

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Dispute Resolution  
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<b>Parent, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioner,</b>	)	
	)	<b>Hearing Dates: 12/10/20; 12/11/20</b>
	)	<b>Hearing Officer: Michael S. Lazan</b>
	)	<b>Case No. 2020-0173</b>
<b>District of Columbia Public Schools,</b>	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving an X-year-old student who is currently eligible for services as a student with a 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 29, 2020. The Complaint was filed by the Student’s parent (“Petitioner” or “Mother”). This Hearing Officer was appointed to the case on September 30, 2020. On October 6, 2020, Respondent filed a timely response. A resolution meeting was held on October 13, 2020. The resolution period expired on October 29, 2020.

**II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R.

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

Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

### **III. Procedural History**

Petitioner moved to amend the Complaint on October 8, 2020. The amended Complaint was filed on October 8, 2020. Over objection, the motion was granted on October 26, 2020. An amended response was filed on November 9, 2020. A prehearing conference was held on October 13, 2020. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on October 19, 2020, summarizing the rules to be applied in the hearing and identifying the issues in the case. The Hearing Officer Determination (“HOD”) due date is December 22, 2020.

The hearing proceeded on December 10, 2020, and December 11, 2020. Petitioner was again represented by Attorney A, Esq. Respondent was again represented by Attorney B, Esq. After testimony, closing arguments were presented. This was a closed proceeding. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-44, without objection. Respondent moved into evidence exhibits R-3, R-38, and R-40 without objection. Petitioner presented as witnesses: herself; the Student’s father (“Father”); Witness A, a special education advocate (expert in Individualized Education Program (“IEP”) programming and eligibility); and Witness B, a psychologist (expert in special education testing and eligibility). Respondent presented as witnesses: Witness C, a school psychologist (expert in school psychology); Witness D, a resolution specialist; and Witness E, a teacher.

#### IV. Issues

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

**1. Did Respondent violate “Child Find” because it should have identified, located, and evaluated the Student by September 29, 2018? If so, did Respondent violate 20 U.S.C. Sect. 1412(a)(3)(A), 34 C.F.R. Sect. 300.111(a), and related provisions of the IDEA and its regulations? If so, did Respondent deny the Student a Free Appropriate Public Education (“FAPE”)?**

Petitioner contended that the Student had poor grades and test scores, and that the Father had asked for an evaluation of the Student during the 2018-2019 school year.

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

Petitioner contended that some of the records she requested from DCPS are missing, including meeting notes, academic records, logs, and summer school records.

**3. Did Respondent fail to comprehensively evaluate the Student in all areas of suspected disability in or about March, 2020? If so, did Respondent violate 34 C.F.R. Sect. 300.304 and related provisions? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that Respondent should have assessed the Student’s speech and language needs.

As relief, Petitioner seeks compensatory education, a speech and language evaluation/assessment, the educational records said to be missing, and related relief.

**Prior to the start of the hearing on December 10, 2020, Petitioner withdrew, with prejudice, all claims relating to Issue #2 and Issue #3.**

## V. Findings of Fact

1. The Student is an X-year-old who is currently eligible for services as a student with a Specific Learning Disability. The Student is charismatic and can communicate like a typically developing peer. Testimony of Mother. However, the Student currently reads well below grade level. The Student's reading is slow and laborious, with missed words, errors in intonation, and a lack of fluency. Testimony of Witness A. The Student's reading concerns carry over to all areas of academics, causing the Student to have issues with work completion, attendance, initiating tasks, and being disruptive. Testimony of Witness B.

2. The Student has had issues in school for, at least, most of his/her academic career. The Student was held back in one grade after the Student's teachers brought his/her issues to Petitioner's attention. Even after being held back, the Student continued to struggle in school. Testimony of Mother. The Student was given the i-Ready mathematics assessment on September 1, 2017. The Student scored 442, below level. The Student was administered the SRI reading assessment on October 6, 2017. The Student scored 154, below basic level. The i-Ready assessment was again administered on January 10, 2018. The Student scored 445, below level. The SRI was again administered on January 18, 2018. The Student scored 284, below basic level. P-20-1. The Student was administered the PARCC assessment in spring, 2018. The Student scored 687 in English language arts, at the 9th percentile among students in the District of Columbia. P-8. The Student scored 683 in mathematics, at the 5th percentile among students in the District of Columbia. P-9.

3. During the 2018-2019 school year, the Student attended School A, which tested students at the start of the school year. On an SRI reading assessment administered on August 24, 2018, the Student scored 302, at the below basic level. P-17-1. On an i-Ready mathematics assessment administered on September 14, 2018, the Student scored 454, at Level 4. P-19-1.

4. The Student struggled in his/her classes during the 2018-2019 school year. In the Student's language arts class, which was sometimes unruly, the Student would seem to be interested, then disengage. The Student had issues understanding the material in class, even if the materials were modified for him/her. The Student was not an active learner, was sometimes absent, and had issues completing work. The Student was also uncooperative. Witness E, the Student's language arts teacher, stated that she should have referred the Student to school staff at this time to determine the Student's eligibility for special education services. Testimony of Witness E.

5. During the first quarter of the 2018-2019 school year, the Student's Father became aware that special education services could possibly be available for the Student. The Father talked to a School A staff member about the process and learned about the Student's rights to evaluations and IEPs. Testimony of Father.

6. After receiving the Student's second-term report card in the 2018-2019 school year, the Father asked the School A principal for the Student to be evaluated for special education services. The principal responded that the Father should have a "roundtable meeting" with school staff before any decision to evaluate the Student for special education services. Testimony of Father; P-28-2.

7. On another SRI reading assessment administered on February 5, 2019, the Student scored 345, below basic level. P-17-1.

8. For the third term of the 2018-2019 school year, the Student received “F” grades in math, world geography and cultures, language arts, and science. The Student also received a “C-” in Spanish exploratory and a “D” in extended literacy. P-18.

9. At the end of the third quarter of the 2018-2019 school year, a “roundtable meeting” was held between school staff and the Father. All participants spoke at the meeting. At the end of the meeting, the school created a “contract” for the Student to ensure that the Student would be “accountable” for his/her education. The Student signed this contract. The Father asked whether the Student would also receive an IEP, but the principal expressed that it was too late in the school year to move forward with the IEP process. Testimony of Father.

10. On a PARCC assessment administered in spring 2019, the Student scored 680 in English language arts, at the 3rd percentile among students in the District of Columbia, and 684 in mathematics, at the 8th percentile among students in the District of Columbia. P-10; P-11. On an SRI assessment administered on June 4, 2019, the Student scored at Lexile level 478, far below grade reading level. P-12-4; P-14-5. On an i-Ready mathematics assessment administered on May 29, 2019, the Student scored 455, Level 4, below grade level. P-19-1.

11. For the 2018-2019 school year, the Student received a final grade of “D+” in Spanish exploratory, with an “F” in the fourth term. The Student received final grades of “F” in science, world geography and cultures, math, and language arts. The Student was absent twenty-two days during this school year, fifteen of which were unexcused.

The Student's report card indicated that the Student had issues with doing homework, studying, completing assignments, and taking initiative. P-14.

12. The Student was not promoted at the end of the 2018-2019 school year; instead, s/he was asked to attend summer school to be promoted. P-30-1. The Student attended summer school and was promoted for the 2019-2020 school year, though the Student failed one of his/her three summer school classes, world geography and cultures. Testimony of Father; P-15.

13. The Student changed schools for the 2019-2020 school year, enrolling at School B, which decided to place the Student in "resource room" classes for extra help. The Student was not evaluated and did not make meaningful progress with the additional supports. Testimony of Witness A. At the start of the school year, the Student scored 453 on an i-Ready mathematics assessment, representing more than three grades below level. The Student also took an SRI reading assessment at the start of the year and scored 125, below basic level. P-28-9. In the middle of the school year, the Student scored 445 on another i-Ready mathematics assessment, again more than three grades below level. P-23-3. The Student also took an SRI reading assessment in the middle of the year and scored 244, below basic level, at the 1st percentile. P-23-6.

14. The Mother requested an evaluation of the Student during the 2019-2020 school year. Testimony of Mother. School B staff agreed to move forward with testing to determine the Student's eligibility for services in view of the Student's poor academic achievement, especially in reading and written expression. Testimony of Witness C. Witness C assessed the Student through a comprehensive psychological evaluation dated March 14, 2020. The Student performed much better on non-verbal tasks during testing.

Testimony of Witness C. The Student's scores in reading comprehension and fluency were the most prominent areas of weakness. Testimony of Witness B. The evaluation consisted of a record review, an observation in science class (during which the Student was engaged and on task), an interview with the Student and Mother, and an interview with the Student's English teacher at School B. The teacher told Witness C that the Student participates in class but engages in work avoidance, has difficulty retaining information, produces little work, is often out of his/her seat, and is inattentive and distracted. The teacher reported that the Student was functioning well below his/her peers and did "somewhat" better on a one-to-one basis. The evaluator administered the Test of Nonverbal Intelligence, 4th Edition ("TONI-4"), on which the Student scored 91, at the 27th percentile, in the average range. On the Reynolds Intellectual Assessment Scales, 2nd Edition ("RIAS-2"), the Student scored 83 on the nonverbal intelligence index, at the 18th percentile. On the composite memory index, the Student scored 46, below the 0.1 percentile. On the Woodcock-Johnson, 4th Edition Tests of Achievement, Form A ("WJ-IV"), the Student scored 62 in broad reading (very low range), a 79 in broad math (low range), and a 75 in written expression (low range). The Student's reading comprehension score was 49, in the very low range. Witness C concluded that the Student needed visuals and charts, as well as specialized instruction, to succeed at school. Testimony of Witness C; P-28.

15. The evaluation suggested that the Student was so far below grade level in reading and writing that any educator would know it, especially since the Student tended to do better in assessments than in class. Testimony of Witness A; P-23-3.

16. On March 25, 2020, the Student was determined to be eligible for services as a student with a Specific Learning Disability. The eligibility determination was based on the Student's verbal reasoning and working memory, which were significantly below average, as well as the Student's low to very low levels in reading comprehension, math reasoning, spelling, decoding, and reading fluency. The eligibility determination indicated that the Student's progress was not limited by inappropriate instruction, cultural factors, or economic disadvantage. P-27-1.

17. An IEP was created for the Student on April 22, 2020. The IEP contained "Area of Concern" sections (including goals) in mathematics, reading, and written expression. The IEP recommended eight hours per week of specialized instruction in reading (three hours outside general education, five hours inside general education), seven hours per week of specialized instruction in mathematics (three hours outside general education, four hours inside general education), and one hour per week of specialized instruction in written expression (inside general education). The IEP also recommended as "Other Classroom Aids and Services": sitting near the teacher, being provided with a schedule, using a binder to organize materials, use of verbal prompts, use of a calculator, graphic organizers, specific and clear verbal directions, predictable classroom routines, "sentence stems," and peer partners, among other interventions. The IEP also recommended as "Classroom Accommodations": clarification, repetition of directions, and "redirect student to test." P-23.

18. As of April, 2020, in mathematics, the Student was continuing to have difficulty focusing in a large classroom and completing work. The Student could skip count, recognize numbers, add three-digit numbers with regrouping, tell time to the hour

and half-hour, understand the value of coins, and know multiplication facts through “times 9.” But the Student’s disability impacted his/her ability to access and understand the curriculum. The Student also arrived late to class and had issues with rules and peers, sometimes needing a small break. The Student required seating in a location with minimal distractions, a peer or buddy to work with during classwork time, and an individualized token economy system, as well as a calculator and manipulatives, modified instruction, and small-group math instruction. P-23-4.

19. As of April, 2020, in reading, the Student had trouble focusing in a large classroom and completing assigned work. The Student had difficulty accessing the curriculum due to his/her disability. The Student could complete phonic lessons but often struggled when reading a new word within a passage or using reading strategies introduced to him/her. The Student needed small-group reading instruction to meet his/her needs. P-23-6. As of April, 2020, in writing, the Student was making progress with punctuation, but needed assistance due to deficits in comprehension. The Student also needed help in using a narrative format, and in supporting his/her answers with an evidence-based analysis of text. The Student benefitted from graphic organizers, chunking, modeling, and visual aids, among other things. P-23-7.

20. For the 2019-2020 school year, the Student received a final grade of “P” (pass) in language arts, despite “F” grades for two terms. In science, the Student received “F” grades for the first three terms and an “I” (incomplete) as a final grade. In world history and geography, the Student received “F” grades in terms two and three, with a final grade of “P.” In mathematics, the Student received an “F” grade in the first term

and a final grade of “P.” The report card indicated that the Student had zero absences for the year. P-13.

## VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed in 2014. The law states that “(w)here there is a dispute about the appropriateness of the child’s individual educational program or placement, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement” provided that the party requesting the due process hearing establishes “a *prima facie* case.” D.C. Code Sect. 38-2571.03(6)(A)(i). Issue #1 does not directly relate to the appropriateness of the Student’s program or placement. As a result, on Issue #1, the burden of persuasion must be on Petitioner. Schaffer v. Weast, 546 U.S. 49 (2005). It is again noted that Petitioner’s other claims have been withdrawn.

**1. Did Respondent violate “Child Find” because it should have identified, located, and evaluated the Student by September 29, 2018? If so, did Respondent violate 20 U.S.C. Sect. 1412(a)(3)(A), 34 C.F.R. Sect. 300.111(a), and related provisions of the IDEA and its regulations? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that the Student had poor grades and test scores and that the Father had asked for an evaluation of the Student during the 2018-2019 school year.

The Child Find provisions of the IDEA require each state to have policies and procedures in effect to ensure that all 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 child suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade. 34 C.F.R. Sect. 300.111(c)(1); 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). Child Find is an “affirmative obligation.” Montuori v. District of Columbia, No. CV 17-2455 (CKK), 2018 WL 4623572, at \*6 (D.D.C. Sept. 26, 2018). The District of Columbia Circuit Court of Appeals has stated that the “Child Find” obligation is “(a)mong the most important” requirements for a Local Educational Agency (“LEA”) in the IDEA. D.L. v. District of Columbia, 860 F.3d 713, 717 (D.C. Cir. 2017).

Respondent presented, as its final witness, Witness E, who was the Student’s language arts teacher for the 2018-2019 school year at School A. However, Witness E admitted during testimony that she should have referred the Student for an evaluation during the 2018-2019 school year to determine whether the Student was eligible for special education services. Witness E indicated that the Student would be disengaged in class, was not an active learner, and would miss learning experiences because s/he had to “decompress.” Witness E indicated that she tried to differentiate work for the Student in the general education classroom, but the Student did not understand some of the work, even though it had been modified for him/her.

This testimony is consistent with the credible testimony of Witness A and Witness B. Witness A, an expert in IEP programming and eligibility, testified that the Student should have been evaluated and provided with an IEP by the start of the 2018-2019 school year. Witness A contended that the Student’s standardized test scores during the 2017-2018 school year indicated s/he was functioning significantly below grade level. She pointed out that the Student’s SRI reading assessment scores were so low that any teacher should have suspected that the Student had a disability. Other testing, including

on an i-Ready mathematics assessment and a PARCC assessment, also showed that the Student was far behind his/her peers. Witness A testified, without rebuttal, that the Student's academic skills were like those of a child more than five years younger. She also stated that the Student made no progress in mathematics during the past three school years, per the i-Ready measures, and that the Student had made little progress in reading during this time, per the SRI scores. Witness A argued that DCPS should have been alert to "red flags," including the Student's lack of progress with instruction, failing grades, parent concerns, consistently poor standardized test scores, and a widening gap between the Student and his/her peers.

Witness B, a psychologist who is an expert in special education testing and eligibility, also testified that the Student should have been evaluated and provided with an IEP by the start of the 2018-2019 school year. Witness B also testified that the Student's scores reflected a lack of progress and were "red flags." She pointed out that the Student had issues with phonemic awareness, which is ordinarily a significant "warning sign." She also testified that the Student had issues with fluency, reading inaccurately, "guessing" words, reading comprehension, writing content, writing mechanics, and work avoidance.

The Father also felt that the Student needed to be evaluated for special education services during the 2018-2019 school year, though he did not clearly state that the Student should have been evaluated and provided with an IEP by the start of the 2018-2019 school year. Instead, the Father testified, without rebuttal, that he asked DCPS to evaluate the Student in or about February-March, 2019. DCPS declined the Father's

request, even though parents have the right to receive an evaluation of their child for special education services if they ask for it. 34 C.F.R. Sect. 300.301(b).

DCPS argued that Witness E's testimony was a product of reflection and that she had reasonably determined that the Student did not have to be evaluated during the 2018-2019 school year. Witness E did state that her conclusion was formulated when she was "looking back" in time. However, Witness E expressed regret that she did not initiate the Student's evaluation during the 2018-2019 school year, and she did not say or indicate that then-available data supported DCPS's position that it had no reason to suspect that the Student was disabled during the 2018-2019 school year. DCPS also argued that there were no "red flags" for this Student, pointing to Compton Unified Sch. Dist. v. Addison, 598 F.3d 1181, 1184 (9th Cir. 2010). But in Compton, the court ruled for the parent, rejecting the school district's argument that Child Find liability must be premised on a school district's affirmative refusal to act. DCPS also pointed to D.K. v. Abington Sch. Dist., 696 F.3d 233, 251 (3d Cir. 2012), where the court concluded that the school district was not required to "jump to the conclusion" that the Student's misbehavior denoted a disability or disorder because such issues are "not atypical" during early primary school years. The court also noted that the student's report cards and "conference forms" indicated intermittent progress and even academic success in several areas. This case also does not lend support to DCPS's position. The Child Find allegation here is not premised on behavioral concerns, and the Student is not a preschooler. Moreover, unlike in D.K., there is no contention, from any of the DCPS witnesses, that the Student made meaningful progress in academic areas during the 2018-2019 school year (during which the Student failed almost every academic class) or the 2019-2020 school year.

DCPS also argued that the Student was having problems at home during the 2018-2019 school year, when s/he had issues with attendance. The record suggests that this is true, but Witness E did not testify that the Student's family issues were the main cause of his/her academic difficulty. Nor does the record support the claim that the Student's difficulties were limited to the 2018-2019 school year, when the Student had attendance issues. Indeed, the Student's scores on the SRI and i-Ready tests got worse during the 2019-2020 school year, when the Student was not absent even once. On the SRI, the Student scored 478 at the end of the 2018-2019 school year, then only 244 in the middle of the 2019-2020 school year. On the i-Ready, the Student scored 455 at the end of the 2018-2019 school year, then 445 in the middle of the 2019-2020 school year.

DCPS also argued that the Student's failure to receive appropriate instruction was the reason for the Student's low performance, noting that this fact precludes the Student from being determined to be eligible as a student with a Specific Learning Disability. 34 C.F.R. Sect. 300.309(3)(b). However, the record is to the contrary. DCPS's own eligibility determination from March, 2020, states that the Student should not be excluded from eligibility as a student with a Specific Learning Disability because of the Student's failure to receive instruction. Petitioner has shown that DCPS failed to comply with "Child Find" when it failed to evaluate the Student during the 2018-2019 school year.

Moreover, as pointed out by Witness A, the Student should have been determined to be eligible and provided with specialized instruction during the 2018-2019 year. This was DCPS's conclusion during the 2019-2020 school year, when Witness C and the DCPS IEP team determined that the Student had significant issues and needs, and required sixteen hours of specialized instruction per week, a substantial change in

program. No DCPS witness testified to the contrary or suggested that the Student did not need specialized instruction during the 2018-2019 school year.

As a result, this Hearing Officer finds that Petitioner has shown that DCPS denied the Student educational benefit, and therefore a FAPE, when it failed to comply with “Child Find” during the 2018-2019 school year.

### **RELIEF**

As relief, Petitioner seeks 480 hours of compensatory tutoring for the Student. When a hearing officer concludes that a school district has failed to provide a student with a FAPE, s/he has “broad discretion to fashion an appropriate remedy,” which can include compensatory education. B.D. v. District of Columbia, 817 F.3d 792, 797–98 (D.C. Cir. 2016) (quoting Boose v. District of Columbia, 786 F.3d 1054, 1056 (D.C. Cir. 2015)). Under the theory of compensatory education, courts and hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 521-523 (D.C. Cir. 2005). An award of compensatory education aims to put a student in the position s/he would have been in absent the FAPE denial and “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.” B.D., 817 F.3d at 797-798 (quoting Reid, 401 F.3d at 524). The District of Columbia Circuit Court of Appeals has “explicitly disavowed” compensatory education in the form of “cookie-cutter” lump-sum awards when the hearing officer does not explain how the remedy is tailored to provide the services the student was denied. Branham v. District of Columbia, 427 F.3d at 7, 11 (D.C. Cir. 2005). The court emphasized that, in determining the

“complicated work” of fashioning such a remedy, the hearing officer should play close attention to the question of assessment. B.D., 817 F.3d at 800.

Petitioner seeks compensatory education based on the testimony of Witness A and Witness B, both of whom claimed that the Student should receive 480 hours of tutoring for the FAPE deprivation from the start of the 2018-2019 school year through to the date of the Student’s April 22, 2020, IEP. Witness A contended that the Student should have received sixteen hours of specialized instruction per week starting at the beginning of the 2018-2019 school year, and would have achieved 1.5 years of academic growth if these services had continued through to April 22, 2020. She also determined that the proposed 480 hours of tutoring would likely lead to the same 1.5 years of academic growth.

Witness A said that she tried to be data- and assessment-driven in her analysis, and submitted a plan containing three different charts showing that the Student had made little to no academic progress in standardized testing during the 2018-2019 and 2019-2020 school years. She explained that the 480 hours of tutoring would provide the Student with tutoring twice per week, and that the tutoring would result in the Student progressing to the mid-third-grade level in reading and the mid-fifth-grade level in mathematics. She added that her analysis was supported by research from the Council for Exceptional Children. Witness B testified in accord with Witness A’s testimony.

DCPS argued that Petitioner’s calculation of FAPE deprivation would result in an overload of instruction for the Student, but did not explain why this struggling Student would have trouble going to tutoring twice a week. In fact, references in the record suggest that the Student is eager to learn, including testimony from Witness A. DCPS also posited that there was limited evidence about the Student’s education during the

2017-2018 school year. This Hearing Officer agrees with DCPS that Petitioner did not show that the Student should have been evaluated during the 2017-2018 school year.

While Witness A did testify that the Student's standardized test scores were so low that any teacher would have recognized a problem, she also said that the Student's "red flags" included failing grades, parent concerns, and a widening gap between the Student and peers. There is nothing in the record to clearly establish that the Student's grades were poor during the 2017-2018 school year, or that the Student's parents expressed concerns to the school during the 2017-2018 school year, or that the gap between the Student and his/her peers was widening during the 2017-2018 school year.

As a result, this Hearing Officer finds that DCPS should have evaluated the Student in or about September, 2018, when Witness E should have determined that the Student was far below his/her peers and needed to be evaluated.

This means that the Student's IEP would not have gone into effect until approximately December, 2018, to January, 2019. When a student is referred for an evaluation, DCPS has sixty days to conduct the evaluation and determine whether that student is eligible for services. D.C. Code 38-2561.02. If a student is determined to be eligible for services, DCPS could opt to take another thirty days to create an IEP. 34 C.F.R. Sect. 300.323(c)(1). This Hearing Officer therefore finds that the Student should have started receiving IEP services in approximately December, 2018, to January, 2019, instead of at the start of the 2018-2019 school year, and that it is appropriate to proportionately reduce the compensatory education award to 370 hours of tutoring to reflect the narrower window of FAPE deprivation. The tutoring shall be provided by a certified special education teacher at a reasonable and customary rate in the community.

## VII. Order

As a result of the foregoing, the following is hereby ordered:

1. Respondent shall pay for 370 hours of one-to-one academic tutoring for the Student, to be provided by a certified special education teacher, at a rate that is usual and customary in the community;
2. All claims relating to Issue #2 and Issue #3 are withdrawn and dismissed with prejudice;
3. Petitioner's other requests for relief are denied.

Dated: December 22, 2020

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Petitioner's Representative: Attorney A, Esq.  
Respondent's Representative: Attorney B, Esq.  
OSSE Division of Specialized Education  
[REDACTED]/DCPS  
[REDACTED]/DCPS

### **VIII. 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 days from the date of the Hearing Officer Determination in accordance with 20 USC Sect 1415(i).

Dated: December 22, 2020

*Michael Lazan*  
Impartial Hearing Officer