District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parent, on behalf of Student,[1]	)	**Room: 2004 (810 First Street)**
Petitioner,	)	**Hearing: January 10, 2018**
	)	**HOD Due: January 13, 2018**
v.	)	**Hearing Officer: Michael Lazan**
	)	**Case No.: 2017-0293**
District of Columbia Public Schools,	)	**Issue Date: January 13, 2018**
	)	
Respondent.	)	

HEARING OFFICER DETERMINATION

I. Introduction

This case involves a 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 October 30, 2017. Petitioner is the parent of the Student. On November 6, 2017, Respondent filed a response. A resolution meeting was held on November 21, 2017. The resolution period expired on November 29, 2017.

II. Subject Matter Jurisdiction

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

[1]Personally identifiable information is attached as Appendix A, which 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 December 14, 2017, the Hearing Officer held a prehearing conference. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on December 19, 2017, summarizing the rules to be applied in the hearing and identifying the issues in the case.

There was one hearing date: January 10, 2018. This was a closed proceeding. Petitioner was represented by Attorney A, Esq. Respondent was represented by Attorney B, Esq. Petitioner moved into evidence Exhibits 1-28. Respondent made objections to Exhibits 1-4, 11, 13-24, and 25-28. The objections were sustained in regard to Exhibits 14, 15 and 16. All other objections were overruled. Exhibits 1-13 and 17-28 were admitted. Respondent moved into evidence Exhibits 6-7. There were no objections. Exhibits 6-7 were admitted. At the close of testimony, both sides presented oral closing statements.

Petitioner presented as witnesses: Petitioner; Witness #1, from X Learning Center; Psychologist A; Witness #2, a paralegal; and Witness #3, an advocate. Respondent presented as witnesses: Assistant Principal A, from School A, and Assistant Principal B, from School B.

IV. Credibility.

Petitioner's contentions that the Student had a chronic illness were not supported by any documentation, medical or otherwise. Accordingly, there is reason to doubt these contentions. There were no other material issues raised in regard to Petitioner's

testimony. Psychologist A's contention that the Student should have been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") was largely premised on assertions from a teacher. However, that teacher only stated that the Student *might* have ADHD. Psychologist A also failed to explain clearly why changes were made to the Revised Comprehensive Psychological Evaluation, which was moved into evidence. A different version of this same report was submitted to the Student's school but was not moved into evidence. Assistant Principal A, while impressive and articulate, gave questionable testimony about being willing to evaluate the Student in December, 2016. There was little documentation to this effect in the record, and Assistant Principal A testified it was going to be "exceptionally difficult" for the Student to qualify for an Individualized Education Program ("IEP") due to absenteeism, even though the Student did eventually qualify for an IEP. The other witnesses were generally credible and presented testimony consistent with their earlier statements, if any.

V. Issues

As identified in the Prehearing Conference Summary and Order and in the Due Process Complaint, the Free Appropriate Public Education ("FAPE") issues to be determined were as follows:

1. Did Respondent violate "Child Find" when it failed to evaluate the Student in or about fall, 2016? 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? If so, did Respondent deny the Student a FAPE?

2. Did Respondent fail to provide Petitioner with access to the Student's educational records within forty-five days of Petitioner's request for such records? If so,

did Respondent violate 20 U.S.C. Sect. 1232g(a)(1)(a)? If so, did Respondent fail to allow the parent meaningful participation in the IEP process in violation of 34 CFR Sect. 300.513(a) and 300.501(b)? If so, did Respondent deny the Student a FAPE?

Petitioner has requested, as compensatory education, 300-500 hours of tutoring services and a new IEP with additional special education services in reading and writing.

VI. Findings of Fact

1. The Student is a X year old eligible for services as a student with a Specific Learning Disability. The Student has had attendance and tardiness problems throughout his/her academic career. The Student is below grade level in all academic areas and can be inattentive in class. The most recent cognitive testing for the Student revealed a Full-Scale IQ of 73. (P-6; R-6; Testimony of Witness #1)

2. When left alone, the Student does not accomplish many learning tasks. During whole group instruction, the Student often gets distracted, though the Student does come to class wanting to complete work. The Student seeks help when confused, but sometimes does not realize help is needed. In general, the Student's approach to work is slow and laborious. (P-5; P-6-3)

3. At the start of the 2016-2017 school year, the Student attended School A in a general education program. The Student was not eligible for special education services. Petitioner believed the Student was not doing well in school because the Student, among other things, could not complete homework independently. On or about September 16, 2016, Petitioner, through counsel, sent Principal X of School A two correspondences formally requesting evaluations and production of records. Petitioner specifically sought an evaluation for special education, stating that the Student should

receive a psycho-educational evaluation, a social history, clinical testing and a "Connor's" evaluation. (P-22-4; Testimony of Petitioner)

4. Petitioner, again through counsel, followed up on these requests with emails over the next few months. Respondent did not clearly react to these requests until on or about December, 2016, when Petitioner specifically questioned Assistant Principal A of School A at a meeting. Assistant Principal A told Petitioner it would be exceptionally difficult for the Student to qualify for an IEP because of the Student's absenteeism. (P-24-8-11; Testimony of Petitioner; Testimony of Witness #2; Testimony of Assistant Principal A)

5. Assistant Principal A and Petitioner's representatives then tried to set up a meeting. Assistant Principal A wanted to review existing data and determine if there was any need for "Response to Intervention" or evaluations. The parties tried to find a time to meet before the school year ended, but no meeting occurred. During the 2016-2017 school year, no consent forms for evaluations were sent to the parent, no evaluations conducted of the Student, and the Student did not receive an IEP, or an IEP meeting. (P-20; Testimony of Assistant Principal A)

6. The Student had difficulty with attendance during the 2016-2017 school year. The Student was absent thirty-four days, and tardy approximately seventy days. Accordingly, the Student missed a significant amount of "literacy block" time. Because literacy block skills "build upon" each other, the days the Student went to school were not as meaningful as they could have been, because the Student had not received the requisite instruction beforehand. The Student did better in school when attendance was regular. (Testimony of Assistant Principal A)

7. School A tried to remediate the Student's deficits through general education interventions. It offered tutoring before and after school, work over breaks, and even an alarm clock, but the Student showed little interest in extra help and did not meaningfully participate in the interventions. (Testimony of Assistant Principal A)

8. The Student's grades were low during the 2016-2017 school year. In the first three terms, the Student scored a "1" in writing and language, indicating significantly below grade level performance. In speaking and listening, the Student scored a "1" for terms one and three, and a "0" for term two. In math, the Student scored a "2" in the first term, indicating below grade level, and a "1" in terms two and three. The Student's report card for term 4 of the 2016-2017 school year indicated "NM," for No Mark, in all areas. The report card indicated that, for the second and third terms, the Student rarely participated, made an effort, returned completed homework, respected the rights of others, or listened when others spoke. (P-10-1)

9. Testing conducted by X Learning Center, dated August 3, 2017, revealed low scores in "picture vocabulary," at the 8th percentile, and in listening for oral directions, below the first percentile. However, the Student scored at the 93rd percentile in "word attack," and at the 77th percentile in oral reading. Additionally, the Gray Oral Reading Test, Form A, indicated that the Student was functioning at grade level in most areas. On this test, the Student scored at the 63rd percentile in word reading and at the 50th percentile in spelling, though only the 9th percentile in math computation. (P-7)

10. In or about August, 2017, Psychologist A conducted an independent evaluation of the Student. The corresponding report, dated September 1, 2017, found that the Student was at least two grade levels below the norm in all academic areas, as well as

at-risk for "Attention and Learning Problems." However, on the Woodcock-Johnson IV Tests of Achievement, Form A and Extended, the Student scored in the "average range" in reading overall, with a "low average" score on reading comprehension. In writing, the Student also scored in the "average range." In math, the Student scored in the low range, with a "low average" score for applied problems. By percentile rank, the Student was in the 27th percentile in reading, 8th percentile in math, and 30th percentile in writing. In overall academic skills, the Student was ranked in the 19th percentile. (P-6-1-6, 12-13; Testimony of Psychologist A)

11. Psychologist A also tested the Student to determine the extent to which behavioral issues were a factor in school. Pursuant to the Behavior Assessment for Children, 3rd Edition, Psychologist A questioned the Student's teacher. The teacher's answers led to a low score (11th percentile) in "externalizing problems." However, the Student's scores for school problems, "internalizing problems," behavior symptoms, and adaptive skills were in the "average range." (P-6-7-8)

12. On June 26, 2017, Petitioner sought, by letter, a multidisciplinary team ("MDT") meeting to "discuss the Student's cumulative and special education files from the third and fourth term" and discuss the status of the requested evaluations. However, there was no MDT meeting over the summer of 2017. (P-18-2)

13. The Student moved to a new school, School B, for the 2017-2018 school year. School B evaluated the Student: it conducted teacher observations, created teacher reports, reviewed the testing by Psychologist A, reviewed work samples, and reviewed other assessments, including the Student's "Beginning of the Year" and Scholastic Reading Inventory testing. Respondent held an eligibility meeting for the Student in or

about October, 2017, during which Respondent determined the Student eligible for services as a Student with a Specific Learning Disability. The decision on eligibility was a difficult one for the staff at School B, but they were persuaded by the testing results and by Petitioner's insistence that the Student receive services. There was no discussion of attendance problems at this meeting. (Testimony of Assistant Principal B)

14. Petitioner received copies of some of the Student's educational records on or about December 19, 2016. (P-22-2)

15. An IEP meeting was held for the Student on December 20, 2017. The draft IEP formulated at this meeting provided math and reading goals, and recommended four hours per week of specialized instruction: two hours each in reading and mathematics. All services were to be provided within general education. Accommodations included use of a calculator, preferential seating, small group testing, extended time, flexible scheduling, and testing administered over several days. Both the parent and the parent's advocate, Witness #3, agreed with the services. However, Witness #3 wanted additional goals, different transportation arrangements, a different eligibility category, and an alternative school setting. (P-5; Testimony of Witness #3)

16. After the IEP meeting, Witness #3 proposed additional math, reading, writing, and social, emotional and behavioral goals. School B agreed to incorporate all of the goals into the IEP except for the social and emotional goals. School staff encouraged Petitioner to bring in information to supplement her request for social and emotional goals. School B sent the finalized IEP to Petitioner over the Christmas break, 2017-2018. (P-13; Testimony of Witness #3; Testimony of Assistant Principal B)

17. During the 2017-2018 school year, the Student's attendance has improved. After being marked absent or tardy for almost twenty days in September and October, 2017, the Student has not been marked absent or tardy since October 26, 2017. The Student is in classes that contain from ten to fifteen students, most of whom are below grade level like the Student. The Student is also in a reading intervention class, a math intervention class, and gets small group supports within general education. (R-6-1; Testimony of Assistant Principal B)

VII. Conclusions of Law

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

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

> Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, 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 shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.

See D.C. Code § 38-2571.03(6)(A)(i)

Here, neither issue directly involves a challenge to the Student's existing or proposed IEP or placement. Accordingly, there is no dispute that, for this due process hearing, the burden of proof lies with the party seeking relief. Schaffer v. Weast, 546 U.S. 49 (2005).

1. Did Respondent violate "Child Find" when it failed to evaluate the Student in or about fall, 2016? 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 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. 20 U.S.C. Sects. 1400(d)(1(A), 1401(9)(D), 1414(d); 34 C.F.R. Sects. 300.17(d), 300.320. The "Child Find" provisions of the IDEA require each State to have policies and procedures in effect to ensure that "[a]l1 children with disabilities residing in the State ... who are in need of special education and related services, are identified, located, and evaluated." 20 U.S.C. Sect. 1412(a) (3) (A); 34 C.F.R. Sect. 300.111(a). Child Find must include any children "suspected of being a child with a disability under Section 300.8 and in need of special education, even though they are advancing from grade to grade." 34 C.F.R. Sect. 300.111(c)(1).

Federal caselaw 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). In the District of Columbia, the Local Educational Agency ("LEA") must conduct an initial evaluation to determine the child's eligibility for special education services "within 120 days from the date that the student was referred [to DCPS] for an evaluation or assessment." D.C.Code Sect. 38–2561.02(a). Once the

eligibility determination has been made, the LEA must conduct a meeting to develop an IEP within 30 days. 34 CFR Sect. 300.323(c)(1); G.G. ex rel. Gersten v. District of Columbia, 924 F.Supp.2d 273, 279 (D.D.C. 2013).

Respondent did not conduct an initial evaluation within 120 days of September 16, 2016, the date that Petitioner requested an evaluation. The Student's IEP was not written until December, 2017, well over a year after the request for evaluation. Respondent's position is that this violation is procedural in nature and therefore should not be sustained. As stated by the D.C. Circuit: "(a)n IDEA claim is viable only if those procedural violations affected the student's substantive rights." Lesesne ex rel. B.F. v. D.C., 447 F.3d 828,834 (D.C. Cir. 2006); Kruvant v. District of Columbia, 99 Fed. App'x. 232, 233 (D.C. Cir. 2004); cf. 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).

However, it is fair to conclude that the Student was entitled to educational services by about February, 2017. Only ten months later, the IEP team found that the Student needed special education services and offered the Student four hours of specialized instruction per week. The draft IEP from December, 2017, indicated that the Student needed these services because of difficulties working alone, without close support. There is nothing in the record to suggest that the Student's needs were different ten months earlier. Nor was a witness presented to support the contention that the services offered in the December, 2017 IEP were so *de minimus* as to be inconsequential to the Student's education. Respondent also did not point to any caselaw where a loss of four hours of services per week was considered "procedural" in nature.

Respondent suggested the Student's absences and tardiness caused the Student's difficulties in school, and that these attendance issues caused the Student's low grades and test scores. The record does indicate that absences and tardiness played a partial role in the Student's difficulties. Even so, it is reasonable to agree with Respondent's own IEP team that the Student needed specialized instruction to address cognitive and attentional issues. In fact, the IEP team at School B did not even discuss the Student's absences at the IEP meeting in December, 2016. Cf. Joaquin v. Friendship Pub. Charter Sch., No. CV 14-01119 (RC), 2015 WL 5175885, at *6 (D.D.C. Sept. 3, 2015)(even though Student was absent during much of the time period in question, LEA held violative of IDEA when it failed to provide Student with transition services).

As a result of the foregoing, Respondent denied the Student educational benefit, and therefore a FAPE, when it failed to evaluate the Student within 120 days or provide the Student with an IEP within 30 days of the request to evaluate.

2. Did Respondent fail to provide Petitioner with access to the Student's educational records within forty-five days of the request for such records? If so, did DCPS violate 20 U.S.C. Sect. 1232g(a)(1)(a)? If so, did DCPS fail to allow the parent meaningful participation in the IEP process in violation 34 CFR Sect. 300.513(a) and 300.501(b)? 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 applicable 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, school districts have a duty to ensure 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).

20 U.S.C. Sect. 1232g(a)(1)(A) requires each educational agency or institution to grant parents access to the educational records of their children no more than forty-five days after such a request. The IDEA regulations provide in pertinent part: "(t)he parent of a child with a disability must be afforded, in accordance with the procedures of Sects. 300.613 through 300.621, an opportunity to inspect and review all education records with respect to -- the identification, evaluation, and educational placement of the child and the provision of FAPE to the child." 34 C.F.R. Sect. 300.501(a). The term "education records" means the type of records covered under the definition of "education records" in 34 C.F.R. Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Sect. 1232g (FERPA)). 34 C.F.R. Sects. 300.611-300.625. Education records as defined under FERPA are "directly related to a student" and "maintained by an educational agency or institution or by a party acting for the agency or institution." The term does not include: "records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the "record."" "Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm and microfiche. 34 C.F.R. Sect 99.3.

There is no dispute that Petitioner requested the Student's records through written request on September 16, 2016, and reiterated the request through emails several times

during the remainder of the 2016 calendar year. The broad request was for a copy of the Student's educational records, including attendance records, progress reports, report cards, standardized test scores, class schedules, IEPs, evaluations, assessments, MDT meeting notes, portfolios, related services provider logs, charts and observations, letters, memos, notes, emails, forms, data compilations, letters of understanding, and disciplinary records.

No documents were provided to Petitioner until December, 2017, after the start of this litigation. A parent should not have to resort to litigation to obtain documents from a school district, even if the parent was asking for a "copy" of the records rather than to "inspect and review" the records. Nevertheless, Petitioner did not specify which missing records were material or exactly how, and when, the lack of such records caused the parent to fail to participate in any IEP meeting, during the placement process, or during the hearing. Instead, Petitioner argued generally that the lack of records made it more difficult for her to evaluate and get services for the Student. Those general arguments were not backed up by statements from witnesses, and Petitioner did not provide any persuasive authority for the proposition that a failure to produce records can amount to a claim that the parent was denied the opportunity to participate in the IEP process. Since procedural violations of the IDEA should not form the basis of a finding of FAPE denial, Lesesne, 447 F.3d at 834, this claim must be dismissed.

VIII. Relief

As relief, Petitioner seeks compensatory education in the amount of 300-500 hours of tutoring at X Learning Center, together with a revised IEP that provides additional specialized instruction for the Student.

When school districts deny students a FAPE, courts and hearing officers have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the court or hearing officer to "grant such relief as [it] determines is appropriate." The type of relief is not further specified, except that it must be "appropriate." School Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985).

Under the theory of compensatory education, courts and hearing officers may award "educational services 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.

In 2016, the Circuit clarified the scope of FAPE deprivation in the context of FAPE denial. In B.D. v. District of Columbia, 817 F.3d 792, 797 (D.C. Cir. 2016), Judge Tatel explained that students should not only be compensated for the FAPE denial's "affirmative harm" but should also be compensated for "lost progress" that the student would have made were the Student to have received a FAPE.

Respondent argued that the Student should receive no compensatory education because of equitable considerations, pointing to cases such as Parents of Student W. v. Puyallup Sch. Dist., No. 3, 31 F.3d 1489, 1497 (9th Cir. 1994), where the behavior of the student's parents was relevant in fashioning equitable relief, since the mother declined special education for her son, never again asked for special services, and then twice declined to take advantage of summer school. Here, however, the delay in the Student's evaluation was not due to the parent's inaction or resistance to direction from the school district. To the contrary, the record established that the parent pushed for the Student to receive services and responded to the school district's requests. Respondent also cited to Garcia v. Bd. of Educ. of Albuquerque Pub. Sch., 520 F.3d 1116, 1130 (10th Cir. 2008), where the court found that a student was not due compensatory education since the student had no interest in obtaining an education. While the Student here did not take advantage of the tutoring offered by the School B, there is no dispute that the Student is interested in getting an education.

Psychologist A, who created Petitioner's compensatory education plan, framed the period of FAPE denial as the date of the request to evaluate (September 16, 2016) through the date Psychologist A's report was issued (October 13, 2017). However, Psychologist A's start date for the period of FAPE denial is incorrect, since Respondent

had 120 days to conduct the eligibility review and 30 days to create an IEP pursuant to applicable law and regulation. An IEP should therefore have been created for this Student by approximately mid-February, 2017. Since there is no showing that the Student was entitled to summer services, the Student was therefore denied a FAPE for approximately six months from mid-February, 2017 through the end of school in June, 2017, and then from the start of school in August, 2017 to October 13, 2017.

It should also be noted that the IEP team ultimately recommended that the Student should receive only four hours of specialized instruction per week. Though Petitioner now claims these hours are inadequate, Petitioner and her advocate agreed with the recommended four hours of specialized instruction when they attended the IEP meeting last month. It is fair to consider the relatively low level of services that were recommended here in calculating the extent of the deprivation of services. In consideration of all the above factors, an appropriate compensatory education award for this Student amounts to seventy-five hours of academic tutoring. The tutoring should be provided by X Learning Center, which established itself as a credible organization during the hearing through the testimony of Witness #1.

Psychologist A also recommended seventy-five hours of counseling, but the record did not show that the Student required counseling in school. No such services were recommended at the December, 2017 IEP meeting. Nor, at that meeting, did Petitioner request that the Student receive behavioral support services. Testing by Psychologist A found that the Student was behaving reasonably well in the classroom, except for attentiveness issues. Nothing in the record indicated that counseling should address the Student's attention issues.

Petitioner also asked for an increase in specialized instruction hours as relief. However, again, Petitioner and her advocate agreed on the four hours of specialized instruction at the IEP meeting in December, 2017. Moreover, the advocate, Witness #3, did *not* indicate any need for more specialized instruction during the hearing. Also considering that the Student is functioning at about the same academic level as the others in general education classes at School B, and that the classes at School B contain fifteen students at most, the record does not support the request for additional specialized instruction hours at School B.

IX. Order

As a result of the foregoing:

1. Respondent shall pay for seventy-five hours of academic tutoring for the Student, to be provided by X Learning Center, at their usual and customary rate;

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

Dated: January 13, 2018

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

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: January 13, 2018

Michael Lazan
Impartial Hearing Officer