and insufficient specialized instruction? 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?

The parent is not in agreement with the IEP developed by DCPS for the student in that: 1) it was not based on comprehensive evaluations and didn't adequately address the impact that the student's difficulty with handwriting and language issues were having on his ability to access his education; 2) many of his academic goals were insufficient, immeasurable, and unattainable, and his social emotional goals did not address the difficulties he was having with organization and executive functioning issues; 3) the IEP did not provide the student with sufficient instructional support to enable him to access his education and make appropriate progress in light of deficits in reading and writing which impact him in all academic courses (i.e., insufficient hours of specialized instruction).

As relief, Petitioner sought, in the prehearing order, to revise the IEP and provide the interventions referenced in Issue #4, a speech and language evaluation, an occupational therapy evaluation, a placement to provide services that match the Student's needs, compensatory education in the form of tutoring, and to reserve any compensatory education award in speech and occupational therapy until after the Student is assessed.

## **VI. Findings of Fact.**

1. The Student is an X-year old who has had significant difficulty in reading and writing. The Student cannot sound out all the letters in the alphabet and is well behind in all academic areas. As a result, the Student has engaged in misbehavior in school, though the Student does not particularly misbehave at home. (Testimony of Petitioner; Testimony of Witness A; P-1)

2. The Student has had difficulty in school since the Student's first year at School A, which was the 2013-2014 school year, the Student's [REDACTED]. The Student made little to no progress at School A during this time, when the parent discussed the Student's struggles frequently with the teacher. The Student received grades of "1" (below basic) and "2" (basic) grades in all subjects. (Testimony of Petitioner; P-22; P-23)

3. For the 2014-2015 school year, these problems continued. The Student made little to no progress in all academic areas, and the Student behaved poorly in class. The parent received many phone calls from parent to teacher about behavior. The Student exhibited disruption, peer issues, recess issues, hallway issues, and elopement. Security had to be called to address the Student's issues. (Testimony of Petitioner)

4. In the 2015-2016 school year, the Student went through the Response to Intervention or "RTI" process at School A. The Student was referred to RTI because of academic concerns. In the first "cycle" of the RTI process, the Student worked in a "literacy lab," which means an individualized program where the Student worked in a small group or with an individual every single day for at least 30 minutes. This work focused on the foundations of literacy, and there was an instructional leader in the group.

Typically, in these sessions, the teacher would go over letter sounds, work with letter cards. However, this intervention was not effective. Thereafter, the Student was given instruction pursuant to the second cycle of RTI. The RTI staff saw progress as they began to alter the educational environment, and they saw more progress when the Student was in a group of one or two. However, the progress was not adequate, and they decided that the Student needed to be referred to special education. (Testimony of Witness B)

5. RTI ended in May, 2016. The Student did get promoted, but the teacher told the parent that she did not know how the Student got promoted. Limited progress was reported, from TRC reading level A to B. At this point, the Student was far below grade level in reading, still at a kindergarten level. (Testimony of Petitioner; Testimony of Witness C; Testimony of Witness D; Testimony of Witness E; P-7; P-18)

6. Also during this time, the Student was engaging in behavioral incidents. In March, 2016, the Student refused to follow classroom directions, threw a tantrum, threw his math book on the floor, stomped across the classroom, and walked out of the classroom. The Student was suspended for two days in April, 2016 for hitting a student. Then, in May, 2016, the Student refused to come inside the building after recess and lost special privileges for three days. This was considered the Student's thirteenth disciplinary referral at School A. (P-14; P-15)

7. A Functional Behavior Assessment ("FBA") was conducted of the Student on June 9, 2016. This FBA found that the student engaged in fighting, resisted assignments, and was easily frustrated. The Student's behaviors were largely triggered by difficulty with academics, but there also were behaviors during non-structured periods like lunch. The FBA stated that the Student did well when he received individualized

attention or working on assignments that do not require reading. During the three formal observations, the Student was off task sixty percent of the time in the classroom. A behavior intervention plan was written for the Student at this time, which was later revised by Witness B. This plan recommended that the Student take classes that the Student is comfortable with. (P-2; Witness B)

8. A psychological evaluation was conducted of the Student by Witness B of DCPS in August, 2016. This evaluation found that the Student was functioning in the average range for intelligence, better than 58 percent of the students at the Student's age. However, the Student had much trouble reading, scoring in the very low range in broad reading. He was unable to identify all of the letter sounds. The Student was also in the low range in math, the Student's writing was "significantly immature" because of serious visual motor delays. An observation by the evaluator found that the Student had difficulty completing a math task but began to try to work when a teacher directly gave a prompt. However, the Student then put the pencil down and placed his/her head on the desk. The evaluation expresses that there has been a concern about the Student's ability to write since he was in pre-school. (P-1; Testimony of Witness B)

9. During the 2015-2016 school year, the Student's report cards showed that the Student was deemed "below basic" in reading and writing and "basic" in social studies and science. Math was deemed initially "below basic" and then "basic." The Student was "very often" off task. At computer time, the Student would "sit and do nothing." The Student would consistently cause many disruptions to the classroom environment and refuse to listen to instruction. (P-2-3; P-20-1)

10. In or about August, 2016, before the upcoming IEP meeting, Petitioner provided DCPS with an evaluation of the Student from July, 2013. This evaluation found that, in 2013, the Student had a full-scale IQ in the low average range, at the 14<sup>th</sup> percentile. It also showed that, the Student had writing difficulty going back to the age of 4. Also in August, 2016, the parents requested a speech and language evaluation and an occupational therapy evaluation from DCPS through email. (Testimony of Witness E; P-3; P-33-1; P-35-1)

11. At the IEP meeting of September 8, 2016, there was discussion of the Student's reading comprehension. There was discussion of the Student's cognitive levels, academic performance, social and emotional needs, the Student's FBA, the Student's classification, and the Student's service hours. The team felt the Student should not be classified as a student with "Other Health Impairment" because behaviors did not occur outside the classroom. The team all agreed that the Student should be determined to be eligible as a student with a Specific Learning Disability. DCPS agreed to provide the Student with behavioral support, and provided seven hours of special education inside the classroom and five hour outside the classroom, believing this was a "good and appropriate" place to start. (Testimony of Witness E; P-6; R-8)

12. The IEP meeting was continued on September 22, 2016. At the second IEP meeting, a parent advocate up about the Student's issues, including with speech and language therapy, occupational therapy, and the FBA. The BIP was then discussed, as was the school's behavioral system. The parent spoke about a number of issues, including that she was not in agreement with the decision to "return to the table" to discuss further testing. (Testimony of Witness E; P-5).

13. The Student's "safety plan" was developed on September 22, 2016. The plan required that the school "mental health team" or other school members check in with the student. If the Student leaves the class, the "office" should be notified. Calm down strategies were to be provided to the Student during frustrating times. The plan recommends talking to the Student in a calm voice, acknowledging frustration, and not leaving the Student alone. During stressful times, this plan recommends prompting the Student to take a walk, employ deep breathing exercises, use muscle relaxation, and teachers were advised to use a sense of humor. The safety plan advises teachers and staff to refrain from asking the Student to write about his feelings and to refrain from yelling at or shoving the Student. (P-43)

14. In the finalized IEP, the Student was offered goals in mathematics, reading, written expression, and social and emotional development. The IEP recommended 5 hours per week of specialized instruction inside general education, and 7 hours per week of specialized instruction outside general education. 120 minutes per month of behavioral support services were offered, sixty minutes of services inside general education, and sixty minutes of services outside general education. Classroom aids included graphic organizers, chunked and/or modified assignments, visual aids, examples, manipulatives, highlighters, and modified notes. A location with minimal distractions was recommended. (P-4)

15. For the 2016-2017 school year, the Student was assigned again to School A. He was to be taking classes in math, computers, media, PE, art, ELA (120 mins), science social studies. The Student would be expected to read and write in ELA and math and science and social studies. The DCPS members of the team felt that the

Student would be able to manage this arrangement because the classrooms are set up in such a way that there was small group activity, and the “push-in” special education services were only needed for large group activities. (Testimony of Witness E)

16. In or about October, 2016, the Student moved to School B, where the Student is currently. At School B, the Student as developed a close relationship with a behavior technician who is in the BES classroom, which the Student will go to when upset. However, the Student is not placed in the BES classroom. The Student has had “very mixed” success in all academics. The Student continues to struggle to write letters, and the educational interventions only work fifty percent of the time. The Student’s reading levels are still extremely low. The Student is responding somewhat to a rewards system inside the classroom but has engaged in repeated behavioral incidents, including reckless behavior, leaving the classroom without permission, and inappropriate physical contact with other students. (Testimony of Witness A; P-24-1)

## **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 violate "Child Find" by failing to evaluate and identify the Student during the 2014-2015 (following end of first advisory) and/or 2015-2016 school year? If so, did DCPS violate 20 U.S.C. Sect. 1412(a) (3) (A), 34 C.F.R. Sect. 300.111(a) and related provisions of the IDEA? If so, did DCPS deny the Student a FAPE?**

The "child find" provisions of the IDEA require each State to have policies and procedures in effect to ensure that "[a]ll children with disabilities residing in the State ... who need 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).

Federal case law indicates that these provisions impose an affirmative duty to identify, locate, and evaluate all such children. Reid v. District of Columbia, 401 F.3d 516, 518-19 (D.C. Cir. 2005); Hawkins v. District of Columbia, 539 F. Supp. 2d 108 (D.D.C. 2008). Consistent with the statutory language, the "child find" obligation "extends to all children suspected of having a disability, not merely to those students who

are ultimately determined to have a disability." N G. v. District of Columbia, 556 F. Supp. 2d 11 (D.D.C. 2008).

The Student appears to be a typical learning disabled child. Though the Student has an average IQ, the Student can read little and cannot really write at all. The Student is not able to write all the letters of the alphabet, nor is the Student able to sound out all the letters in the alphabet. The record also shows that the Student reverses his letters. Witness C testified that she felt that the Student's teachers should have been able to pick these conspicuous signs by the end of fall, 2014, and that, at the end of January, 2015, an IEP should have been in place.

DCPS did not call the Student's teacher(s) during the 2014-2015 school year to rebut these claims. Moreover, there is little in the record to suggest that the Student was making meaningful progress during the 2014-2015 school year. Instead, the record is consistent with the parent's claims. By March, 2015, DCPS had reason to suspect that the Student might have a learning disability after the report card dated February 10, 2015, indicated that the Student was at a "1" level (below basic) in reading, speaking and listening, and math.

DCPS appears to suggest that, by providing the Student with Response to Intervention ("RTI") services during the next school year, the Student was serviced properly. While RTI may be used<sup>2</sup> to determine whether a student has a learning

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<sup>2</sup> The IDEA encourages districts to use the RTI process as part of the SLD evaluation process. Under the IDEA, criteria adopted by a state in determining whether a child has SLD:

1. Must not require the use of a severe discrepancy between intellectual ability and achievement.
2. Must permit the use of a process based on the child's response to scientific, research-based intervention.
3. May permit the use of other alternative research-based procedures.

34 CFR 300.307 (a).

disability, it does not take the place of an evaluation. In fact, RTI is supposed to be used *during* an evaluation, in addition to other methods of assessing the Student (since a “variety” of data-gathering tools and strategies are required in an evaluation). Questions and Answers on Response to Intervention (RTI) and Early Intervening Servs. (EIS), 47 IDELR 196 (OSERS 2007). While I can understand why the District would want to provide RTI interventions to a Student before evaluating, that is not how OSERS views this issue. The District should have identified, located and evaluated the Student by at least March, 2015. As a result, DCPS denied the Student a FAPE.

**2. Did DCPS fail to assess the Student in all areas of disability, in particular with regard to speech and language and occupational therapy, during the evaluation of the Student in or about May through September, 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 has withdrawn the claim with respect to speech and language therapy, but continues to litigate the contention that DCPS failed to conduct an occupational therapy evaluation of the Student. Petitioner pointed to the fact that the DCPS psychological evaluation of August, 2016 indicated that there were concerns about the Student's handwriting since the Student was four years old. The DCPS evaluator also noted that the Student's letters were "significantly immature," and the IEP itself indicates that the Student had poor letter formation, poor visual discrimination and planning and the inability to distinguish and correct letters.

Still, Petitioner did not call an occupational therapist to explain why it was that an occupational therapy evaluation was necessary or to link occupational therapy with writing. As a hearing officer, I cannot assume that an occupational therapy evaluation is

necessary in every case where there are some handwriting issues. None of Petitioner's experts were qualified in occupational therapy, and indeed Petitioner's compensatory education plan does not even request compensatory occupational therapy directly. Petitioner also did not present an occupational therapy evaluation in support of this claim, where she bears the burden. There is one psychological evaluation that did suggest an occupational therapy evaluation (P-3), but this evaluation is three years old was not presented to the school district until 2016.

Petitioner did not meet her burden by showing that the Student needed an occupational therapy assessment in the review following the June, 2016 request to evaluate. This claim is therefore dismissed.

**3. Did DCPS fail to allow the parent to meaningfully participate in the IEP meeting of September, 2016? If so, did DCPS violate 34 CFR Sect. 300.501(b) and 34 CFR Sect. 300.321? If so, did DCPS deny the Student a FAPE?**

Congress sought to protect individual children by providing for parental involvement in the formulation of a child's individual educational program. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 208 (1982). Accordingly, the regulations require that parents of a child with a disability be afforded an opportunity to participate in meetings with respect to the educational placement of the child. 34 C.F.R. Sect. 300.501(b)(1); 34 C.F.R. Sect. 513(a); 20 U.S.C. Sect. 1414(e). To this end, Districts have a duty to insure that parents meaningfully participate in an IEP review. Paolella ex rel. Paolella v. Dist. of Columbia, 210 F. App'x 1, 3 (D.C. Cir. 2006); A.M. v. Dist. of Columbia, 2013 WL 1248999 (D.D.C. Mar. 28, 2013); T.T. v. Dist. of Columbia, 2007 WL 2111032 (D.D.C. July 23, 2007).

Petitioner bears the burden on this issue, which does not involve the contents of the IEP but instead focuses on communications during the IEP meeting. Petitioner leans on the testimony of Witness F, who testified that the IEP was already finalized when the second IEP meeting had started on September 22, 2016. The parent also testified that she did not feel part of the IEP team. However, at the September 6, 2016 meeting, the parent and Witness F discussed the issues in the IEP, including the main issues of special education hours, behaviors, and related services. This is clear from the DCPS minutes, which establish that the team reviewed the psychological evaluation, the Student's levels in all areas, the FBA, the disability classification, special education hours, and also discussed occupational therapy and speech therapy.

There was a second meeting on September 22, 2016, during which there was additional discussion of related services and behavioral interventions. Still, the fact that there was a second meeting does not mean that the first meeting was incomplete, at least in this case. The parent received an opportunity to genuinely discuss all the issues in the IEP, which is all the school district is required to do. Petitioner did not meet her burden on this claim, which must be dismissed.

**4. Did DCPS provide an IEP in September, 2016 that provided inappropriate and insufficient goals, inadequate occupational therapy and speech services, inadequate interventions in reading and writing, and insufficient specialized instruction? 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?**

The parent's argument is that the IEP: 1) is not based on comprehensive evaluations; 2) many of his academic goals were insufficient, immeasurable, and unattainable, and his social emotional goals did not address the difficulties he was having

with organization and executive functioning issues; 3) the IEP did not provide the student with sufficient instructional support to enable him to access his education and make appropriate progress in light of deficits in reading and writing which impact him in all academic courses (i.e., insufficient hours of specialized instruction).

In regard to the parent's claim that the IEP was not based on comprehensive evaluations, this is in effect the same issue that was raised in Issue # 2. While it is true that the Student had handwriting issues, Petitioner did not present a specialist to specifically link up the handwriting issues to occupational therapy. Nor was any report presented from an occupational therapist in support of this claim. The fact that there was a psychologist who recommended an occupational therapy evaluation three years ago is not persuasive enough to meet Petitioner's burden in my opinion.

In regard to the goals, Petitioner contended that the goals were unrealistic and did not cover all subject matter areas. Witness F particularly pointed to the math goals, but I did not find this testimony specific enough to be persuasive. A review of the math goals indicates that they relate to adding and subtracting. The testing by Witness B suggested that the Student could do some simple math problems. There also was criticism of the reading fluency goal on the theory that the goal was unrealistic because he cannot sound out letters. The record suggests that while the Student cannot sound out *all* of his letters, but the Student does sound out *most*. Petitioner also points to the goal of reading a "grade level" passage, suggesting that the Student is not anywhere near grade level, which is true. However, the goal indicates that the Student will try to read a grade-level text with pictures as a scaffold to allow the Student to understand the material. Other goals seem similarly appropriate, such as a writing goal which asks the Student to

compose simple sentences and an emotional, social and behavioral goal of utilizing behavioral supports to improve coping skills. While every single possible area of deficit is not addressed in these goals, there is no requirement that goals address each and every issue and sub-issue that the Student may have.

I do agree with the parent that the specialized instructional hours in the IEP are inadequate. The record is clear that the Student cannot read or write with any proficiency. According to the recent testing, the Student was reading in the “very low” range and was unable do something as basic as being able to say the sounds of all the letters. The Student also still reverses letters, and his letters are significantly immature. Nevertheless, the Student is getting most of his academic instruction in a general education class that requires reading and writing without a special education teacher. As Witness B pointed out, the Student needs to develop reading and writing skills to be able to be maintained in this kind of environment. DCPS argued that the Student would be working in a small group in the larger classroom, and that the five hours of specialized instruction inside general education was a good “starting point.” However, any small group work would involve a fair amount of independent activity since there is only one teacher in the general education classroom. This Student does not do well when he is given independent work to do. In fact, in his report card dated April 18, 2016, it is indicated that the Student does nothing during independent reading.

Indeed, even with a teacher *and* a small group, lessons can be problematic for this Student. In RTI instruction, in the first cycle of the RTI process, the Student was in a group of four – with a teacher there the whole time. Even though the lesson lasted only thirty minutes, this was considered unsuccessful, and so the Student was placed with one

or two other students, again with a teacher there the whole time. The Student did better when there was an extremely small group with a teacher, but even that intervention was not completely successful. As a result, the Student was referred to the MDT team for services.

The observations in the record support Petitioner. The observation by Witness B described how the Student, upon being presented with a difficult math task, promptly started to talk to another student. After a classroom assistant intervened, he briefly complied – but then put his head on the desk, pencil down. The report card ending April 18, 2016 is similar. In this report card, the teacher comments that the Student is “very often” off task and constantly has to be reminded to keep his hands to himself. The FBA of the Student indicated that he was sixty percent off task (during observations) in the 2015-2016 school year without special education support.

These problems have continued this year, with the new IEP, at School B. Witness A testified that the educational interventions in the class only work “fifty percent” of the time. He has had “very mixed” success in all academics, continues to struggle to write his letters, and his reading levels are still extremely low. Moreover, the Student has engaged in several behavioral incidents, including inappropriate physical contact with others, that have resulted in suspension. I agree with Petitioner that by not providing the Student sufficient special education hours inside the classroom, DCPS denied the Student educational benefit, and therefore a FAPE, through its IEP dated September, 2016.

### **VIII. Relief.**

In Petitioner's closing statement, she modified her requests for relief as stated in the prehearing order. Petitioner is currently asking for 1) changes to the IEP for a more restrictive setting; 2) an occupational therapy evaluation; 3) tutoring; 4) occupational therapy in an amount to be designated by the evaluator.

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.

I found Witness C to be credible, and her compensatory education plan was appropriately linked to the Student's period of educational deprivation, which, at minimum, was from September, 2015 to present (since I have found that an evaluation

should have commenced in or about March, 2015 and that services should have started about 4 months later). Given the duration of the FAPE denial, I agree with Witness C that 360 hours of specialized tutoring is an appropriate award. A special education teacher must be assigned to the student for this tutoring. DCPS may provide its own special education teacher for the tutoring if it wishes. If an independent tutor is used, DCPS shall pay the tutor a rate that is usual and customary in the community. The end date of the services should be December 31, 2018.

In regard to the request for a more restrictive setting, I agree that the Student needs all of his academic classes that involve reading and writing in a classroom with a special education teacher in it. There is no requirement that the Student be taught by a special education teacher in other “specials” like art or music. Moreover, DCPS may elect whether such services should be delivered inside or outside general education.

Finally, I have not found that DCPS denied the Student a FAPE by denying the Student an occupational therapy evaluation or occupational therapy services.

Petitioner’s remaining requests for relief are therefore denied.

### **IX. Order**

As a result of the foregoing:

1. Respondent is deemed to have denied the Student a FAPE;
2. The Student is awarded 360 of compensatory tutoring, to be provided by a licensed special education teacher, by December 31, 2018;
3. The Student shall receive all academic instruction that involves reading and writing with a special education teacher in the room;
4. Petitioner’s other requests for relief are denied.

Dated: December 24, 2016

*Michael Lazan*  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Attorney A, Esq.  
Attorney B, Esq.  
OSSE Division of Specialized Education  
[Contact.resolution@dc.gov](mailto: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 24, 2016

*Michael Lazan*  
Impartial Hearing Officer