

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
810 First Street, N.E.  
Washington, DC 20002

OSSE  
Student Hearing Office  
January 23, 2014

---

PARENT, on behalf of  
STUDENT,

Petitioner,

Hearing Officer: Michael Lazan

V

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

---

**HEARING OFFICER DETERMINATION**

**INTRODUCTION**

This is a case involving a student who has been determined to be eligible for services as a Student with other health impairment

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 October 29, 2013 in regard to the Student. This Hearing Officer was appointed to preside over this case on December 19, 2013, after the recusal of IHO James Mortensen.

A Response was filed by the District denying this contention on November 7, 2013. This Response was timely filed. A resolution meeting was held on November 12, 2013. This meeting was timely pursuant to the applicable regulations. The resolution period ended on November 28, 2013.

On November 14, 2013, IHO Mortensen held a prehearing conference.

A prehearing conference order issued on November 15, 2013, summarizing the rules to be applied in this hearing and identifying the issue in the case.

A hearing date was scheduled for December 19, 2013. Petitioner moved for partial summary judgment by motion dated November 25, 2013. Respondent provided opposition on November 27, 2013. By order dated December 11, 2013, IHO Mortensen granted the motion for partial summary judgment in regard to issue #1 in this case and required Respondent to convene the IEP team no later than January 1, 2013 to discuss the specific school that could implement the Student's IEP.

Petitioner moved for a continuance on December 12, 2013. There was no opposition from Respondent. This motion was granted by IHO Mortensen on December 13, 2013. The new HOD date was set at January 22, 2014. The prior HOD date was January 13, 2014.

On January 13, 2014, a hearing was held in this case. This was a closed proceeding.

Petitioner entered into evidence exhibits 1-20; Respondent entered into evidence exhibits 1-13. Petitioner presented as witnesses: Witness A, Investigator; Witness B, Investigator; Petitioner; Witness C, an expert consultant. Respondent presented as witnesses: Witness D, LEA representative/teacher, School A.

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

### **ISSUE**

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

1. Whether Respondent failed to ensure a placement decision for the Student for the 2013-2014 school year was made by the IEP team and was based on the Student’s IEP, when it left a decision to an “LRE” team that did not include the Petitioner and was to conduct its own observations of the Student, and that no placement decision was made?

2. Whether the Respondent denied the Student a free appropriate public education (FAPE) when it failed to provide special education and related services in conformity with his IEP because the required amount of specialized instruction has not been provided since September 6, 2013 and the amount of related services required has not been provided since October 29, 2013?

As noted, IHO Mortensen issued a final order on the first issue, including an appeals notice. As a result, only a single FAPE issue remains this case -- issue #2.

### **FINDINGS OF FACT**

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer’s Findings of Fact are as follows:

1. The Student is a \_\_\_\_\_ student with a Developmental Delay. (R-1-1)
2. He is diagnosed with ADHD-Predominantly Combined Type, Mathematics Disorder, Reading Disorder, and Disorder of Written Expression. (P-12-12; Testimony of Witness A)
3. He has been diagnosed with Microdeletion Syndrome, a \_\_\_\_\_ condition which can cause developmental problems in terms of cognition and motor issues. (P-12-2; P-13-1)
4. The Student has a fear of older children and has been bullied. (Testimony of Petitioner)
5. The Student struggles to write. (R-8-29)
6. He is a shy child who is willing to do his work but does not know how to do it. He has difficulty understanding his work. (Testimony of Petitioner)
7. The Student has difficulty with working memory and processing speed. He has trouble remembering his assignments. (Testimony of Witness C)
8. He has difficulty separating fantasy from reality. (Testimony of Witness C; P-10-2)
9. He will get lost in class and work on the wrong assignment. (Testimony of Witness C)
10. He benefits from 1:1 support. (P-10-2)
12. He spends a lot of time looking at other students and is highly distracted. (P-10-2)

14. Behavioral modifications for the Student have not worked. (P-10-2)

15. He needs a small group instruction outside general education to minimize distractions and teach strategies. He needed occupational therapy to receive help in writing, attending to task, focus, and work on developing a threshold for visual and auditory distractions. He needed behavioral support services to build and improve social and self-management skills. He needs speech and language therapy to address deficits in expressive language and pragmatic language in addition to auditory comprehension. (R-1-10)

16. The Student attended School A for elementary school and was very frustrated in this setting. He would have difficulty processing the lessons. (Testimony of Witness A; Testimony of Petitioner)

17. Near the start of the 2011-2012 school year, the Student was able to read and write numbers from 1 to 20, and could count with 1:1 correspondence up to 20. He could write letters but could not match words to pictures, . He had difficulty communicating and had particular difficulty with auditory memory. He had difficulty with one step directions. (R-1-2-4, 7)

18. The IEP dated February 10, 2010 recommended 25 hours of specialized instruction outside general education, with 180 minutes per month of speech and language pathology, 240 minutes per month of occupational therapy, and 240 minutes per month of behavioral support services. (P-1-8)

19. The IEP dated November 11, 2011 recommended 20 hours a week of specialized instruction outside of general education, 2 hours per month of speech and language pathology

outside general education, 4 hours per month of occupational therapy outside general education, and 4 hours per month of behavioral support services. (R-1-9)

20. ESY services were added by amendment dated March 30, 2012. (P-2-1)

21. In regard to services actually offered: in November, 2011, the Student was offered 105 minutes of speech and language therapy; in December, 2011, the Student was offered 120 minutes speech and language therapy; in January, 2012, the Student was offered 120 minutes of speech and language therapy; in February, 2012, the Student was offered 120 minutes of speech and language therapy; in March, 2012, the Student was offered 180 minutes of speech and language therapy; in April, 2012, the Student was offered 60 minutes of speech and language therapy; in May, 2012, the Student was offered 180 minutes of speech and language therapy; in June, 2012, the Student was offered 60 minutes of speech and language therapy. (R-9-1-8)

22. In November, 2011, the Student was offered 90 minutes of behavioral counseling; in December, 2011, the Student was offered 210 minutes of behavioral counseling; in January, 2012, the Student was offered 240 minutes of behavioral counseling; in February, 2012, the Student was offered 240 minutes of behavioral counseling; in March, 2012, the Student was offered 300 minutes of behavioral counseling; in April, 2012, the Student was offered 120 minutes of behavioral counseling; in May, 2012, the Student was offered 240 minutes of behavioral counseling. (R-6-1-15)

23. In November, 2011, the Student was offered 360 minutes of occupational therapy; in December, 2011, the Student was offered 120 minutes of occupational therapy; in January, 2012, the Student was offered 240 minutes of occupational therapy; in February, 2012, the Student was offered 180 minutes of occupational therapy; in March, 2012, the Student was offered 180 minutes of occupational therapy; in April, 2012, the Student was offered 60 minutes

of occupational therapy; in May, 2012, the Student was offered 120 minutes of occupational therapy. (R-7-1-13)

24. Counseling was offered to the Student for 105 minutes in July, 2012. (R-6-19)

25. Occupational therapy was offered to the Student for 120 minutes for the summer, 2012. (R-7-14)

26. For the 2011-2012 school year, progress was reported in speech and language issues in the following areas: attending to task, auditory memory, and recalling facts and events. (R-8-1-4, 9-10, 14-15)

27. Little progress was reported in emotional, social and behavioral issues. (R-8-5-6, 10-11, 14-15)

28. Progress was reported in occupational therapy in the following areas: developing visual motor skills, cutting pictures out of paper, copying letters, and using sensorimotor strategies. (R-8-6, 11, 17)

29. The Student again went to School A for 2012-2013. (Testimony of Petitioner)

30. By November 19, 2012, the Student was counting to 100 but showed only very modest improvement in his reading and writing. Impulse control continued to be an issue. Communication issues in the expressive and pragmatic areas continued to make it difficult for the Student to access general education. (R-2-2-3, 7-8)

31. The November 19, 2012 IEP reduced behavioral support services to 3 hours per month and kept other services the same. (R-2-13) This IEP provided for ESY services. (R-2-15)

32. The classroom was very chaotic at School A for 2012-2013. The teacher and the students became involved in physical altercations during the school day. (Testimony of Witness C)

33. The Student was not learning much in this classroom. The teacher did not know how to address his behavioral issues and believed that the Student could not learn. (Testimony of Witness C)

34. In regard to related services actually offered to the Student: in September, 2012, the Student was offered 135 minutes of speech and language therapy; in October, 2012, the Student was offered 165 minutes of speech and language therapy in one session; in November, 2012, the Student was offered 165 minutes of speech and language therapy; in December, 2012, the Student was offered 110 minutes of speech and language therapy; in January, 2013, the Student was offered 90 minutes of speech and language therapy; in February, 2013, the Student was offered 120 minutes of speech and language therapy; in March, 2013, the Student was offered 105 minutes of speech and language therapy; in April, 2013, the Student was offered 105 minutes of speech and language therapy; in May, 2013, the Student was offered 135 minutes of speech and language therapy; in June, 2013, the Student was offered 120 minutes of speech and language therapy in one session. (R-9-9-25)

35. In September, 2012, the Student was offered 150 minutes of behavioral support services; in October, 2012, the Student was offered 240 minutes of speech and language therapy; in November, 2012, the Student was offered 180 minutes of speech and language therapy; in December, 2012, the Student was offered 120 minutes of behavioral support services; in January, 2013, the Student was offered 180 minutes of behavioral support services; in February, 2013, the Student was offered 240 minutes of behavioral support services; in March, 2013, the Student was

offered 180 minutes of behavioral support services; in April, 2013, the Student was offered 120 minutes of behavioral support services; in May, 2013, the Student was offered 330 minutes of behavioral support services; in June, 2013, the Student was offered 120 minutes of behavioral support services. (R-6-16-35)

36. In September, 2012, the Student was offered 210 minutes of occupational therapy; in October, 2012, the Student was offered 180 minutes of occupational therapy; in November, 2012, the Student was offered 180 minutes of occupational therapy; in December, 2012, the Student was offered 180 minutes of occupational therapy; in January, 2013, the Student was offered 180 minutes of occupational therapy; in February, 2013, the Student was offered 80 minutes of occupational therapy; in March, 2013, the Student was offered 180 minutes of occupational therapy; in April, 2013; the Student was offered 150 minutes of occupational therapy; in May, 2013, the Student was offered 210 minutes of occupational therapy; in June, 2013, the Student was offered 150 minutes of occupational therapy. (R-7-15-45)

37. For 2012-2013, progress in speech and language was reported in the following areas: demonstrating attention to task, recalling facts or events, maintaining a conversational topic. The fourth reporting period saw no progress and a decline in some areas. (R-8-24-25, 29-30, 35-36, 41-42)

38. For 2012-2013, progress was reported in emotional, social and behavioral development in the following areas: remaining in his own space, refraining from being aggressive to peers, verbal outbursts, and stating cause and effect. (R-8-25-26, 30-31, 36-37, 42-43)

39. For 2012-2013, progress was reported in occupational therapy in the following areas: developing visual motor skills, using sensimotor strategies, cutting out pictures, improving visual perceptual skills, maintain a tripod grasp, and written skills. (R-8-26, 31-32, 37-38, 43-44)
40. Notwithstanding reports of some progress, meaningful progress for 2012-2013 was limited. The Student was very difficult to teach. (P-10-2)
41. Instruction was particularly difficult in the Student's classroom, which was chaotic and uncontrolled. (P-10-3)
42. WISC-IV testing reported in July, 2013 found that the Student has extremely low to low average scores, with extremely low processing speed scores. (P-12-4-7)
43. WJ-III Tests of Achievement testing in July, 2013 found that the Student was borderline in letter-word identification, and significantly below average in all other areas. Broad math standard scores was 38. Broad reading standard score was 57. (P-12-7)
44. Teacher scores from the ABAS-II composite in July, 2013 showed scores ranging from the 23<sup>rd</sup> percentile in social skills to the first percentile in conceptual skills. (P-12-10)
45. ESY speech and language therapy services were not provided for this Student for summer, 2013. (R-9-23)
46. Occupational therapy was provided to the Student for 210 minutes for July, 2013 and 30 minutes in August, 2013. (P-7-43-44)
47. The Student was provided with one session of counseling in August, 2013 for 180 minutes. (R-6-36)
48. An IEP meeting was held on September 6, 2013, during which the parties went over evaluations, reviewed IEP goals, reviewed IEP hours, and reviewed the Student's placement at School A. Petitioner indicated that the Student required a smaller class size and a quieter

setting. The team decided to increase the Student's hours. A representative from the District, Witness D, indicated that she would initiate the "LRE" process. No IEP was generated as a result of this meeting, which was continued on September 27, 2013 because the meeting ran too late. (Testimony of Witness A, Testimony of Petitioner, Testimony of Witness D)

49. At the IEP meeting on September 27, 2013, Petitioner and the District representatives discussed the Student's levels of performance, the fact that School A could not implement the IEP, and that the parties agreed on the Student needing 27.5 hours of specialized instruction out of the general education setting. (Testimony of Witness A)

50. The additional hours were to be allocated to "specials" such as art, music and physical education. (Testimony of Witness D)

51. By September 27, 2013, the Student was below kindergarten level in regard to math fluency and applied problem solving. Reading was now at a first grade level, with a broad reading score of 1.4 grade level equivalent on the Woodcock-Johnson III. There were writing difficulties resulting in incorrect grammar, punctuation, capitalization, spelling. Speech concerns remained in the areas of expressive language and pragmatics. He was on task for 76 percent of the time. Overall, his stress and attentional difficulties were very high. (R-4-2-8)

52. The September 27, 2013 IEP increased the Student's specialized instruction hours outside general education to 27.5. Behavioral support services were increased to 240 minutes per month. Speech and language pathology and occupational therapy recommendations were not changed. (R-4-13)

53. In regard to services actually offered, in September, 2013, the Student was offered 120 minutes of speech and language therapy; in October, 2013, the Student was offered 120 minutes of speech and language therapy; in November, 2013, the Student was offered 90 minutes

of speech and language therapy; in December, 2013, the Student was offered 60 minutes of speech and language therapy. (R-9-25-28)

54. In September, 2013, the Student was offered 180 minutes of behavioral support services; in October, 2013, the Student was offered 120 minutes of behavioral support services; in November, 2013, the Student was offered 240 minutes of behavioral support services; in December, 2013, the Student was offered 190 minutes of behavioral support services. (R-6-38-45)

55. In September, 2013, the Student was provided 240 minutes of occupational therapy; in October, 2013, the Student was offered 210 minutes of occupational therapy; in November, 2013, the Student was offered 210 minutes of occupational therapy; in December, 2013, the Student was offered 150 minutes of occupational therapy. (R-7-6-56)

56. For 2013-2014, progress has been noted in speech and language therapy in regard to demonstrating attention to tasks, maintaining conversation, identifying reality from fantasy, staying on topic, and using appropriate social skills. (R-8-53-55)

57. For 2013-2014, progress has been noted in occupational therapy in regard to demonstrating improved written communication skills, and improved visual perceptual skills. (R-8-55-57)

58. At a resolution meeting, Witness D of Respondent recommended School B. No location of services had been provided to the Student prior to this meeting for the 2013-2014 school year. Petitioner was told that School B had hired two new teachers to start a program. Respondent's staff were unable to answer questions about specifics, e.g. the number of Students in the class, the class size.

59. School B could not implement the IEP because it could not provide 27.5 hours of specialized instruction outside general education. (Testimony of Witness A, Testimony of Witness D)

60. The Student received a notice placing him at School B on December 20, 2013. (R-11-1, R-12-1)

61. Thereafter, about December 11, 2013, a school tour was set up. Petitioner was told that the classroom at School B contained two sixth graders and two eighth graders. The teacher of the class, Teacher A, indicated that he did not know how he could teach the Student. (Testimony of Witness A, Testimony of Witness C)

62. Teacher A is not a licensed teacher. (Testimony of Witness A, P-19-1)

63. During the 2013-2014 school year, the Student has remained at School A. The teacher at School A has difficulty providing appropriate scaffolding for Students. The Student is being bullied in class. (Testimony of Witness A; Testimony of Witness C; P-9-1-2; P-20-1)

64. The Student has received 22.5 hours of specialized instruction outside of general education at School B starting on September 30, 2013. (Testimony of Witness D)

### **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:

The burden of proof in a special education due process hearing lies with the party seeking relief. 5 DCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005).

The central purpose of the IDEA is to ensure that all children with disabilities have available to them special education and related services designed to meet their unique needs and provided in conformance with a written IEP (i.e., free and appropriate public education, or

“FAPE”). 20 U.S.C. Sects. 1400(d)(1)(A), 1401(9)(D), 1414(d); 34 C.F.R. Sects. 300.17(d), 300.320; Shaffer v. Weast, 546 U.S. 49, 51 (2005). Pursuant to the Supreme Court's decision in Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176, (1982), the IEP must, at a minimum, “provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005). The standard set out by the Supreme Court in determining whether a child is receiving a FAPE, or the “basic floor of opportunity,” is whether the child has “access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” Rowley, 458 U.S. at 201. The IDEA, according to Rowley, imposes “no additional requirement that the services so provided be sufficient to maximize each child's potential commensurate with the opportunity provided other children.” Id. at 198; A.I. ex rel. Iapalucci v. Dist. of Columbia, 402 F. Supp. 2d 152, 167 (D.D.C. 2005)

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).

Petitioner raises one remaining FAPE claim. This claim, in effect, alleges that: a) Respondent failed to implement the current IEP insofar as specialized instruction is concerned; and b) Respondent failed to implement the current and prior IEPs insofar as related services are concerned.

“Failure to implement” claims are actionable if the school district cannot materially implement an IEP. A party alleging such a claim must show more than a de minimis failure, and must indicate that substantial or significant portions of the IEP could not be implemented. Savoy v. District of Columbia, 844 F. Supp.2d 23 (D.D.C. 2012)(holding no failure to implement where District’s school setting provided ten minutes less of specialized instruction per day that was on the IEP); see also Van Duyn ex rel Van Duyn v. Baker School Dist. 5J, 502 F.3d 811 (9<sup>th</sup> Cir. 2007).

1. Specialized Instruction, 2013-2014.

The record is clear that Respondent failed to implement the Student’s IEP in regard to specialized instruction for 2013-2014.

The record shows that 27.5 hours of specialized instruction out of the general education setting were required by the September 27, 2013. However, no location of services was provided to this Student by the time of the filing of this Due Process Complaint. Eventually, in December, 2013, Respondent sent Petitioner a notice assigning the Student to School B. However, School B cannot provide this Student with the 27.5 hours of specialized instruction outside of general education. The Student has ended up back in School A, which also cannot provide the Student with 27.5 hours of specialized instruction outside of general education. As a result, the Student has been receiving only 22.5 hours of specialized instruction out of general education per week. I find this a material deviation from the IEP, and Respondent does not argue otherwise. Respondent denied the Student a FAPE when it failed to implement the September 27, 2013 IEP in regard to specialized instruction hours outside of general education.

2. Related Services, 2011-present.

A review of the service tracking logs reveals that the Student was not provided with his mandate of related services in many respects for the past three years. The question for this IHO is whether the failure to implement here rises to the level of a material failure.

a. 2011-2012.

The record indicates that the Student missed at least 300 minutes of occupational therapy during the 2011-2012 school year. In regard to behavioral support services, the record indicates that the Student also missed over 300 minutes of services. Respondent suggests that these services were missed because other activities supplanted the therapies on such days. Respondent also argues, pointing to Savoy, that such an amount of missed services constitutes a de minimis violation. However, this Student has significant behavioral issues and issues with writing which should have been addressed with regular therapy without exception. The IEP does not allow for related services to be skipped in the event of testing, trips and the like. To this IHO, this large number of missed minutes in behavioral support and occupational therapy deprived the Student of educational benefit and rises to the level of FAPE denial for 2011-2012.<sup>1</sup>

b. 2012-2013.

The record shows that the Student missed over 500 minutes of occupational therapy during this school year. This Student has significant behavioral issues and issues with writing which should have been addressed with regular therapy without exception. Again, Respondent argues that Savoy precludes a finding of FAPE denial here. However, on these facts, I am persuaded that the Student required regular therapy to address his issues in class. I find that this

---

<sup>1</sup> I do not base this finding of FAPE denial on missed speech and language therapy hours for 2011-2012. The record shows that the Student missed less than 50 minutes of speech and language therapy for the year, a de minimis number of missed services.

large number of missed minutes deprived the Student of educational benefit and rises to the level of FAPE denial for 2012-2013.<sup>2</sup>

Additionally, the Student did not receive any speech and language therapy during the summer, 2013. I find that the lack of speech and language therapy during summer, 2013 deprived the Student of educational benefit and therefore denied him a FAPE.

c. 2013-2014.

The record shows that the Student has missed related services hours for this current school year. By this IHO's count, the Student has missed 90 minutes of speech and language therapy, 150 minutes of occupational therapy, and 210 minutes of occupational therapy. I have already ruled that the Student has been denied FAPE for 2013-2014. The lack of an appropriate mandate of related services underscores the inappropriateness of the Student's program for the current school year.

### 3. Relief.

When school districts deny Students a FAPE, courts have wide discretion to insure that students receive a FAPE going forward. As the Supreme Court stated:

The statute directs the court to "grant such relief as [it] determines is appropriate." The ordinary meaning of these words confers broad discretion on the court. The type of relief is not further specified, except that it must be "appropriate." Absent other reference, the only possible interpretation is that the relief is to be "appropriate" in light of the purpose of the Act. As already noted, this is principally to provide handicapped children with "a free appropriate public education which emphasizes special education and related services designed to meet their unique needs.

---

<sup>2</sup> I should note that, in regard to speech and language therapy and behavioral support services, the record shows that the Student missed a de minimis number of hours.

School Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985).

I will therefore order the District to implement its current IEP at a location of services that can provide the Student with 27.5 hours of specialized instruction outside of general education. I do not agree with the argument proffered by Witness D that providing this Student with a general education classroom together with a special education paraprofessional can somehow satisfy this mandate. This mandate can only be fulfilled by placement of the Student in a location of services that provides him with 27.5 hours of specialized instruction in a classroom that is taught by a special education teacher. This location may be public or non-public. Since the record does not suggest that such a location is impossible to find in the District of Columbia and its environs, I decline Petitioner's request for the IHO to order the Respondent to "create" a program here.

In regard to relief connection to to the related services issues, Petitioner is seeking two years of Orton-Gillingham instruction inside the classroom, two years of academic tutoring after school, two years of counseling by a licensed clinical psychologist or social worker, two years of a social skills group, and one year of speech and language therapy and occupational therapy.

One of the equitable remedies available to a hearing officer, exercising his authority to grant "appropriate" relief under IDEA, is compensatory education. 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 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. Specifics regarding the type of relief sought may not be required by Courts if witnesses have identified where the Student was before FAPE denial, where the Student should be after FAPE denial, the number of hours of compensatory education needed for the Student, and what program would get the student where he should be, and what it would consist of. Cousins v. District of Columbia, 2012 WL 3090265 (D.D.C. 2012).

I find some of Petitioner's requests to be insufficiently unconnected to the FAPE deprivation here. The Student did not receive five hours of specialized instruction per day for the past four or so months and did not receive his related services regularly. As compensation, Petitioner seeks two years of Orton-Gillingham instruction inside the classroom, and two years of academic tutoring outside the classroom. I find this request is disproportionate to the harm suffered to the Student. Taking into account that this disabled Student will likely need time to adjust to tutoring before he can derive any meaningful educational benefit that can compensate him for the deficient program for 2013-2014, I will instead order that the Student receive six months of Orton-Gillingham based academic tutoring, for one hour per day. The Student has

significant deficits in academics and will benefit from this kind of specialized instruction, which should address the Student's FAPE denial for 2013-2014. Tutoring shall be provided after school on school days.

In regard to related services, I find Petitioner's request for two year of a social skills group to be disproportionate to the harm actually suffered by the Student. To compensate the Student for the lack of behavioral support services, I will instead order the Student to receive one hour per week of a "social skills group" for a three month period of time. The Student has behavior issues, including issues relating to attentiveness, which can be addressed with such a group. This kind of service should address Respondent's failure to provide the Student with behavioral support services in 2011-2012. To compensate the Student for the lack of occupational therapy services, I will order that the Student receive one hour per week of occupational therapy services for a six month period. The Student will benefit from occupational therapy given his deficits in writing, attending to task, and focusing. This service shall address Respondent's failure to provide sufficient occupational therapy for the 2011-2012 and the 2012-2013 school years. To compensate the Student for the lack of speech and language therapy over the summer, 2013, I will order that the Student receive a block of 200 minutes of additional speech and language therapy services, to be used as per Petitioner's preferences by the end of the 2014-2015 school year. The Student will benefit from speech and language therapy given his expressive, pragmatic language, and auditory memory deficits.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law:

1. Respondent is adjudged to have denied the Student a FAPE by failing to implement the Student's IEPs during the 2011-2012, 2012-2013, and 2013-2014 school years;

2. Respondent is directed to immediately provide the Student with a location of services that can provide the Student with 27.5 hours of specialized instruction outside general education;

3. Within 30 days, Respondent is directed to provide the Student with one hour per day of Orton-Gillingham tutoring after school on every school day for six months;

4. Within 30 days, Respondent is directed to provide the Student with receive one hour per week of a “social skills group” for a three month period of time;

5. Within 30 days, Respondent is ordered to provide the Student with one hour per week of occupational therapy services for a six month period of time;

6 Respondent is ordered to provide the Student with 200 minutes of speech and language therapy services, to be used as per Petitioner’s preferences by the end of the 2014-2015 school year.

Dated: January 22, 2014

*Michael Lazan*  
Impartial Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

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

Date: January 22, 2014

*Michael Lazan*  
Impartial Hearing Officer