

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parent, on behalf of Student,¹)	Room: 2003
Petitioner,)	
)	
v.)	Case No.: 2015-0101
)	
District of Columbia Public Schools,)	Hearing: 6/1/2015
)	
Respondent.)	Hearing Officer: Michael Lazan

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving a _____ year old student who is eligible for services as a Multiple Disabilities (“the Student”). _____.

A Due Process Complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on March 24, 2015 in regard to the Student. On April 2, 2015, Respondent filed a response. A resolution meeting was held on April 10, 2015. The resolution period expired on April 23, 2015.

II. Subject Matter Jurisdiction

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

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

III. Procedural History

On April 28, 2015, this Hearing Officer held a prehearing conference. Roberta Gambale, Esq., counsel for Petitioner, appeared. Justin Douds, Esq., counsel for Respondent, appeared.

A prehearing conference order issued on May 1, 2015, summarizing the rules to be applied in this hearing and identifying the issues in the case.

One hearing date followed, on June 1, 2015. This was a closed proceeding. Petitioner was represented by Roberta Gambale, Esq. Respondent was represented by Justin Douds, Esq. Petitioner moved into evidence Exhibits 1-34. Respondent objected to Exhibits 13 and 15 because they are counsel's meeting notes. Respondent objected to Exhibits 12 and 16 because they are requests for records. The objection to Exhibit 15 was sustained. Other objections were overruled. Exhibits 1-14, and 16-34 were admitted. Respondent moved into evidence Exhibits 1-14, which were admitted without objection.

The parties presented closing statements orally, on the record, after completion of testimony on June 1, 2015. After the closing statements, Petitioner sought permission to file a supplemental email with case citations, which permission was granted. Petitioner's supplemental email was received on sent on June 3, 2015.

Petitioners presented as witnesses: Petitioner; the Student; Witness A, a psychologist (expert in clinical and school psychology); Witness B, a psychologist (expert in clinical and school psychology); and Witness E, a representative of School C.

Respondent presented as witnesses: Witness C, a teacher; and Witness D, a social worker.

IV. Credibility

I found all the witnesses had some credibility in this proceeding. Some of the Student's testimony struck me as so detailed that she must have been telling the truth, such as when she was describing the BES classroom. Other parts of the Student's testimony rang false, such as when she stated that she had received virtually no counseling during the period in question. Other witnesses seemed to have no material inconsistencies, and presented their testimony with reasonable candor.

V. Issues

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

1. Did DCPS fail to implement the IEP dated October 17, 2014, which called for behavioral support services outside general education? If so, did DCPS deny the Student a FAPE?

2. Did DCPS fail to provide the Student with a reasonably calculated IEP which appropriately considered the recommendations of a court-ordered evaluation, pursuant to such caselaw as Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 276 (1982)? If so, did DCPS deny the Student a FAPE?

3. Did DCPS fail to provide the Student with an appropriate behavior intervention plan (BIP) on February 9, 2015, pursuant to 34 CFR Sect. 300.324(a)(2)(i)? If so, did DCPS deny the Student a FAPE?

4. Did DCPS fail to assess the Student in all areas of suspected disability by failing to provide the Student with a Vineland Adaptive Scale (“Vineland”), pursuant to 28 U.S.C. Sect.1414(b)(3), 34 C.F.R. Sect.300.304(c), and related provisions? If so, did DCPS deny the Student a FAPE?

As relief, Petitioner is seeking placement in a non-public school and compensatory education.

Issue 4 was withdrawn, orally, on the record, at the commencement of the hearing on June 1, 2015.

VI. Findings of Fact

1. The Student is a [REDACTED] year old who is eligible for services as a Student with Multiple Disabilities. (P-4-1)
2. She was born with fetal alcohol syndrome. (P-1-4)
3. She was pregnant at the time of the hearing. (Testimony of Petitioner)
4. She has been diagnosed with Disruptive Mood Dysregulation Disorder, Oppositional Defiant Disorder (Severe), Borderline Intellectual Functioning, Specific Learning Disorder with Impairment in Reading, Specific Learning Disorder with Impairment in Mathematics, and Specific Learning Disorder with Impairment in Written Expression. (P-1-13)
5. She has also been diagnosed with Mood Disorder NOS. (P-2-3)
6. She has a general inability to use appropriate judgment in potentially dangerous situations. (P-2-3)
7. After getting upset, she tends to go out of control. (Testimony of Witness B)

8. She has threatened to harm her mother, not followed household rules, and has had a “bad attitude.” (P-1-4)
9. She has, historically, had difficulty in school. She has tended to curse at teachers, skip classes, and dress inappropriately. (P-1-5)
10. She requires individual therapy. (Testimony of Witness B)
11. She has a full scale IQ of sixty-nine, which is in the extremely low range, at the second percentile. (P-1-8-9)
12. On the Woodcock-Johnson Tests of Achievement-III, her reading scores have been very low, with Basic Reading testing at the equivalent of a child aged about seven years (standard score fifty). In Reading Comprehension, the standard score was sixty-one, which corresponds to a grade equivalent of two years and six months. (P-1-10)
13. In Broad Math, her standard score was a fifty-two, below the first percentile, with a grade equivalent of second grade range. (P-1-12)
14. In Broad Written language, her standard score was sixty-nine, in the second percentile, with a grade level equivalent of third grade range. The Student has significant issues with writing. She has difficulty with content and grammar. (Testimony of Witness C; P-1-12)
15. She wants to graduate high school and attend college. (P-1-6)
16. She has had an IEP since about first grade. (Testimony of Petitioner)
17. She went to School A from 6th to 8th grade. She received counseling at School A. Her IEP from January 16, 2013 requires twenty hours per week of specialized instruction outside general education and one hundred eighty minutes of counseling per month. (P-1-5)

18. She was arrested for felony assault, assault with a dangerous weapon, and aggravated assault on February 24, 2014. (P-1-1)

19. Starting in 9th grade, for the 2014-2015 school year, she went to School B. (P-1-5)

20. She was placed in the BES program at School B. This program has an 8:1 teacher to student ratio. (Testimony of Witness C)

21. There are lectures in this class, there is group work, and online assistance is provided. There are six computers in the classroom. (Testimony of Witness C)

22. An instructional aide is provided, and there is also a behavioral technician for students who have “outbursts”. (Testimony of Witness C)

23. *Ad hoc* counseling can be provided if students need it. (Testimony of Witness C)

24. A token economy system has been implemented for the students. (Testimony of Witness C)

25. Students in some of the BES classrooms do not always report to class on time. (Testimony of Student)

26. During the first few months of school, the Student skipped at least 2 classes a day and incidents were occurring on a daily basis. She refused to do her work, cursed a lot, and was rude. (P-1-5)

27. She had a problem with verbal aggression and an inability to stay in class. (Testimony of Witness C)

28. She went to counseling “sometimes” during this time. (Testimony of Witness D)

29. The Student did not like counseling at this time. (Testimony of Witness D)

30. The school tried phone calls home, positive behavior incentives, and 1:1 teacher support to get her to attend. They tried behavior trackers, preferential seating, emailing lesson plans home, verbal and non-verbal redirections, small group work, work in an environment with minimal distractions, positive behavior incentives, meetings with a social worker, and outside support services. (P-4-2)

31. Still, she was extremely disruptive in class. She used vulgar language, shouted out inappropriately, was chronically absent, was late, refused to complete work, stormed out of the classroom without permission, and refused to put her cell phone away. (P-4-2)

32. On October 14, 2014, she was committed to Center A. (P-1-3)

33. Initially, she had difficulty with the staff at Center A. (P-1-3)

34. Then she became a “model resident,” waking up on time. (P-1-4)

35. While she was at Center A, an IEP was written for the Student on October 17, 2014. (P-4-1)

36. The IEP contains math goals, reading goals, written expression goals, and emotional, social, and behavioral development goals. (P-4)

37. The emotional goals related to demonstrating self-control while using positive coping strategies, accepting consequences without making inappropriate comments or cursing, and attending classes on a consistent basis. (P-4-7-8)

38. The IEP recommends 25 hours per week of specialized instruction outside general education, with 240 minutes per month in behavioral support services. 120

minutes of those services were to be in a confidential location. Classroom accommodations include reading of test questions, repetition of directions, location with minimal distractions, preferential seating, small group testing. (P-4)

39. A psychological evaluation, ordered by a criminal court judge, was issued on November 13, 2014. (P-1-1)

40. The evaluation recommended a residential treatment program for the Student. (P-1-14)

41. It recommended, among other things, a placement with highly trained staff that are trained to manage youths with emotional and behavioral problems, individual cognitive behavioral therapy, group therapy, family support meetings with the student's mother, the capability of medication being administered on site, two staff members with her at all times, and venues to channel her creative strengths. (P-1-14)

42. In November, 2014, the Student returned to School B. She decided to find a new peer group after her time at Center A. (P-1-7)

43. The incarceration had a positive impact on her. (Testimony of Petitioner)

44. The Student's maturity level increased. (Testimony of Witness C)

45. She began to have less altercations in the classroom because she learned about impulse control. (Testimony of Witness D)

46. The Student began to make progress on essay writing, researching, and sentence structure. (Testimony of Witness C)

47. She started to complete her assignments and her work has improved on the work that he was given her. (Testimony of Witness C)

49. Still, there were issues. The parent was getting calls because the Student has issues with her Biology teacher. (Testimony of Petitioner)

50. The Student had difficulty doing the work in Math and Science.
(Testimony of Student)

51. She was also suspended, about two months prior to the date of hearing.
(Testimony of Witness C)

52. During this time, the Student saw her counselor three to four times a week, with sixty percent of that time spent in the counselor's office. (Testimony of Witness D)

53. The Student attended counseling on October 23, 2014, October 27, 2014, October 31, 2014, November 5, 2014, November 20, 2014, December 3, 2014, December 4, 2014, January 8, 2015, January 14, 2015, February 11, 2015, and February 24, 2015.
(P-5)

54. DCPS conducted a reevaluation of the Student on January 12, 2015, which reviewed the Student's Brigance Inventory of Basic Skills, a reading comprehension assessment, and a writing assessment. This evaluation did not include a review of the Student's court-ordered evaluation. (P-3)

55. She has not made "that much" progress since she has been at School B. She has had trouble retaining information. (Testimony of Petitioner)

56. An MDT meeting was held on December 12, 2014 where the Student reportedly said that she liked all of her classes. Petitioner expressed concerns and was seeking a different placement, and a tutor. At this meeting, DCPS staff discussed how the Student had improved in class. The Student was working harder and was more open to speaking in class than she had been previously. (R-2-1-3)

57. A BIP was created for the Student on February 9, 2015. The Student's BIP resulted in the following strategies: 1) assigned seating; 2) discussion of classroom rules; 3) expression of simple directions; 4) use of appropriate tone of voice; 5) checking the student for understanding; 6) real world situations will be presented for understanding; 7) ad hoc behavioral supports; 8) allowing the student to take leadership roles in the classroom; 9) intervening early when there is a problem; 10) developing signals to redirect and refocus the student; 11) beginning class with a compliment; 12) allowing her to take a "helper" role; and 13) frequently "checking in" on the Student. (P-17-1-2)

58. The Student made progress on her goals for Period 2, which ran from November 3, 2014 through January 23, 2015. (P-31)

59. The Student's grades for Term 2 (ending January 23, 2015) were B in self-advocacy, B in reading workshop, C in Career Exploration, and D in Algebra I. (R-11-2)

60. For Term 3 (ending April 3, 2015), the Student received a C in Biology with eleven absences, a B in English 1. (R-11-6-7)

61. For Term 4 (ending May 15, 2015), the Student received C in Biology, a B in English, a C in Algebra, and a B in World History/Geo. (R-11-10-11)

62. From November 24, 2014 through May 21, 2014, she was absent or late in at least one class approximately 67 times. Many of these were latenesses or absences relating to Biology and Algebra, which she had for first period. (R-12-2-3)

VII. Conclusions of Law

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

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

The central purpose of the IDEA is to ensure that all children with disabilities have available to them special education and related services designed to meet their unique needs and provided in conformance with a written IEP (i.e., free and appropriate public education, or "FAPE"). 20 U.S.C. Sects. 1400(d)(1)(A), 1401(9)(D), 1414(d); 34 C.F.R. Sects. 300.17(d), 300.320; Shaffer v. Weast, 546 U.S. 49, 51 (2005).

Pursuant to the Supreme Court's decision in Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176, (1982), the IEP must, at a minimum, "provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005).

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies: (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit. 34 CFR Sect. 300.513(a).

1. Implementation/Location of Services.

Petitioner contends that DCPS failed to implement the IEP dated October 17, 2014, which called for behavioral support services outside general education.

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

Petitioner argues that the Student’s testimony supports this contention. The Student testified that she only went to counseling once or twice after returning from Center A. Petitioner also contends that the District’s service trackers are unreliable, since an entry for November 20, 2014 indicated the Student went to counseling on a day she was not even at school on that day. Petitioner also argues that the progress notes in the service trackers do not indicate sessions outside the classroom, as is required on the IEP.

To accept the Student’s position that she only went to counseling once or twice after returning from Center A, I would have to also accept that Witness D simply forged tracking forms that discussed the Student’s progress during counseling. There is no reason for this social worker to have done so. I agree with Petitioner that it is curious that there is an entry for November 20, 2014, when the Student was apparently still at Center A. Still, I cannot say, on this record, that Petitioner has presented sufficient evidence to prove that that counseling was not provided to the Student after she returned to School B in November, 2014.

The Student also argued that the counseling sessions were not provided confidentially, as required by the IEP. The IEP does indeed require 120 minutes per month of the counseling to be done “confidentially.” However, Witness D said that she met with the Student three to four times a week, and that sixty percent of the sessions were in her office. Additionally, the service trackers do not report that the Student’s counseling was conducted in a group. On the contrary, the trackers say the group size is zero, suggesting, to this IHO, that the Student may have gotten counseling with zero other students.

I find these claims without merit.

2. The IEP, and BIP, after Center A.

Petitioner contends that DCPS failed to provide the Student with a reasonably calculated IEP which appropriately considered the recommendations of a court-ordered evaluation, and then failed to provide the Student with an appropriate BIP on February 9, 2015.

DCPS argues that the Student has made a great turnaround and is doing well in school under the October 17, 2014 IEP. DCPS also argues that the BIP provides the Student with specific interventions to address all the Student’s issues.

Districts have a duty to revise IEPs as appropriate. Kevin T. v. Elmhurst Comm. Sch. Dist. No. 205, 36 IDELR 153 (N.D. Ill. 2002) The applicable regulations, at 34 CFR Sect. 300.324, provide that a District must revise the IEP to address any lack of expected progress toward the annual goals, to address the results of any reevaluation, to address information about the child provided to, or by, the parents, to address the child’s anticipated needs; or to address other matters.

The court-ordered evaluation recommended, among other things, a placement with highly trained staff that are trained to manage youths with emotional and behavioral problems, individual cognitive behavioral therapy, group therapy, family support meetings with the student's mother, the capability of medication being administered on site, two staff members with her at all times, and venues to channel her creative strengths.

Some of these interventions are provided at School B, which is providing the Student with trained staff with small class size. The staff is trained to manage youths with emotional and behavioral problems, as evidenced by the fact that the Student's classroom has its own behavior technician. There is counseling that is provided by the Student, as already discussed.

These interventions were largely working for the Student. With the exception of attendance and tardiness issues, the Student did reasonably well in School B after her time at Center A, making progress in writing, staying in class, participating, and passing. Some from the school appeared genuinely excited about the Student's turnaround after having being committed at Center A. All that was needed for the Student, at the time, was an adjustment of the program to address the student's attendance and tardiness issues. There was no practical need to reconvene the IEP team to address the recommendations in the evaluation, though certainly the DCPS staff should have reviewed the evaluation and thought about it.

The question here is whether the failure of the District to address the Student's attendance and tardiness issues amounts to a denial of FAPE. On sixty-seven different days after the Student came back from Center A, the Student missed or was late to at least one class. Between January 26, 2015 and May 21, 2015, the Student was absent from

Biology nineteen times and late for Biology twenty-two times. Previous to attending Center A, the Student's attendance and tardiness issues were even worse, with the Student being absent or late for at least one class virtually every single day in September, 2014.

The District failed to deal with these issues. The October 17, 2014 IEP references the Student's attendance and lateness issues (P-4-2) but fails to provide any specific services beyond counseling to address them. Counseling had been provided to the Student since at least January 16, 2013 without any apparent success in convincing the Student to attend regularly or in timely fashion. No BIP was annexed to this IEP though the IEP says that the Student's behavior impedes his learning and the learning of others.

In February, 2015, a BIP was written for the Student. This BIP, however, does not touch upon the Student's inability to get to class on time or regularly. There is no testimony and evidence that the District even considered addressing the Student's lateness and attendance issues in the BIP. 20 U.S.C. Sect. 1414(d)(3)(B)(i); 34 C.F.R. Sect. 300.324(a)(2)(i) ("if behavior impedes the student's learning, the IEP team shall consider the use of positive behavioral supports and other strategies to address that behavior in conformance with the IDEA and its implementing regulations).² It is noted that many courts have held that a BIP should include interventions to address a student's

²It is "essential" for the LEA to address behavioral issues. Long v. Dist. of Columbia, 780 F. Supp.2d 49 (D.D.C. 2008)(in ruling the District failed to provide an FBA/BIP for a Student, court stated that "the quality of a student's education is inextricably linked to the student's behavior"); Shelton v. Maya Angelou Charter School, 578 F.Supp.2d 83 (D.D.C. 2008)(FBA/BIP required where learning disabled student was suspended) .

issues with attendance and tardiness if the issues can be linked to the Student's disability.³

No student, much less a multiply disabled [REDACTED] year old with an IQ of 65 and a reading level of a second grader, can miss that much class without being deprived an educational benefit. This is evidenced by the fact that the Student received a D in Algebra during the time that she was consistently late or absent. While it may not be the easiest task for a school district to get certain children to get to school on time, or at all, *something* must be tried when a chronic problem like this exists. Nothing new was tried here, and the Student ended up having significant difficulty in Algebra and Biology,⁴ two of the five academic subjects the Student studied during the 2014-2015 school year (the Student also took English, Reading Workshop, and World Hist/Geo 1).

I should note that this Student's IEP referenced the Student's lateness and attendance issues, suggesting that these issues are a function of her disabilities. The record also suggests that the lateness and attendance issues relate to the Student's disability. The Student is diagnosed with Disruptive Mood Dysregulation Disorder and severe Oppositional Defiant Disorder, and she testified that she has difficulty with Math

³Respondent has an "affirmative duty" to address a Student's truancy. Lexington County Sch. Dist. One v. Frazier, 57 IDELR 190 (D. S.C. 2011)(SRO's ruling that District failed to assess Student's truancy issue upheld by District Court); Springfield School Committee v. Doe, 623 F.Supp.2d 150 (D. Mass 2009)("behavior management services" fall within the scope of IDEA); cf. R.B. v. Mastery Charter School, 762 F. Supp.2d 745 (E.D. Pa 2010)(District had duty to respond to absences through educational intervention); Independent Sch. Dist. No. 284, Wayzata Area Sch. v. A.C., 258 F.2d 769 (8th Cir. 2001)(neuropsychological assessment conducted of truant student; assessment was relied upon by the court to determine appropriate educational program for Student); see also Urban Pathways Charter School, 112 LRP 27526 (Pennsylvania, 2012)(District had duty to explore reasons behind absences); Corpus Christi Ind. Sch. Dist., 57 IDELR 240 (Texas 2011)(District denied FAPE when truancy was not properly assessed by District).

⁴Respondent in effect conceded that the Student is not doing well in Biology in counsel's opening statement.

and Science, the two subjects at issue. I find that the Student's social and emotional issues, and her difficulties with math and science, contributed to this otherwise motivated Student's inability to get to class during the 2014-2015 school year. I therefore find that DCPS denied the Student a FAPE by failing to address the Student's lateness and attendance issues after she returned from Center A in November, 2014.

VIII. Relief

As a remedy, Petitioner asserts that appropriate relief in this matter is to order placement at School C and compensatory education.

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

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

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

In Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005), the Circuit laid forth rules for determining when it is appropriate for IHOs to order funding of non-public placements. First, the court indicated that “(i)f no suitable public school is available, the [school system] must pay the costs of sending the child to an appropriate private school.” Id. At 9 (citing Jenkins v. Squillacote, 935 F.2d 303, 305 (D.C.Cir.1991)). The Circuit then explained that such relief “must be tailored” to meet a student's “unique needs.” Id.

At 11-12 (citing to Florence County School Dist. v. Carter, 510 U.S. 7, 16 (1993)). To inform this individualized assessment, courts must consider “all relevant factors” including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment. Id. at 12.

The record suggests that School C would be a good placement for the Student. There is small class size, a behavior “point sheet,” reading assistance programs, therapists going into the classroom to collect information, access throughout the day to a therapist, and a sensory room to work out their energy. Still, there is no need to take the Student out of the public schools. The record reveals that, except for the Student’s difficulties with attendance and timeliness, the BES at School B is appropriate for her. It also has small class size, behavioral interventions, and access to counseling. She is motivated there, passing her classes, making strides in emotional and social issues, and making clear progress in writing. The record also indicates that she is happy there. While School C, as described by Witness E, may also be appropriate, this does not provide enough of a reason to order placement there at this time.

Petitioner also seeks compensatory education for the period of FAPE denial. One of the equitable remedies available to a hearing officer, exercising his authority to grant “appropriate” relief under IDEA, is compensatory education. Under the theory of compensatory education, courts and hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In every case, however, the inquiry

must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F. 3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to craft an award 'tailored to the unique needs of the disabled student'").

A Petitioner need not "have a perfect case" to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011) Under the IDEA, if a Student is denied a FAPE, a hearing officer may not "simply refuse" to grant one. Henry v. District of Columbia, 55 IDELR 187 (D.D.C. 2010) Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

Petitioner seeks one hundred fifteen hours of math tutoring, twenty hours of English/reading tutoring, and forty-eight hours of writing tutoring. However, this request for relief is premised on the Student not receiving any benefit at all from her program after the October, 17, 2014 IEP. The FAPE deprivation here centers on the Student's inability to attend school for a certain portion of the day, not the whole day.

Relying on my experience as a hearing officer, I will therefore significantly modify Petitioner's requested award to forty-five hours of 1:1 tutoring by a certified special education teacher. I will also order that the Student's BIP be rewritten to provide specific, new interventions designed to get the Student to attend school on time every day.

IX. Order

As a result of the foregoing:

- 1) Respondent is hereby ordered to provide the Student with forty-five hours of 1:1 individualized tutoring, to be delivered by a certified special education teacher (services to be completed by 6/16/16);
- 2) Respondent is hereby ordered to rewrite the Student's BIP to provide multiple, specific, new interventions designed to get the Student to attend school on time every day.
- 3) Petitioner's other claims are hereby denied with prejudice.

Dated: June 7, 2015

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Roberta Gambale, Esq.
Justin Douds, Esq.
OSSE Division of Specialized Education
Contact.resolution@dc.gov
Chief Hearing Officer

X. Notice of Appeal Rights

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

Date: June 7, 2015

Michael Lazan
Impartial Hearing Officer