

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

Office of Dispute Resolution
1050 First Street, N.E., Third Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
January 25, 2023

<i>Student</i> , ¹)	Case No.: 2022-0202
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 1/25/23
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates (using Microsoft Teams):
("DCPS"),)	1/18/23 & 1/19/23
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student's Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") due to DCPS's failure to provide appropriate Individualized Education Programs ("IEPs"), conduct a Functional Behavioral Assessment ("FBA") and develop a Behavioral Intervention Plan ("BIP"), and fully implement Student's IEPs. DCPS responded that there were no IDEA violations or denials of FAPE.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

Following the filing of the due process complaint on 11/16/22, the case was assigned to the undersigned on 11/17/22. Respondent was given leave to file a timely response on

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student's gender are omitted.

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11/28/22 and did not challenge jurisdiction. A resolution meeting took place on 12/1/22, but the parties did not settle the case or shorten the 30-day resolution period, which ended on 12/16/22. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 1/30/23.

A prehearing conference was held on 12/19/22 and the Prehearing Order was issued the same day, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 1/18/23 and 1/19/23 and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in the hearing.

Documents and Witnesses

Petitioner’s Disclosure, submitted on 1/10/23, contained documents P1 through P65, all of which were admitted into evidence without objection. Respondent’s Disclosure, also submitted on 1/10/23, contained documents R1 through R89, of which R1, R7, R8, R12, R15, R16, R17, R18, R19, R21, R42, R48, R49, R50, R51, R52, R53, R54, R59, R63, R66, R68, R69, R70, R72, R76, R78, R79, R81, R82, R83, R84, and R85 were offered and admitted into evidence without objection.²

Petitioner’s counsel presented 2 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. Parent
2. *Educational Advocate* (qualified over objection as an expert in IEP Programming)

Respondent’s counsel presented 7 witnesses in Respondent’s case (*see* Appendix A):

1. *Social Worker* (qualified without objection as an expert in Social Work)
2. *School Psychologist* (qualified without objection as an expert in School Psychology)
3. *Early Learning Support (“ELS”) Teacher* (qualified without objection as an expert in Special Education)

² Citations herein to Petitioner’s documents are indicated by a “P” followed by the exhibit number, a hyphen, and the page number(s) of the exhibit (legible Bates numbers are not consistently available), while Respondent’s documents are indicated by an “R” and the exhibit number, followed immediately by a “p” (for page) and the Bates number(s) with any leading zeros omitted.

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4. *Occupational Therapist* (qualified without objection as an expert Occupational Therapist)
5. *Special Education Teacher*
6. *General Education Teacher*
7. *Local Education Agency (“LEA”) Representative* (qualified without objection as an expert in Special Education Programming and Placement)

Petitioner’s counsel submitted no rebuttal evidence.

Issues and Relief Requested

The issues to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement/location of services during 2020/21³ and/or 2021/22 because the IEPs: (a) failed to provide sufficient specialized instruction until 1/16/22; (b) failed to address behavioral and social-emotional needs; (c) failed to include Extended School Year (“ESY”) in the summer of 2021; (d) were not based on comprehensive evaluation data or the most current evaluations; and/or (e) failed to include a dedicated aide. (*Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*)

Issue 2: Whether DCPS denied Student a FAPE by failing to conduct a Functional Behavioral Assessment (“FBA”) and/or develop a Behavior Intervention Plan (“BIP”) during 2020/21 and/or 2021/22, based on the recommendations of a 11/30/20 independent psychological evaluation. (*Petitioner has the burden of persuasion on this issue.*)

Issue 3: Whether DCPS denied Student a FAPE by failing to provide all speech-language and occupational therapy services over the past 2 years, amounting to 2040 minutes of missed speech-language services and 1295 minutes of missed occupational therapy services. (*Petitioner has the burden of persuasion on this issue.*)

The relief requested by Petitioner is:

1. A finding that Student has been denied a FAPE.
2. DCPS shall conduct or fund an FBA and develop a BIP.
3. DCPS shall fund compensatory education for any denials of FAPE.⁴

³ All dates in the format “2020/21” refer to school years.

⁴ Petitioner’s counsel was put on notice at the prehearing conference that at the due process hearing Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student’s alleged denial of FAPE and the specific compensatory measures needed to best correct those

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4. Any other just and reasonable relief.

Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact⁵ are as follows:

1. Background. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁶ Student is *Age, Gender, in Grade* during 2022/23 at *Current School*, after being at *Prior School* for several years.⁷ Student was born very prematurely, with an extremely low birth weight, and was hospitalized for the first six months of life and often since then.⁸ Student was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") in January 2018 and epilepsy in September 2018, and also has asthma and allergies.⁹ Student is hardworking, energetic, and loves to learn.¹⁰

2. Cognitive Ability/Classification. Student's general cognitive ability is in the Very Low to Extremely Low ranges, with a Full Scale IQ ("FSIQ") standard score of 61, based on the Wechsler Preschool and Primary Scale of Intelligence – Fourth Edition ("WPPSI-IV"); Adaptive behavior was also in the Extremely Low range, except for social skills, which were in the Below Average range and an area of personal strength.¹¹ Student was determined to have an Intellectual Disability ("ID") on 12/16/21 and the disability classification changed from Developmental Delay.¹²

3. IEPs. Student's initial IEP, dated 9/17/18, provided 2 hours/week of specialized instruction inside general education and 120 minutes/month of speech-language services (plus consultation services that are not relevant and will not be detailed herein).¹³

deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was encouraged to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE was found.

⁵ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁶ Parent.

⁷ Parent; P25-1; P62-4.

⁸ P5-1,2.

⁹ P5-1.

¹⁰ ELS Teacher.

¹¹ P5-3,4,7.

¹² P34-1,2; P35-1.

¹³ P13-1,12.

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4. Student's 5/5/20 annual IEP provided 3 hours/week of specialized instruction (1 inside and 2 outside general education), 180 minutes/month of speech-language services and 120 minutes/month of occupational therapy (related services were both inside and outside general education).¹⁴ The IEP notes that Student made gains in math, reading and writing, but missed some foundational skills; Student required "maximum support" to attempt or complete classroom assignments in math and reading, and needed "moderate support" in writing.¹⁵ Detailed accommodations were included in the Other Classroom Aids and Services, which LEA Representative testified were to address the academic and behavior issues that concerned Petitioner.¹⁶

5. On 3/9/21, Parent proposed that Student's IEP be amended to increase specialized instruction and update present levels of performance ("PLOPs") and goals, because Student had not been able to make progress in the inclusion classroom.¹⁷ Student's IEP was amended on 3/19/21 to increase specialized instruction to 20 hours/week (4 hours/day) outside general education and update PLOPs and goals.¹⁸

6. Student's next annual IEP on 5/17/21 decreased specialized instruction to 10 hours/week (2 hours/day, divided evenly between inside and outside general education) but did not change related services; DCPS could not explain the decrease in hours.¹⁹ The 5/17/21 IEP noted that Student regressed in math and reading; with major health challenges Student was not able to participate and was well below grade level, requiring maximum support to attempt or complete classroom assignments in math or reading; Student has missed most fundamental skills from the previous year.²⁰ In the 5/17/21 IEP, the same accommodations as on 5/5/20 were included in the Other Classroom Aids and Services, which Social Worker explained were very helpful to address Student's attending issues and ADHD, and as part of the IEP these accommodations superseded an FBA and BIP, although absences made the effectiveness uncertain.²¹

7. Student's IEP was amended days later, on 5/24/21, to change PLOPS and add adaptive goals, among other things.²² In proposing the 5/24/21 amendment, DCPS noted that Student had regressed in most areas, both academically and behaviorally.²³ Student

¹⁴ P14-1,12.

¹⁵ P14-3,4,6.

¹⁶ P14-13; LEA Representative.

¹⁷ P15-1.

¹⁸ P16-1,13 (efforts to confirm that 4 hours/day were not confused with 4 hours/week were not successful, although the hours/day in the next IEP were confirmed in meeting notes).

¹⁹ P17-1,13; Social Worker; R59p784 (confirmed hours).

²⁰ P17-3,5.

²¹ P17-14; Social Worker; P14-13.

²² P19-1; P18-1.

²³ P18-1.

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developed behaviors of concern, such as staying in assigned areas; Student also regressed in self care needs and had difficulty completing tasks.²⁴

8. Student's next annual IEP on 12/14/21 (creation date 12/16/21) increased specialized instruction to 20 hours/week (with all but 2 hours/week outside general education) and increased speech-language services to 240 minutes/month, while keeping occupational therapy the same at 120 minutes/month.²⁵ Student was performing well below grade level in math and reading, and required "maximum support" to attempt or complete assignments in math.²⁶ The 12/14/21 IEP noted that Student was very social and verbally engaging with peers, as well as being a very polite and respectful student.²⁷ The Other Classroom Aids and Services provided the same accommodations as previously.²⁸

9. Student's IEP was amended the next month on 1/20/22 to increase specialized instruction to 25.5 hours/week, all outside general education, as Student needed a more restrictive classroom environment.²⁹ Student's next annual IEP on 5/20/22 maintained specialized instruction and occupational therapy, but reduced speech-language services to 180 minutes/month.³⁰

10. Student's Needs. A psychological independent educational evaluation ("IEE") of Student dated 11/30/20 and signed on 12/23/20 was conducted due to Parent's concerns about Autism Spectrum Disorder ("ASD").³¹ The IEE revealed that Student did not present with ASD, but with mild ID, with both cognitive and adaptive scores well below expectations.³² Student also met the criteria for an expressive language disorder.³³ Student was likely to require support both at home and in school to develop academic and conceptual skills.³⁴

11. After beginning on 4/20/21, School Psychologist completed DCPS's formal review of the IEE on 12/9/21 (including a teacher interview apparently misdated 12/13/21).³⁵ The review noted that Student's teacher differentiated instruction to support Student's needs, but Student needed more support than the teacher was able to provide.³⁶ A 9/20/21 observation of Student noted a student-teacher ratio of 13:1 and that Student was both on and off task;

²⁴ *Id.*

²⁵ P20-1,17.

²⁶ P20-1,3,5.

²⁷ P20-10.

²⁸ P20-18.

²⁹ P23-1,17; P21-1.

³⁰ P25-1,16.

³¹ P5-1.

³² P5-8; P7-2.

³³ P5-8.

³⁴ *Id.*

³⁵ P7-1,4.

³⁶ P7-4.

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Student had difficulty initiating work, participating in discussion and completing classwork independently.³⁷ The classroom teacher needed more support.³⁸

12. The Woodcock-Johnson IV (“WJ-IV”) Tests of Achievement were administered to Student; Student’s Brief Achievement score of 58 was within the Very Low range; the Reading cluster score of 66 was within the Very Low range with difficulty identifying letters; the Math cluster score of 65 was within the Very Low range as Student was unable to do simple addition and subtraction problems; the Written Language score of 65 was within the Very Low range, with Student able to write name, but not other letters.³⁹

13. Based on the Adaptive Behavior Assessment System 3rd Edition (“ABAS-3”) ratings, Student may need support communicating and completing academic tasks, as well as in social settings.⁴⁰ With extremely low adaptive skills in the school setting, Student would require a “significant amount” of support in the educational setting.⁴¹ Student would benefit from a small, structured academic setting where Student could be monitored and supported at all times.⁴² In 2020/21, Student struggled to make significant academic progress; Student’s grades declined over the year.⁴³ DCPS’s 12/7/21 PWN noted Student’s “minimal” academic progress.⁴⁴ DCPS’s formal conclusion in its IEE Review was that due to a diagnosis of mild ID, Student might benefit from a small, structured setting in which Student could receive instruction from a dependable and caring instructor.⁴⁵

14. Evaluations. On 2/16/21, Parent consented to in person assessments only, due to Student’s ADHD, agreeing to an educational, occupational therapy and speech-language.⁴⁶ Student’s speech-language reevaluation was completed on 3/30/21 in person and concluded that Student had remained consistent or made progress, but would still benefit from extra supports.⁴⁷ In 2020/21, DCPS used distance learning; Student used Teams videoconference to work on speech-language goals.⁴⁸

15. FBA. An FBA tries to determine the function of behavior – what is the student trying to get from the behavior.⁴⁹ Not every student needs an FBA, even if they have behavior challenges or problems.⁵⁰ The IEE recommended that an FBA completed by the

³⁷ P7-4; School Psychologist.

³⁸ School Psychologist.

³⁹ P7-5,6.

⁴⁰ P7-6,7.

⁴¹ P7-8.

⁴² *Id.*

⁴³ P49-1.

⁴⁴ P32-1.

⁴⁵ P7-8.

⁴⁶ R51p765.

⁴⁷ P9-1,11; Parent.

⁴⁸ P9-2,3.

⁴⁹ Social Worker.

⁵⁰ *Id.*

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school could help optimize Student's ability to learn.⁵¹ Social Worker was not aware of any behavior concerns by Student; such behavior issues would have come to Social Worker's attention at Prior School.⁵² Student had symptoms of ADHD – such as inattention and hyperactivity – that a teacher could redirect, none of which were alarming.⁵³ LEA Representative credibly testified that Student had no observable behavior of which LEA Representative was aware that would warrant an FBA.⁵⁴

16. Student's team didn't agree an FBA was warranted when raised.⁵⁵ DCPS had not observed behaviors that warranted a BIP at Prior School or Current School.⁵⁶ At Prior School an adaptive section and goals were added to Student's IEP to address adaptive/social issues, safety issues, and concerns with communication; at Current School, Student is in a self-contained program where those issues are imbedded in classroom programming.⁵⁷ Adaptive goals added to the IEP to address concerns about behavior are better than an FBA.⁵⁸

17. ESY. The IEP team on 5/17/21 stated that Student was not eligible for ESY, so Parent should explore other summer programs.⁵⁹ ESY was denied for the summer of 2021 because “no present” evidence of regression was demonstrated.⁶⁰ Parent testified to regression during periods of hospitalization.⁶¹

18. Dedicated Aide. Educational Advocate testified that Student “absolutely” needed a dedicated aide in a large class with a 25:1 student-teacher ratio.⁶² Student's pediatrician on 1/31/22 recommended a student-teacher ratio close to 5:1, stating that Student's then-current classroom was 21:1; Student needed closer supervision and either a smaller classroom or more aide supports.⁶³ A large class was the wrong setting for Student, as it was overwhelming and Student couldn't learn.⁶⁴ Student needed a significant amount of specialized instruction – over 20 hours/week – with fewer students and more assistance.⁶⁵ Eighteen children in Student's class was too much for Student.⁶⁶ Student's class at Current

⁵¹ P5-8.

⁵² Social Worker.

⁵³ *Id.*

⁵⁴ LEA Representative.

⁵⁵ *Id.*

⁵⁶ R70p836.

⁵⁷ R70p836; LEA Representative.

⁵⁸ LEA Representative.

⁵⁹ R59p785.

⁶⁰ P31-1.

⁶¹ Parent.

⁶² Educational Advocate.

⁶³ P6-1.

⁶⁴ Occupational Therapist.

⁶⁵ *Id.*

⁶⁶ *Id.*

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School has a student-adult ratio of 3:2, so Petitioner is no longer seeking a dedicated aide in this case.⁶⁷

19. Student would not engage instruction online and did better in person.⁶⁸ As of a May 2021 teacher interview, Student struggled with attention and focus in virtual instruction and required maximum verbal prompts with additional support of an aide to attend to instruction; Student had a home health aide 5 days/week that Special Education Teacher instructed with strategies to help Student.⁶⁹ DCPS asserted that Student had never had a dedicated aide on an IEP and didn't need one.⁷⁰

20. Attendance. Student reportedly was in the hospital for 2 months the summer of 2019; LEA Representative informed Parent of the Home and Hospital Instruction Program ("HHIP") and provided forms to Parent.⁷¹ Student was hospitalized for 2 months in a coma in the summer of 2020 due to respiratory failure.⁷² At the 5/5/20 IEP meeting, DCPS was concerned about frequent absences due to medical challenges.⁷³ On 10/27/20, the IEP team agreed that Parent would send medical excuses to ensure that absences were excused.⁷⁴

21. Student's absences impacted academic performance; even 10 to 15 absences would have a tremendous impact.⁷⁵ Student missed 93 days in 2020/21, of which 92 days were unexcused; the teacher noted Student's many medically-induced challenges.⁷⁶ Student was not in school from December 2020 to April 2021 due to respiratory health concerns.⁷⁷ Student missed most of 2020/21 and was seen only 3 days during second semester.⁷⁸ At the 5/17/21 IEP meeting, Parent stated that it had been a very trying year for her family with Student's continuing medical challenges including a new diagnosis that caused increased stress; the virtual classroom simply did not work for Student, due to difficulty sitting and focusing on the screen.⁷⁹

22. On 3/17/21, Parent reported to the speech-language evaluator that Student's device was broken, but in any case Student was unable to join virtual class lessons due to lack of stamina to sit in front of the computer as needed.⁸⁰ Special Education Teacher conducted a home visit and checked in several other times to try to get Student to work on the computer;

⁶⁷ Parent; ELS Teacher (6:2 ratio at Current School).

⁶⁸ LEA Representative.

⁶⁹ P11-1,4,10; R59p782; Parent.

⁷⁰ R70p836.

⁷¹ R1p12.

⁷² P5-1,2.

⁷³ R48p739.

⁷⁴ R50p758.

⁷⁵ P9-3; Social Worker.

⁷⁶ P49-1; P52.

⁷⁷ P63-14.

⁷⁸ P18-1; R59p782.

⁷⁹ R59p781-82.

⁸⁰ P9-3.

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Prior School made many contacts with Parent concerning absences.⁸¹ Student did not do well in the virtual environment; Student had not been able to attend virtual classes.⁸² DCPS modified Student's schedule to begin later to help Student participate.⁸³ Student had fewer absences in the first semester of 2021/22, with 5 absences listed in September, 7 in October, none in November, and 1 in December, but 12 in January 2022.⁸⁴

23. On 1/6/22, Parent emailed DCPS asking for Student's absences to be excused as Parent was no longer letting Student attend Prior School out of concern for safety, learning and health, until a smaller classroom or dedicated aide was provided; Parent referred to an incident that could have damaged Student's inner ear; [REDACTED] counsel asserted Covid concerns.⁸⁵ Student was assigned to Current School in February 2022, with a transition meeting about the self-contained program at Current School in March 2022, although Student did not attend until 2022/23.⁸⁶

24. Speech-Language Services. Petitioner claimed that speech-language services were not made available as provided by Student's IEPs, which required 180 minutes/month of direct speech-language services, with Petitioner's claim from mid-November 2020 (2 years prior to Petitioner's due process complaint) to January 2022, with an increase in speech-language services to 240 minutes/month in mid-December 2021.⁸⁷ Petitioner calculated that 2040 minutes of direct speech-language services were not provided over 13 months; careful review revealed that the total in Petitioner's calculations should be 1840 missing minutes.⁸⁸ With adjustments by the undersigned for Student's absences and periodic holidays, and counting only one-half month for November 2020, including data for January 2021, counting only one-third month for August 2021, and adjusting for the mid-December 2021 increase in services, there are 540 missing minutes out of 2400 total minutes due (with 30 missing minutes in November 2020, none in December, 60 in January 2021, 90 in February, 90 in March, 90 in April, 90 in May, 60 in June, 30 in August, and none for September through December 2021).⁸⁹

25. Occupational Therapy Services. Petitioner claimed that occupational therapy services were not provided to Student as required by Student's IEPs, which required 120 minutes/month of direct occupational therapy services with Petitioner's claim from mid-November 2020 (2 years prior to Petitioner's due process complaint) to January 2022.⁹⁰ Petitioner calculated that 1295 minutes of direct occupational therapy services were not provided over 10 months, but careful review revealed the total should be 815 missing

⁸¹ Special Education Teacher; R79.

⁸² Special Education Teacher; P17-5.

⁸³ Special Education Teacher.

⁸⁴ R78.

⁸⁵ P57-1,5; LEA Representative.

⁸⁶ Educational Advocate; LEA Representative.

⁸⁷ P63-17,18; P20-17.

⁸⁸ P55.

⁸⁹ P41; P42; R16.

⁹⁰ P63-17,18.

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minutes in Petitioner's calculations.⁹¹ With adjustments by the undersigned for Student's occasional absences and periodic holidays, and counting only one-half month for November 2020, there were 345 missing minutes out of 1140 total minutes due (with 60 missing minutes in February 2021, 120 in March, 120 in June, 30 in September, 30 in October, an extra 45 minutes in November, and 30 missing in December 2021).⁹²

26. Compensatory Education. Educational Advocate prepared a 21-page Compensatory Education Proposal dated 1/5/23 with which she testified that Student could be restored to the position Student would have been in but for the denials of FAPE, by providing 300 hours of 1:1 tutoring, 20 hours of occupational therapy, 35 hours of speech-language services, an independent FBA, a BIP, and subsequent implementation of FBA recommendations.⁹³ Educational Advocate further testified that reductions in the amount of compensatory education requested would be appropriate depending on the scope of the FAPE denials.⁹⁴

Conclusions of Law

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

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(14); *Endrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d

⁹¹ P55.

⁹² P41; P42; P55.

⁹³ Educational Advocate; P63; P63-21.

⁹⁴ Educational Advocate.

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303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Endrew F.*, 137 S. Ct. at 1001.

In addition, the local education agency (“LEA”) must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at *3 (D.D.C. 2018).

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. 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 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z. B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

Issue 1: *Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement/location of services during 2020/21 and/or 2021/22 because the IEPs: (a) failed to provide sufficient specialized instruction until 1/16/22; (b) failed to address behavioral and social-emotional needs; (c) failed to include ESY in the summer of 2021; (d) were not based on comprehensive evaluation data or the most current*

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evaluations; and/or (e) failed to include a dedicated aide. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)

Petitioner established a *prima facie* case concerning Student's IEPs through testimony and documents, shifting the burden to DCPS, which failed to meet its burden of persuasion only on subpart (a), as discussed below. However, Petitioner did not establish a *prima facie* case as to placement/location of services, as there was an insufficient assertion that DCPS could not fulfill Student's IEPs at Prior School. *See, e.g., St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 527, 113 S. Ct. 2742, 2758, 125 L. Ed. 2d 407 (1993) (a *prima facie* case requires enough evidence to raise an issue for the trier of fact).

The applicable legal standard for analyzing the appropriateness of the IEPs at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether they were "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. As the U.S. Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* "raised the bar on what counts as an adequate education under the IDEA," requiring more than "merely some" educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be "reasonably calculated to produce meaningful educational benefit"). The measure and adequacy of the IEPs are determined as of the time they were offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at *12 (D.D.C. 2021); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student's IEPs is analyzed by focusing on the specific concerns raised by Petitioner, which are considered in turn.⁹⁵ *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(a) Specialized Instruction. Student's IEPs must provide sufficient personalized instruction so that the child can benefit educationally, which in the case at hand required additional specialized instruction outside general education. *See Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203; *cf. Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible).

Here, the first IEP challenged by Petitioner was amended on 3/19/21 to increase specialized instruction from 3 hours/week in the 5/5/20 IEP to 20 hours/week (4 hours/day) outside general education, along with updated PLOPs and goals. However, just 2 months later, Student's annual IEP on 5/17/21 decreased Student's specialized instruction to 10 hours/week (2 hours/day), divided evenly inside and outside general education), but at the hearing DCPS could not explain the decrease. This decline was more remarkable as the IEP noted that Student regressed and was well below grade level, requiring maximum support.

⁹⁵ A Hearing Officer must also determine whether "the State complied with the procedures" set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), *quoting Rowley*, 458 U.S. at 206-07. Certain procedural concerns are discussed herein.

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Indeed, just a few days later when proposing a 5/24/21 amendment, DCPS noted that Student had regressed in most areas, both academically and behaviorally.

Further, School Psychologist noted in her observation of Student during the IEE review that Student needed more support than the teacher could give. The review noted Student's extremely low adaptive skills in the school setting, requiring significant support in the educational setting, such as a small, structured academic setting. Student's grades declined over 2020/21 and there was minimal academic progress as of December 2021. Occupational Therapist credibly testified that Student needed a significant amount of specialized instruction – over 20 hours/week – with fewer students and more assistance.

Student's next annual IEP on 12/14/21 returned Student's specialized instruction back to 20 hours/week, of which 18 hours/week were outside general education. Finally, Student's IEP was amended the next month on 1/20/22 to increase specialized instruction to 25.5 hours/week, all outside general education, as all agreed that Student needed a more restrictive classroom environment. Petitioner considered the 25.5 hours/week to be sufficient specialized instruction for Student, as does this Hearing Officer. However, in the view of the undersigned, DCPS failed to meet its burden of persuasion that there were sufficient hours of specialized instruction from 5/17/21 – when specialized instruction was reduced by half⁹⁶ – until it was finally increased to 25.5 hours/week on 1/20/22.

In sum, this Hearing Officer concludes that Student's level of specialized instruction from 5/17/21 until 1/20/22 was not reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances, and to access the curriculum to advance toward meeting Student's annual goals pursuant to 34 C.F.R. § 300.320(a)(4), resulting in a denial of FAPE and significant award of compensatory education below.

(b) Behavior/Social-Emotional Needs. While Student's behaviors – or lack thereof – are discussed in more detail in Issue 2 below, it should be noted that the IDEA requires in the case of a student whose behavior impedes the student's own learning or that of others, that the IEP team consider the use of positive behavioral interventions and supports (“PBIS”) and other strategies to address that behavior. 34 C.F.R. § 300.324(a)(2)(i). Here, however, DCPS did not consider Student to be a child whose behavior impeded Student's own learning or that of others and the undersigned does not disagree based on the details set forth in analyzing Issue 2 below. Nonetheless, DCPS did include appropriate, detailed accommodations in the Other Classroom Aids and Services section in Student's IEPs to address whatever behaviors did exist. The undersigned holds that DCPS did meet its burden of persuasion on this subpart, which does not contribute to the finding of a denial of FAPE or to compensatory education.

⁹⁶ The undersigned was not able to confirm satisfactorily that the shift from 3 hours/week on 5/5/20 to 4 hours/day (or 20 hours/week) on 3/19/21 was not an unintended error by DCPS on the IEP. But if the figure was intended to be only 4 hours/week, this Hearing Officer is of the view that the harm to Student would have been even greater and in that case the denial of FAPE would have begun on 3/19/21.

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(c) ESY. ESY is necessary to provide FAPE under 34 C.F.R. § 300.106(a) when the benefits a disabled child gains during a regular school year will be “significantly jeopardized” if the child is not provided with an educational program during the summer months. *Johnson v. Dist. of Columbia*, 873 F. Supp. 2d 382, 386 (D.D.C. 2012), *quoting MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 537-38 (4th Cir. 2002); *see also S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 68-69 (D.D.C. 2008) (adopting standard from *MM*). The point of ESY is not to provide additional resources or to maximize programming, but to provide FAPE.

Here, the IEP team on 5/17/21 stated that Student was not eligible for ESY because no evidence of regression was demonstrated, so Petitioner was encouraged to explore other summer programs. While Parent testified to regression during periods of hospitalization, the “mere fact of likely regression” is not a sufficient basis for finding ESY eligibility, for all students may regress to some extent during lengthy breaks; ESY is required only when regression will substantially thwart the goal of “meaningful progress.” *Johnson*, 873 F. Supp. 2d at 386, *quoting MM*, 303 F.3d at 538. Here, the lack of ESY did not thwart progress. In these circumstances, the undersigned is persuaded by DCPS and finds no violation on this subpart.

(d) Evaluation Data. Petitioner next asserts that Student’s 5/17/21 and 12/14/21 IEPs are not appropriate due to not being based on updated evaluations and data. The importance of assessing children in all areas of suspected disability was emphasized in *Z.B.*, 888 F.3d at 518, *quoting* 20 U.S.C. § 1414(b)(3)(B). The D.C. Circuit Court explained in *Z.B.*, at 524, that failing to conduct adequate assessments is a procedural violation that could have substantive effects by preventing the IEP team from obtaining necessary information about the student. *See also Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60-61 (D.D.C. 2011) (“in the absence of necessary and appropriate evaluations the district cannot develop a program that is tailored to the student’s unique needs and reasonably calculated to enable [the student] to receive educational benefits” (citation omitted)); 34 C.F.R. § 300.304(c)(4).

Here, DCPS was slow in moving forward with its review of the 12/23/20 IEE, but the educational, occupational therapy and speech-language assessments that it sought to complete were legitimately delayed by the need to conduct the assessments in person, due to Student’s challenges in engaging virtually, as both sides agreed. For this reason, DCPS has persuaded the undersigned that any lack of evaluation data did not impact Student’s IEPs and thus does not contribute to the denial of FAPE or the award of compensatory education below.

(e) Dedicated Aide. Educational Advocate testified that Student definitely needed a dedicated aide in a large class with a high student-teacher ratio, while Student’s pediatrician made the key point by letter that Student needed either a smaller classroom or more aide supports. *See, e.g., Rowley*, 458 U.S. at 203 (dedicated aide required if necessary “to permit the child to benefit educationally from [the IEP personalized] instruction”). A large class was the wrong setting for Student, as it was overwhelming and Student couldn’t learn. At one point during virtual classes, Student had some assistance from a home health aide, which apparently did not help much. Nor was it clear that a dedicated aide could have

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worked with Student at home during the relevant timeframe. Instead, Student needed a significant amount of specialized instruction in a smaller setting – Occupational Therapist credibly testified to a need for over 20 hours/week – which then avoids the need for a dedicated aide. Indeed, Student’s class at Current School has a student-adult ratio of 3:2, so Petitioner is no longer seeking a dedicated aide for that setting. For these reasons, DCPS met its burden of persuasion and this subpart does not contribute to the denial of FAPE or the award of compensatory education below.

Placement. As for placement, little more need be said. The IDEA requires “school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student’s IEP.” *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 143 (D.D.C. 2018), citing *O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008). See also *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013) (DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP”). Here, the undersigned concludes that Petitioner failed to establish even a *prima facie* case that Prior School could not adequately provide the services set forth on Student’s IEPs. The undersigned determines that Prior School afforded Student the opportunity to make appropriate progress in Student’s particular circumstances (if the IEPs had been appropriate, as set forth in subpart (a)). See *N.W. v. Dist. of Columbia*, 253 F. Supp. 3d 5, 17 (D.D.C. 2017), quoting *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016).

FAPE. In carefully considering the concerns raised above individually and as a group, the undersigned is cognizant of the fact that the analysis is not about achieving perfection. Instead, IEPs simply need to be reasonably calculated to enable Student to make appropriate progress in the circumstances. See *Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA “stops short of requiring public schools to provide the best possible education”). See also *Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015); *S.M. v. Dist. of Columbia*, CV 19-2096 (RC), 2020 WL 7230266, at *5 (D.D.C. 2020). On balance, this Hearing Officer concludes that despite prevailing on subparts (b) through (e), DCPS failed its burden of persuasion by a preponderance of the evidence on the critical first subpart concerning sufficient specialized instruction, resulting in the Order below awarding compensatory education.

Issue 2: *Whether DCPS denied Student a FAPE by failing to conduct an FBA and/or develop a BIP during 2020/21 and/or 2021/22, based on the recommendations of a 11/30/20 independent psychological evaluation. (Petitioner has the burden of persuasion on this issue.)*

Petitioner failed to meet her burden of persuasion on this issue. As noted above, the importance of assessing students in all areas of suspected disability was emphasized in *Z. B.*, 888 F.3d at 518, quoting 20 U.S.C. § 1414(b)(3)(B). However, “[t]he IDEA does not require LEAs to administer every test requested by a parent or educational advocate. Rather, to ensure that a child with a disability receives a FAPE, an LEA must use ‘a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information.’ See 20 U.S.C. § 1414(b)(2)(A).” *Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60 (D.D.C. 2011).

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An FBA tries to determine the function of behavior – what the student is trying to get from the behavior. However, not every student needs an FBA, even if they have behavior challenges or problems, and Student’s team didn’t agree an FBA was warranted when raised. While the 12/23/20 IEE did suggest that an FBA completed by the school might be helpful, Social Worker was not aware of any behavior concerns by Student. While Student did have symptoms of ADHD such as inattention and hyperactivity which a teacher could redirect, none were alarming. Further, LEA Representative persuasively testified that Student had no observable behavior of which she was aware that would have warranted an FBA. Moreover, an adaptive section and goals were added to Student’s IEP to address adaptive/social issues, safety issues, and concerns with communication. Given the primacy of IEPs, adaptive goals added to an IEP to address concerns about behavior are better than an FBA. Detailed accommodations were also included in the Other Classroom Aids and Services in Student’s IEPs, which were to address the academic and behavior issues that concerned Petitioner.

For these reasons, the undersigned is persuaded by DCPS’s testimony and documentary evidence and holds that there is no denial of FAPE.

Issue 3: *Whether DCPS denied Student a FAPE by failing to provide all speech-language and occupational therapy services over the past 2 years, amounting to 2040 minutes of missed speech-language services and 1295 minutes of missed occupational therapy services. (Petitioner has the burden of persuasion on this issue.)*

Finally, Petitioner met her burden of persuasion on IEP implementation. With a failure to implement claim, the IDEA is only violated when a school district deviates materially from a student’s IEP. *See Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 144 (D.D.C. 2018); *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). A material deviation requires more than a minor discrepancy or a “*de minimis* failure to implement all elements of [the student’s] IEP.” *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013), *quoting Catalan ex rel. E.C. v. Dist. of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). Courts are clear that it is “the proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement.” *Turner v. Dist. of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), *citing Wilson v. Dist. of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011). Notably, there is “no requirement that the child suffer educational harm in order to find a violation” in a failure to implement claim. *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016).

However, the law is clear that a student missing services by being absent, holidays, and some hours of unavailability due to testing is not to be held against the school. In *Catalan ex rel. E.C. v. Dist. of Columbia*, 478 F. Supp. 2d 73, 76 (D.D.C. 2007), the court held that related services sessions missed due to “snow days, holidays, [student’s] absence from school, and the like” were not counted toward failure to implement the IEP, while *Joaquin v. Friendship Pub. Charter Sch.*, Civ. No. 14–01119, 2015 WL 5175885, at *8 (D.D.C. 2015), makes clear that services simply need to be offered to a student, even if the student “would not have been present to receive any” of them. *See also Letter to Balkman*, 23 IDELR 646 (OSEP, 4/10/95) (does not require missed services due to student absences to

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be made up, but does require provider or student unavailability for school functions to be made up).

Recently, the Court in *White v. Dist. of Columbia*, 20-CV-3821 (APM), 2022 WL 971330, at *5 (D.D.C. 3/31/22), stated that a school must do more than merely “offer” the services in the IEP, and must ensure that a child actually receives them. However, the court goes on to explain that in *White* the child was not absent and the school just “dropped the ball,” scheduling services when the child was taking a standardized test or was on a fieldtrip, and that the school missed services for “no reason at all,” which is very different than the situation at hand. *Id.* See also *Robles v. Dist. of Columbia*, 1:21-CV-02568 (CJN), 2022 WL 3700947, at *12-13 (D.D.C. 8/26/22) (in an IEP implementation case, “[t]he school cannot be faulted for making good-faith efforts to provide the required services when [student] failed to attend on his own volition”). While schools may sometimes be responsible for not making efforts to get children to attend, see, e.g., *Springfield Sch. Comm. v. Doe*, 623 F. Supp. 2d 150, 159 (D. Mass. 2009), here Student’s extensive medical needs limited what could be done to encourage attendance. DCPS did, to its credit, make sure Parent was aware of the HHIP program when Student experienced a long stay in the hospital and provided the necessary forms to her. Prior School was also in touch with Parent out of concern for absences, to encourage Student’s participation in distance learning, which was very difficult for Student as for so many.

(a) Speech-Language Services. Based on Student’s service trackers and Petitioner’s corrected chart, out of 2400 total minutes of speech-language services due to be provided or offered to Student during the claimed period, 540 minutes (9 hours) were missed. That amounts to provision of 77% of the speech-language services that Student was supposed to receive during this period and failure to provide 23%, which is a material deviation from Student’s IEPs and a denial of FAPE based on *Middleton*, 312 F. Supp. 3d at 145 (20% deviation from IEP requirements was material and could not be excused as *de minimis*). This denial of FAPE is addressed with an award of compensatory education below.

(b) Occupational Therapy. Similarly, based on Student’s service trackers and Petitioner’s corrected chart, out of 1140 total minutes of occupational therapy due to be provided or offered to Student during the claimed period, 345 minutes (almost 6 hours) were missed. That amounts to provision of 70% of the occupational therapy services that Student was supposed to receive during this period and failure to provide 30%, which also is a material deviation from Student’s IEPs and a denial of FAPE. See *Middleton*, 312 F. Supp. 3d at 145 (20% deviation from IEP requirements was material and could not be excused as *de minimis*); *Wade v. Dist. of Columbia*, 322 F. Supp. 3d 123, 133 (D.D.C. 2018) (27% deviation was material). This denial of FAPE is addressed with an award of compensatory education below.

Remedies

Having analyzed and resolved the issues in this case, what remains is to consider the compensatory education necessary to make up for the denials of FAPE found above. In determining the amount of compensatory education for denials of FAPE, there is often “difficulty inherent in figuring out both what position a student would be in absent a FAPE

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denial and how to get the student to that position,” *B.D. v. Dist. of Columbia*, 817 F.3d 792, 799 (D.C. Cir. 2016), but that does not permit the effort to be avoided. See *Henry v. Dist. of Columbia*, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse). Moreover, a student is not required “to have a perfect case to be entitled to compensatory education.” *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (citations omitted). Further, with a failure to implement claim, Petitioner need not even show that there was educational harm to Student. *James*, 194 F. Supp. 3d at 139.

Here, Educational Advocate testified that the compensatory education sought in her lengthy plan would put Student in the position Student would have been but for the denials of FAPE. But that plan must be adjusted to match the denials of FAPE actually found herein. First, a denial of FAPE was found for the failure to provide sufficient specialized instruction from the 5/17/21 IEP (at 10 hours/week) until the specialized instruction was increased to 20 hours/week in the 12/14/21 IEP, and finally stepped up to an appropriate 25.5 hours/week in the 1/20/22 IEP. While Petitioner sought a broader denial of FAPE based on insufficient specialized instruction (and calculated that the 3/19/21 IEP provided only 4 hours/week rather than 4 hours/day), Educational Advocate’s proposal sought a total of 300 hours of 1:1 tutoring. However, based on experience and careful analysis, the undersigned awards 150 hours of 1:1 academic tutoring in the Order below to make up for the denial of FAPE related to specialized instruction.

In addition, awards of occupational therapy and speech-language services are required to make up for the failure to offer the related services to which Student was entitled in the IEPs, with the goal of restoring Student to the position in which Student would have been but for the denials of FAPE. Here, based on the experience and judgment of the undersigned, the Order below awards 15 hours of speech-language services and 10 hours of occupational therapy based on the services not offered to Student, with increases in the awards based on the impact of absences due to the ongoing medical challenges faced by Student.

These determinations by the undersigned have been carefully considered and specifically tailored to address Student’s unique needs as a matter of equity, as “hearing officers are reminded that ‘[t]he essence of equity jurisdiction’ is ‘to do equity and to mould each decree to the necessities of the particular case.’” *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), quoting *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005). All compensatory education hours are to be used within 24 months to avoid administrative burdens on Respondent, although the undersigned encourages Parent to get Student engaged as quickly as possible to ensure that the remedial services that Student needs are obtained without delay.

ORDER

Petitioner has prevailed on a portion of the first issue and on the third issue, as set forth above. Accordingly, **it is hereby ordered that:**

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As compensatory education for the denials of FAPE found herein, within 10 business days after request by Petitioner, DCPS shall provide a letter(s) of authorization for (a) 150 hours of 1:1 academic tutoring, (b) 15 hours of speech-language services, and (c) 10 hours of occupational therapy, all from independent providers chosen by Petitioner; all hours are to be used within 24 months and any unused hours shall be forfeited.

Any and all other claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ *Keith Seat*

Keith L. Seat, Esq.
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 U.S.C. § 1415(i).

Copies to:

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