

**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
July 06, 2022

<i>Student</i> , ¹)	Case No.: 2022-0069
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 7/6/22
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates (using Microsoft Teams):
("DCPS"),)	6/22/22 & 6/23/22
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") and an adequate triennial reevaluation. DCPS responded that Student's IEPs and reevaluation were appropriate.

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 E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

Following the filing of the due process complaint on 4/18/22, the case was assigned to the undersigned, also on 4/18/22. Respondent filed a response on 4/29/22 and did not challenge jurisdiction. An amended due process complaint making minor changes was filed on 6/7/22 in line with discussions at the prehearing conference; with agreement of the

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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parties the amendment was accepted while maintaining the existing timeline. A resolution meeting took place on 5/17/22, but the parties did not settle the case or shorten the 30-day resolution period, which ended on 5/18/22. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by a 5-day continuance, which requires a Hearing Officer Determination (“HOD”) by 7/7/22.

A prehearing conference was held on 6/6/22 and the Prehearing Order was issued on 6/10/22, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 6/22/22 and 6/23/22 and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in most of the hearing.

Documents and Witnesses

Petitioner’s Disclosure, submitted on 6/14/22, contained documents P1 through P44, which were all admitted into evidence without objection. Respondent’s Disclosure, also submitted on 6/14/22, contained documents R1 through R19, which were all admitted into evidence without objection.²

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Occupational Therapist* (qualified without objection as an expert in Occupational Therapy)
2. *Private Speech-Language Pathologist* (qualified without objection as an expert in Speech-Language Pathology and Assistive Technology)
3. Parent
4. *Educational Advocate* (qualified without objection as an expert in Special Education as Related to IEP Programming)

Respondent’s counsel presented 3 witnesses in Respondent’s case (*see* Appendix A):

1. *Special Education Teacher* (qualified without objection as an expert in Special Education Programming and Planning)
2. *School Social Worker* (qualified without objection as an expert in School-Based Social Work)

² Citations herein to Petitioner’s documents are indicated by a “P” followed by the exhibit number, followed immediately by a “p” (for page) and the Bates number with any leading zeros omitted, while Respondent’s documents are indicated in the same manner beginning with an “R.”

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3. *School Speech-Language Pathologist* (qualified without objection as an expert in School-Based Speech-Language Pathology)

Petitioner's counsel did not submit any 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 appropriate IEPs on or about 4/16/20 and/or 4/7/21, when (a) DCPS failed to include Petitioner in the 2020 IEP annual review; (b) the IEPs had insufficient present levels of performance ("PLOPs") and inappropriate goals and baselines; (c) the 2020 IEP did not provide adequate behavioral support services ("BSS"); (d) DCPS failed to consider assistive technology; (e) DCPS failed to increase specialized instruction; and/or (f) DCPS failed to provide appropriate behavioral interventions, including its failure to develop a behavioral intervention plan ("BIP"). *(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 comprehensive triennial reevaluation in April 2021, when it failed to conduct the following evaluations: (a) comprehensive psychological, (b) speech-language, (c) assistive technology, and/or (d) occupational therapy. *(Petitioner has the burden of persuasion.)*

The relief requested by Petitioner is:

1. A finding that Student has been denied a FAPE.
2. DCPS shall conduct the following evaluations: (a) comprehensive psychological, including clinical testing of Student's social, emotional and behavioral development functioning, and addressing Student's difficulty focusing; (b) speech-language; (c) occupational therapy; (d) functional behavioral analysis; and (e) assistive technology.
3. DCPS shall convene Student's IEP team to review the results of the evaluations in paragraph 2 and modify the IEP to address Student's needs for (a) assistive technology, (b) measurable goals based on current data, (c) a behavior intervention plan, (d) increased specialized instruction in math and written expression, and (e) increased behavior support services.
4. Student shall be awarded compensatory education for any denials of FAPE.³

³ So far as Petitioner's request for compensatory education depends on the findings of evaluations that may be carried out in the future, that portion of the compensatory education claim is reserved pending the completion of Student's evaluations and a determination of eligibility for additional special education and related services.

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

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5. Any other just and reasonable relief.

Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact⁴ are as follows:

1. **Background.** Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁵ Student is *Age*, *Gender* and is being home schooled in *Grade* after being at *Public School* in 2019/20⁶ and 2020/21, and in other DCPS schools in earlier years.

2. **IEPs.** Student's disability classification throughout has been Specific Learning Disability.⁷ Student's initial IEP dated 5/18/15 provided 12.5 hours/week of specialized instruction outside general education and no related services.⁸ Services remained the same in Student's 4/27/16 IEP.⁹ Student's 4/10/17 IEP provided 12 hours/week of specialized instruction, with half outside general education and half inside, and no related services.¹⁰ Services remained the same in Student's 4/9/18 IEP.¹¹ Student's 5/2/18 IEP again provided 12 hours/week of specialized instruction, but math hours were all shifted outside general education, and for the first time 90 minutes/month of BSS was added as a related service outside general education.¹² Student's 5/1/19 IEP (the "2019 IEP") provided 15 hours/week

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 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 to introduce evidence contravening the requested compensatory education in the event a denial of FAPE were found.

⁴ 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.

⁵ Parent.

⁶ All dates in the format "2019/20" refer to school years.

⁷ R6p89; P8; P7.

⁸ P12p127,134.

⁹ P13p139,144.

¹⁰ P14p151,158.

¹¹ P16p179,187.

¹² P17p194,201.

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of specialized instruction all outside general education, plus an increase to 120 minutes/month of BSS outside general education.¹³

3. Student's 4/16/20 IEP (the "2020 IEP"), the first IEP at issue in this case, provided the same services as the previous year (15 hours/week of specialized instruction outside general education), except BSS was reduced to 90 minutes/month.¹⁴ Student's 4/7/21 IEP (the "2021 IEP"), the other IEP at issue in this case, provided the same services as the previous year.¹⁵

4. Evaluations to Date. Student's initial evaluation was a comprehensive psychological evaluation dated 4/9/15.¹⁶ The Wechsler Intelligence Scale for Children – Fourth Edition ("WISC-IV") indicated that Student's Full Scale IQ ("FSIQ") was 81, in the Low Average range.¹⁷ The Wechsler Individual Achievement Test – Third Edition ("WIAT-III") Composites and 7 Subtests indicated that Numerical Operations was Student's strongest area with a percentile rank of 3, while all others were at the 1st percentile or below.¹⁸

5. Student received a psychological triennial reevaluation dated 5/7/18, which was largely a record review.¹⁹ The Woodcock-Johnson IV Tests of Achievement ("WJ-IV ACH") in 2018 indicated that Student was Low in reading and written expression, and Very Low in math.²⁰

6. An Analysis of Existing Data ("AED") dated 4/7/21 contained little data despite Student's poor performance and lack of progress.²¹ The AED stated that during the 2020/21 mid-term assessment in reading, Student's comprehension was 6 years below grade level and had decreased 1.9 grade levels from the initial assessment; vocabulary was 4 years below grade level, a decrease of 2.7 grade levels; and overall reading proficiency was 5 years below grade level, a decrease of 1.3 grade levels; Special Education Teacher concluded in reading (as in math and written expression) that Student was making "slow progress."²² In written expression, Student was performing below basic.²³

7. Academics. Educational Advocate conducted an informal assessment in reading, writing and math on 6/8/22, and found that Student was 6 or 7 years below grade level in reading; had significant difficulties in math and was 6 years below grade level in

¹³ P18p206,213.

¹⁴ P19p223,230.

¹⁵ P19p240,247.

¹⁶ P7p91.

¹⁷ P7p94.

¹⁸ P7p96.

¹⁹ P8p105; Educational Advocate.

²⁰ P8p109.

²¹ P9p116; Educational Advocate.

²² P9p118; Special Education Teacher (Student's performance had not decreased).

²³ P9p118.

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quantitative reasoning; and wrote a short paragraph that contained no punctuation.²⁴ Student's school grades in 2019/20 and 2020/21 were poor, with many Ds and Fs.²⁵ Student was performing well below grade level in all academic areas of concern:

8. Math. In math, in the Beginning of Year ("BOY") 2018/19 iReady (mistakenly dated 8/22/19), Student was at 397, 5 years below grade level; in the Middle of Year ("MOY") 2018/19, Student was at 416, 4 years below grade level.²⁶ In the BOY 2019/20 math iReady, Student was at 394, which was 5 years below grade level; in MOY 2019/20, Student was at 410, still 5 years behind.²⁷ In the BOY 2020/21 math iReady, Student scored a 443, 5 years below grade level.²⁸

9. Reading. In reading, in the BOY 2018/19 Reading Inventory ("RI"), Student's Lexile score was 357, 5 years below grade level; in MOY Student's Lexile score was 553, 3 years behind; at End of Year ("EOY"), Student's Lexile score was 518, 5 years behind.²⁹ At BOY 2019/20, Student's RI Lexile was 347, 6 years below grade level (which was erroneously stated in the IEP); in MOY Student's Lexile score was 543, 4 years below grade level.³⁰ At MOY 2020/21, Student's Lexile score was 827, 4 years below grade level, but the same 2021 IEP PLOP stated that Student should choose reading texts in a Lexile range of 330-480.³¹

10. Written Expression. The 5/1/19 IEP noted in written expression that Student could write a 3-5 sentence paragraph with some assistance.³² By the 4/16/20 IEP, Student could write a 4-6 sentence paragraph with some assistance.³³

11. Student's 2020 and 2021 IEPs state repeatedly in the academic areas of concern that Student will continue to struggle in general education if "accommodations and assistance is not given."³⁴

12. Progress Reports. In term 1 of 2019/20, the IEP Progress Report indicated that Student's academic goals were Just Introduced (with 1 Not Introduced) and Student's special education teacher commented for each on 11/8/19 that Student "has not made very little progress (sic)."³⁵ In terms 2, 3 and 4 of 2019/20, the IEP Progress Reports indicated that Student made no progress on math, reading or written expression goals as confirmed by

²⁴ P40p376-79; Educational Advocate.

²⁵ P29p317-19; P30p322-24.

²⁶ P18p208.

²⁷ P19p225.

²⁸ P20p242.

²⁹ P18p209; P29p320.

³⁰ P19p226.

³¹ P29p243; P30p324; Educational Advocate (reading range not right).

³² P18p210.

³³ P19p227.

³⁴ P19p225,226,227; P20p242,243,244.

³⁵ P21p257-60.

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comments on 2/11/20, 5/8/20 and 6/1/20.³⁶ The IEP Progress Reports for 2020/21 consistently rated Student as Progressing, with every comment (from Special Education Teacher) on academic goals indicating “slow progress” (except for 2 term-1 goals lacking any comments).³⁷

13. Goals. Special Education Teacher unpersuasively considered the goals appropriate in Student’s 2020 and 2021 IEPs, with concerns about using sufficiently advanced Common Core standards to match Student’s nominal grade; Educational Advocate’s concern was whether the goals were attainable.³⁸ Goals in math and reading were repeated in the IEPs.³⁹ Student’s behavioral goals were appropriate at the time they were developed.⁴⁰ Transition goals were not introduced in 2020/21 but should have been.⁴¹ Special Education Teacher testified without meaningful support that Student could make progress or could “absolutely” make progress on goals with proper differentiation and scaffolding in each academic area.⁴² Special Education Teacher insisted that Student could have made progress if Student had participated and used supports.⁴³

14. Baselines. The 2020 and 2021 IEP baselines for math simply stated that Student was having “difficulties” with algebraic expressions and unknown variables, which Special Education Teacher denied being “vague.”⁴⁴ The 2020 and 2021 IEP baselines for reading were simply that Student was “reading below grade level.”⁴⁵ Baselines in math and reading were repeated verbatim in Student’s IEPs.⁴⁶

15. Specialized Instruction. Student’s IEP programming was not increased in the 2020 or 2021 IEPs from 5 hours/week of specialized instruction for each reading, written expression, and math, despite Student’s severe deficits noted above.⁴⁷ Special Education Teacher considered Student’s 2020 and 2021 IEPs to be appropriate, unpersuasively testifying that Student did not need any more support, considering it merely an issue of Student’s attendance and participation, which a BIP could not address.⁴⁸

³⁶ P22p264-67; P23p274-77; P24p281-84.

³⁷ P25p288-91; P26p296-99; P27p304-07; P28p311-13.

³⁸ Special Education Teacher; Educational Advocate (IEP goals not attainable, so not appropriate); P19p225,226,227; P20p242,243,244; P41p385.

³⁹ Educational Advocate.

⁴⁰ P20p246; School Social Worker.

⁴¹ Educational Advocate; Special Education Teacher (“hands tied” with academics in 2020/21).

⁴² Special Education Teacher.

⁴³ *Id.*

⁴⁴ P19p225-26; P20p242; Special Education Teacher.

⁴⁵ P19p227; P20p243,244.

⁴⁶ Educational Advocate.

⁴⁷ *Id.*

⁴⁸ Special Education Teacher.

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16. Behavior. Student's in-person problematic behaviors were decreasing prior to the shift to virtual learning in March 2020.⁴⁹ In the 2020/21 virtual school year, Student did not display behavioral issues that were of concern in the past.⁵⁰ Student's behavior impeded learning, but an FBA and BIP were never developed.⁵¹ Both the 2020 and 2021 IEPs referenced the BIP that had not been developed for Student.⁵² The 2020 and 2021 IEPs also noted that Student's behavior would continue to adversely affect accessing general education without significant supports in place.⁵³ An FBA requires observation, but Student would not keep the camera on during virtual classes or other engagement.⁵⁴

17. Student's 2019, 2020 and 2021 IEPs each contained an identical statement concerning Positive Behavior Interventions and Supports, which concluded that Student participated in a school-wide incentive program and individualized incentives, and erroneously referred to actions in the school building when Student was in a virtual setting.⁵⁵ The school-wide incentive program encouraged positive behavior by permitting purchases and activities, a teacher put incentives in place for Student.⁵⁶

18. Student's 2020 IEP put great emphasis on Student's Strengths and Difficulties Questionnaires ("SDQs") in the absence of other assessments and data; there was significant improvement from 2018/19 to 2019/20 in Student's scores.⁵⁷ School Social Worker commented on 11/7/19 in Student's IEP Progress Report that Student displayed some progress on the behavioral goal relating to getting very angry and losing temper.⁵⁸

19. Student was verbal, engaging and able to discuss and share in person in a BSS group session of 12 students on 3/12/20.⁵⁹ On 3/27/20, after shifting from in-person, School Social Worker attempted to contact the family but was unable to do so and planned to continue trying.⁶⁰ Student was not present in distance learning for push-in BSS on 5/8/20 or later, and provider was unable to reach the family by phone or text.⁶¹ In 2020/21, Student was often present in virtual classes, but not engaged; Student did not have behavioral issues as when in person; Student did not respond when called by provider.⁶²

⁴⁹ School Social Worker; P19p228 (some improvement in getting along better with others in 2019/20).

⁵⁰ P29p245.

⁵¹ Educational Advocate.

⁵² P19p229; P20p246; Educational Advocate; Parent (no BIP).

⁵³ P19p229; P20p246.

⁵⁴ School Social Worker.

⁵⁵ P18p207; P19p224; P20p241; School Social Worker.

⁵⁶ School Social Worker.

⁵⁷ P19p228.

⁵⁸ P21p260.

⁵⁹ R9p109.

⁶⁰ R9p110.

⁶¹ R9p111.

⁶² R10p113-16,119,121,123,125.

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20. BSS. BSS was decreased from 120 minutes/month in the 2019 IEP to 90 minutes/month in the 2020 IEP.⁶³ School Social Worker believed that Student was doing well with the 90 minutes/month of BSS provided in the 2020 and 2021 IEPs.⁶⁴ Shifting to virtual schooling was hard on Student.⁶⁵ Student did not participate in BSS in 2020/21; School Social Worker would call Student during class or on speaker or go through Student's teachers, but did not attempt to speak to Parent.⁶⁶

21. Attendance. Lack of participation and attendance were viewed by Special Education Teacher as "huge" issues for Student in the virtual setting through 2020/21; Special Education Teacher contacted Parent.⁶⁷ Special Education Teacher unpersuasively asserted that Student did not have a problem doing the work, merely with participation and attendance.⁶⁸ Student went to see Special Education Teacher virtually during her office hours once or twice after Special Education Teacher reached out to Parent.⁶⁹ Student was in a virtual setting throughout 2020/21, but was often not in class or not engaged, with the videoconference camera off.⁷⁰ In 2020/21, Student was frustrated and not able to get 1:1 help; Student would scream and walk away from the computer.⁷¹ The BSS service trackers for 2019/20 and 2020/21 show Student's lack of engagement in the virtual setting.⁷² Less helpfully, the 4/7/21 AED noted only that Student had been absent 8 days out of 138 days enrolled, with no tardies.⁷³

22. Parental Participation. Student's 2020 IEP showed that Parent did not attend the 4/16/20 IEP meeting.⁷⁴ Parent didn't recall participating in the IEP meeting and didn't recall being invited.⁷⁵ School Social Worker contacted Parent by text message on 4/3/20 and recorded that Parent "will attend meeting."⁷⁶ After the meeting, School Social Worker tried to reach Parent on 4/17/20 by text message and received no response, but conveyed "all pertinent information" to Student and Parent.⁷⁷ Parent's concerns about Public School

⁶³ Educational Advocate.

⁶⁴ School Social Worker.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Special Education Teacher.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ P20p245.

⁷¹ Parent.

⁷² R9; R10.

⁷³ P9p117.

⁷⁴ P19p223.

⁷⁵ Parent.

⁷⁶ R13p142.

⁷⁷ *Id.*

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were expressed regularly, including to the IEP team in 2019/20.⁷⁸ Special Education Teacher credibly testified that Parent wanted a smaller setting for Student.⁷⁹

23. Need for Evaluations. A 4/16/21 Prior Written Notice (“PWN”) stated that Student’s team had decided to “proceed with the evaluation process,” but no evaluations were conducted.⁸⁰ Student needs a full battery of assessments, including psychological, occupational therapy, speech-language, assistive technology and FBA.⁸¹ School Speech-Language Pathologist acknowledged that it would be preferable to have an updated psychological evaluation rather than continuing to rely on the 2015 evaluation.⁸² Special Education Teacher asserted that additional testing was not needed because it was known that Student still needed special education services and Student was not using existing services.⁸³

24. Assistive Technology. Assistive technology can help Student be more independent in the classroom.⁸⁴ Assistive technology was not considered when the 2020 and 2021 IEPs were offered and (according to Special Education Teacher) Student had no assistive technology.⁸⁵ Both the 2020 and 2021 IEPs stated without explanation that assistive technology was not warranted for Student.⁸⁶ Assistive technology can be low tech or high tech; Special Education Teacher was only familiar with speech-to-text, but felt it would not help Student who can write in the classroom.⁸⁷

25. Occupational Therapy. Occupational Therapist testified that an occupational therapy evaluation should be conducted based on Student’s deficits and the details included in the comprehensive psychological evaluation.⁸⁸ The comprehensive psychological evaluation raised sufficient red flags in 2015 that an occupational therapy evaluation should have been conducted at that time due to Student’s low skills and struggles.⁸⁹ Occupational therapy can address issues that teachers cannot, and target discrete skills.⁹⁰

26. Speech-Language. Private Speech-Language Pathologist testified that a speech-language evaluation should be conducted based on concerns raised in the comprehensive psychological evaluation, including Student’s poor progress in reading, especially comprehension, and written expression.⁹¹ The 2015 comprehensive psychological

⁷⁸ Parent.

⁷⁹ Special Education Teacher.

⁸⁰ P11p124; Educational Advocate.

⁸¹ Educational Advocate.

⁸² School Speech-Language Pathologist.

⁸³ Special Education Teacher.

⁸⁴ Private Speech-Language Pathologist.

⁸⁵ Special Education Teacher.

⁸⁶ P19p224; P20p241.

⁸⁷ Special Education Teacher; Private Speech-Language Pathologist.

⁸⁸ Occupational Therapist; P7p91,102.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Occupational Therapist; P7p91,96,97,102.

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evaluation recommended a “Speech consult” that was never carried out.⁹² There were also red flags in the 2018 reevaluation as Student was not making progress in speech-language.⁹³ Both School Speech-Language Pathologist and Private Speech-Language Pathologist noted Student’s low or inaudible voice during testing.⁹⁴ School Speech-Language Pathologist agreed that the response-to-intervention discussion in the comprehensive psychological evaluation related to speech-language, as did Student’s difficulties with phonological awareness, blending, vocabulary and reading fluency.⁹⁵ Parent spoke with Student’s IEP team about ■■■ speech-language concerns, but nothing was put in place.⁹⁶

27. Compensatory Education. The 2020 and 2021 IEPs were not appropriate for Student when developed.⁹⁷ But for the denials of FAPE, with appropriate IEPs and support, Student should have been able to make progress in reading, math and written expression.⁹⁸ The compensatory education plan proposed by Educational Advocate and adjusted for the denials of FAPE found herein should have put Student in the position Student would have been but for the denial of FAPE.⁹⁹ The compensatory education plan proposed 322 hours of tutoring along with other elements.¹⁰⁰ Parent is confident that Student would engage with extra tutoring, as Student wants to catch up and not be embarrassed in class due to deficits.¹⁰¹ Parent needs transportation to be provided if her input on evaluations is to be given in person.¹⁰²

28. Credibility. The undersigned found Special Education Teacher to lack general credibility based on various aspects of her testimony, ranging from minor details to substantive matters, such as having difficulty knowing where the date is located on a standard DCPS IEP (despite being the special education teacher and case manager); not being familiar with basic aspects of Assistive Technology and not considering “low tech” graphic organizers to be assistive technology at all; wondering if she was mixing up relevant facts between Student and sibling; and various other points noted herein.¹⁰³

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:

⁹² P7p102; Private Speech-Language Pathologist; P8p105.

⁹³ Occupational Therapist.

⁹⁴ School Speech-Language Pathologist; Private Speech-Language Pathologist; P7p93.

⁹⁵ School Speech-Language Pathologist; P7p92,97.

⁹⁶ Parent.

⁹⁷ Educational Advocate.

⁹⁸ Educational Advocate; P41p386.

⁹⁹ Educational Advocate.

¹⁰⁰ P41p388-89; Educational Advocate.

¹⁰¹ Parent.

¹⁰² Educational Advocate.

¹⁰³ Hearing Officer.

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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.’” *Andrew 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.” *Andrew 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(a)(14); *Andrew 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 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.” *Andrew 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.” *Andrew 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; *Andrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the

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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). "Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5-E D.C.M.R. § 3030.3.

Issue 1: *Whether DCPS denied Student a FAPE by failing to provide appropriate IEPs on or about 4/16/20 and/or 4/7/21, when (a) DCPS failed to include Petitioner in the 2020 IEP annual review; (b) the IEPs had insufficient PLOPs and inappropriate goals and baselines; (c) the 2020 IEP did not provide adequate BSS; (d) DCPS failed to consider assistive technology; (e) DCPS failed to increase specialized instruction; and/or (f) DCPS failed to provide appropriate behavioral interventions, including its failure to develop a BIP. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a prima facie case on this issue through testimony and documents, shifting the burden to DCPS, which failed to meet its burden of persuasion on subparts (b), (d), (e) and (f), as discussed below.

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.

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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.¹⁰⁴ See 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(a) Parental Participation. Petitioner first asserts that DCPS failed to obtain Parent's participation or input when developing the 2020 IEP. The IDEA clearly requires parental involvement in IEP development. See *Andrew F.*, 137 S. Ct. at 999 (crafting an appropriate program of education contemplates the input of the child's parents or guardians); *Z.B. by & through Sanchez v. Dist. of Columbia*, 382 F. Supp. 3d 32, 47 (D.D.C. 2019), and cases collected therein, *aff'd sub nom. Sanchez v. Dist. of Columbia*, 815 Fed. Appx. 559 (D.C. Cir. 2020), *cert. denied sub nom. Z.B. by & through Sanchez v. Dist. of Columbia*, 141 S. Ct. 375, 208 L. Ed. 2d 97 (2020) (the IDEA requires that a student's parents be part of the team that creates the student's IEP and determines the student's educational placement).

Here, there is no doubt that Parent did not attend the 4/16/20 IEP annual review meeting. What is less clear is why, although the meeting was in the early days of the pandemic when DCPS had closed in-person schools just weeks before. While Parent didn't recall being invited, the record indicates that School Social Worker contacted Parent by text message on 4/3/20 and determined that Parent "will attend meeting." Then, the day after the IEP meeting, School Social Worker tried to reach Parent and received no response, but conveyed "all pertinent information" to Student and Parent. Importantly, Parent clearly testified that her concerns about Public School were expressed frequently, including to the IEP team in 2019/20, and Special Education Teacher understood that Parent wanted a smaller setting for Student. On balance, DCPS did meet its burden on parental participation and involvement.

(b) PLOPs, Goals and Baselines. Next, the IDEA requires statements of present levels of academic achievement and functional performance (PLOPs) in IEPs pursuant to 34 C.F.R. § 300.320(a)(1). Here, PLOPs are summarized at length and relied on in the facts set forth above, which the undersigned concludes are adequate for an understanding of Student's very challenging circumstances.

Further, IEPs are required to contain measurable annual goals pursuant to 34 C.F.R. § 300.320(a)(2). Here, Special Education Teacher's concern with Student's goals was whether they were sufficiently advanced based on Common Core standards that matched Student's nominal grade, while Educational Advocate raised very serious concerns about whether Student's goals were attainable when based on grade levels that were often 5 years or so above Student's level of actual academic performance. The undersigned is persuaded by Educational Advocate's testimony that the academic goals in Student's IEP were largely not attainable and thus not appropriate. The undersigned also agrees with Educational

¹⁰⁴ 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 were raised and are discussed herein.

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Advocate's testimony that transition goals were not introduced in 2020/21, but should have been. While Student's behavioral goals were appropriate at the time they were developed, on balance the undersigned concludes that Student's goals were largely inappropriate.

Also, while the IDEA does not expressly require "baselines" in IEPs, it does require a description of how progress toward meeting a student's IEP goals will be measured, in 34 C.F.R. § 300.320(a)(3). That measurement is typically in the form of baselines stating the level at which a student begins so one can determine whether the special education services provided were sufficient to bring about the desired improvement. Here, the IEP baselines were clearly inadequate in math and reading. The 2020 and 2021 IEP baselines for math merely stated that Student was having "difficulties" with algebraic expressions and unknown variables (which Special Education Teacher denied was "vague"), while the 2020 and 2021 IEP baselines for reading were simply that Student was "reading below grade level," which says almost nothing. The baselines were clearly inappropriate.

In sum, while there is no violation based on the PLOPs, the undersigned finds the math and reading goals and baselines to be inadequate, along with the failure to introduce transition goals. This contributes to the denial of FAPE below and to the compensatory education awarded.

(c) BSS. "Related services" must be provided if required to assist a student with a disability to benefit from special education. See 34 C.F.R. § 300.34(a); *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883, 890, 104 S. Ct. 3371, 82 L. Ed. 2d 664 (1984). The issue for the related service raised here is whether as written the IEP for Student was "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. See also *Z.B.*, 888 F.3d at 517; *Damarcus S.*, 190 F. Supp. 3d at 51. Here, Student's BSS was decreased from 120 minutes/month in the 2019 IEP to 90 minutes/month in the 2020 IEP, which Petitioner challenges. However, Student's in-person problematic behaviors were decreasing prior to the shift to virtual in March 2020. Significant improvement from 2018/19 to 2019/20 was also revealed by Student's SDQs. Prior to the closing of in-person school, Student was verbal, engaging and able to discuss and share in person in BSS group sessions. Shifting to virtual schooling was hard on Student, but Student did not have behavioral issues as before. Once school shifted to virtual, Student was not available in distance learning for push-in BSS, and School Social Worker was unable to contact Student's family. In these circumstances, with improvement in Student's behavior while in person, and more improvement with the shift to a virtual setting, the undersigned concludes that DCPS met its burden on the appropriateness of BSS, despite the 30 minutes/month decrease which at least in theory provided more time for Student's academics.

(d) Assistive Technology. While assistive technology could help Student be more independent in the classroom, assistive technology was apparently not considered when the 2020 and 2021 IEPs were developed and offered to Student. Both the 2020 and 2021 IEPs stated without explanation that assistive technology was not warranted for Student. Special Education Teacher had surprisingly little understanding of assistive technology, but was familiar with speech-to-text, which she felt would not help, since Student supposedly could write in the classroom. Quite simply, DCPS failed to meet its burden of showing it

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considered assistive technology, which contributes to the denial of FAPE and award of compensatory education below.

(e) Specialized Instruction. Petitioner's next concern is that DCPS did not provide an appropriate level of services by providing more specialized instruction than the repeated 5 hours/week each for reading, math and written expression. It is sufficient here to note that Student is far behind academically in all areas, but DCPS has not taken steps to increase specialized instruction or otherwise deal with Student's serious needs. As shown by standardized testing detailed above (and confirmed in progress reports), in reading, Student was 4 to 5 years below grade level; in math 4 to 5 years below grade level; and in written expression, Student was only able to increase from a 3-5 sentence paragraph to a 4-6 sentence paragraph, although when informally tested in June 2022, Student's 3-line paragraph contained no sentences (or other necessary punctuation) at all.

The undersigned is persuaded that increased specialized instruction was warranted in the 2020 and 2021 IEPs, given Student's circumstances, and that DCPS failed to meet its burden, contributing to the denial of FAPE and award of compensatory education below.

(f) Behavioral Interventions, Including BIP. Petitioner's final concern is that DCPS failed to provide appropriate behavioral interventions, including failure to develop a BIP. 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, and other strategies, to address that behavior. 34 C.F.R. § 300.324(a)(2)(i); *see Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 146 (D.D.C. 2018). More specifically, the IDEA requires that school districts respond to a student frequently missing school. *See, e.g., Springfield Sch. Comm. v. Doe*, 623 F. Supp. 2d 150, 159 (D. Mass. 2009); *Lamoine School Committee v. Ms. Z. ex rel. N.S.*, 353 F. Supp. 2d 18, 34 (D. Me. 2005) (if not in school, student could not be said to be receiving "a free appropriate public education").

Here, the question is whether DCPS has given Student supports that are reasonable in the circumstances to address Student's behavioral issues, including lack of engagement and participation during 2020/21, which DCPS erroneously sought to treat as Student's problem. While Public School did attempt to provide BSS, as discussed above, other aspects are more troublesome. Student's 2019, 2020 and 2021 IEPs each contained an identical statement concerning Positive Behavior Interventions and Supports, which erroneously referred to actions in the school building even when school was only in a virtual setting. While Student's behavior impeded learning, an FBA and BIP were never developed and included in the record. Both the 2020 and 2021 IEPs mistakenly referenced use of a BIP that had not been developed for Student. The 2020 and 2021 IEPs both noted that Student's behavior would continue to adversely affect accessing general education without significant supports in place. DCPS did not show it provided these supports, which contributes to the denial of FAPE, an order for an FBA to be conducted followed by a BIP, and an award of compensatory education below.

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

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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 (a) and (c), DCPS failed its burden of persuasion by a preponderance of the evidence on the remaining portions of Issue 1, resulting in the Order below requiring specified elements be added to Student’s current IEP, along with a significant award of compensatory education.

Issue 2: *Whether DCPS denied Student a FAPE by failing to conduct a comprehensive triennial reevaluation in April 2021, when it failed to conduct the following evaluations: (a) comprehensive psychological, (b) speech-language, (c) assistive technology, and/or (d) occupational therapy. (Petitioner has the burden of persuasion.)*

The IDEA requires reevaluation of each student with a disability at least once every 3 years, or sooner if the student’s parent or teacher requests a reevaluation, or if DCPS determines that the needs of the student warrant reevaluation. *See* 34 C.F.R. § 300.303. In considering a reevaluation, the IEP team (and other qualified professionals as appropriate) must review existing evaluation data and, with input from the student’s parents, identify what additional data, if any, are needed to determine whether the student continues to have a disability, and the educational needs of the student. 34 C.F.R. § 300.305(a). Decisions on the areas to be assessed are to be made based on the suspected needs of the child. *Z.B.*, 888 F.3d at 518; Office of Special Education and Rehabilitative Services, U.S. Department of Education, *Analysis of Comments and Changes*, 71 Fed. Reg. 46643 (2006). Indeed, evaluations of children by experts are central to the determination of what special education and related services are needed for most eligible children. *See Z.B.*, 888 F.3d at 518; *Hill v. Dist. of Columbia*, No. 14-cv-1893, 2016 WL 4506972, at *18 (“evaluation’s primary role is to contribute to the development of a sound IEP,” *quoting Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60 (D.D.C. 2011)).

Here, Student’s team decided to “proceed with the evaluation process,” according to a 4/16/21 PWN, but no evaluations were conducted. For the reasons set forth below, the undersigned agrees with Educational Advocate that to ensure Student receives a FAPE, Student needs the evaluations sought in the due process complaint, including a comprehensive psychological, speech-language, assistive technology (required in Issue 1(d)), and occupational therapy.

(a) Comprehensive Psychological. Student’s initial evaluation was a comprehensive psychological evaluation dated 4/9/15, which is still the foundation for Student’s services despite the passage of years. School Speech-Language Pathologist acknowledged that it would be preferable to have an updated evaluation rather than continuing to rely on the 2015 evaluation. Student did receive a psychological triennial reevaluation in May 2018, but it was largely a record review. In *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 144 (D.D.C. 2016), the court found that DCPS’s “failure to conduct a new comprehensive psychological evaluation of [the student] means that her IEP might not be sufficiently tailored to her special and evolving needs.” That is the situation here, given Student’s

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circumstances, so DCPS is ordered below to conduct a comprehensive psychological evaluation to include academic, cognitive, emotional and executive functioning testing.

(b) Speech-Language. Private Speech-Language Pathologist testified that a speech-language evaluation should be conducted based on concerns raised in the 2015 comprehensive psychological evaluation, including Student's poor progress in reading, especially comprehension, and written expression. Indeed, the 2015 comprehensive psychological evaluation recommended a "Speech consult" which was never carried out, but was warranted because Student was struggling. There were also red flags in the 2018 reevaluation as Student was not making progress in speech-language. School Speech-Language Pathologist acknowledged that the comprehensive psychological evaluation's response-to-intervention discussion related to speech-language issues, as did Student's difficulties with phonological awareness, blending, vocabulary and reading fluency. Parent spoke with Student's IEP team about her speech-language concerns without success. Thus, a speech-language evaluation is ordered below.

(c) Assistive Technology. An assistive technology evaluation can result in services to help Student be more independent and successful in the classroom. As discussed above, assistive technology was not considered when the 2020 and 2021 IEPs were offered and so a requirement for DCPS to conduct an assistive technology evaluation was required in Issue 1(d), above, along with compensatory education which may need to be supplemented when the assistive technology evaluation is completed.

(d) Occupational Therapy. Finally, Occupational Therapist testified that an occupational therapy evaluation should be conducted based on Student's deficits, along with the specifics in the 2015 comprehensive psychological evaluation, including Student's low skills and struggles. Occupational therapy can address issues that teachers cannot and target discrete skills. DCPS is ordered below to conduct an occupational therapy evaluation.

In sum, the delay in these evaluations is a procedural violation at this point, *Z.B.*, 888 F.3d at 524, but the evaluations may well find a significant need for services that raises the harm from delay to a substantive level that is a denial of FAPE. As noted in footnote 3 above and ordered below, a claim for compensatory education was not sought by Petitioner for Issue 2 in this case and is expressly reserved pending completion of the evaluations. At present, DCPS is simply ordered to complete the required evaluations by the date set, and meet within 10 business days to consider the reports and determine what special education and related services may be needed by Student. A future compensatory education award depends on whether or not Student is found to need additional services that should have been provided sooner, which cannot be determined until the evaluations are completed and reports prepared.

Remedies

Having analyzed and resolved the issues in this case, what remains is to consider appropriate remedies that will address or compensate for the denials of FAPE herein. One remedy is that DCPS is ordered below to convene the IEP team and revise Student's IEP by (a) increasing specialized instruction outside general education in reading, math and written

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expression as determined appropriate, and (b) ensuring that the IEP contains appropriate goals and baselines. In addition, once the evaluations are completed, the IEP team is to review the reports and further modify Student's IEP as appropriate.

Beyond that, compensatory education is awarded to make up for the denials of FAPE found above. In determining the amount of compensatory education for the denials of FAPE, there is often "difficulty inherent in figuring out both what position a student would be in absent a FAPE 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).

Here, a significant amount of academic tutoring is required to make up for the lack of appropriate IEPs due to lack of specialized instruction, inappropriate reading and math goals and baselines, failure to consider and provide assistive technology, and failure to provide behavioral interventions, with the goal of restoring Student to the position in which Student would be but for the denials of FAPE. Educational Advocate testified that the compensatory education hours sought in her Compensatory Education Proposal would achieve that goal. However, Educational Advocate's proposal needed to be adjusted to account for the denials of FAPE actually found herein and this Hearing Officer's view that compensatory education was required as described above and not for home schooling during 2021/22 that was chosen by Parent. Thus, based on the experience and judgment of the undersigned, the Order below awards 250 hours of academic tutoring.

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 undue delay.

ORDER

Petitioner has largely prevailed in this case, as set forth above. Accordingly, **it is hereby ordered that:**

- (1) Within 20 business days, DCPS shall convene an IEP meeting to revise Student's IEP by (a) increasing specialized instruction outside general education in reading, math and written expression, and (b) ensuring that the IEP contains appropriate goals and baselines.

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- (2) Within 60 calendar days, DCPS shall conduct and complete the following evaluations, or authorize independent educational evaluations (“IEEs”) at DCPS’s option: (a) a comprehensive psychological including academic, cognitive, emotional and executive functioning; (b) speech-language; (c) assistive technology; and (d) occupational therapy.
- (3) Within 10 business days after the reports are completed in the evaluations ordered in the prior paragraph, DCPS shall convene Student’s IEP team to review the reports and further modify Student’s IEP as appropriate;
- (4) DCPS shall conduct an FBA and prepare a BIP within the first 30 calendar days of the 2022/23 school year.
- (5) 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 250 hours of academic tutoring from an independent provider chosen by Petitioner; all hours are to be used within 24 months and any unused hours shall be forfeited.
- (6) Claims for compensatory education based on the future completion of the evaluations required in paragraph 2 above are reserved for subsequent resolution.

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).

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