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,	)	**Date Issued: June 29, 2015**
v.	)	**Case No.: 2015-0106**
District of Columbia Public Schools,	)	**Hearing Dates: June 8, 12, 18, 2015**
Respondent.	)	**Hearing Officer: Michael Lazan**

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving a [redacted] year old student who is eligible for services as a student with an Other Health Impairment. ("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 26, 2015 in regard to the Student. On April 3, 2015, Respondent filed a response. A resolution meeting was held on April 8, 2015. The resolution period expired on April 25, 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 May 1, 2015, this Hearing Officer held a prehearing conference. Alana Hecht, Esq., counsel for Petitioner, appeared. Tanya Chor, Esq. counsel for Respondent, appeared.

A prehearing conference order issued on May 6, 2015 summarizing the rules to be applied in this hearing and identifying the issues in the case. This order was amended on May 20, 2015.

Respondent moved for a continuance, through Unopposed Motion to Continue Due Process Hearing, filed on April 21, 2015. This motion was granted by Interim Order on Continuance Motion by Chief Hearing Officer Dietrich on April 28, 2015. A second motion for continuance was filed by Petitioner, filed June 9, 2015, which was called Consent Motion for Continuance for Due Process Hearing and Hearing Officer Determination Deadline. This was granted by Interim Order on Continuance Motion by Chief Hearing Officer Dietrich filed on June 15, 2015.

Three hearing dates were held, June 6, 2015, June 12, 2015, and June 18, 2015. The HOD was due on June 29, 2015. This was a closed proceeding. Petitioner was represented by Alana Hecht, Esq. Respondent was represented by Tanya Chor, Esq. Petitioner moved into evidence Exhibits 1-53, except for Exhibit 49. There was no objection from Respondent. These documents were admitted. Respondent moved into evidence Exhibits 1-32. There were no objections. Exhibits 1-32 were admitted.

The parties presented closing statements orally, on the record, after completion of testimony on June 18, 2015.

Petitioners presented as witnesses: Petitioner; Witness A, a paralegal/advocate; Witness B, a Center Director; Witness C, a Clinical Director; Witness D, an Assistant Executive Director at School C; and Witness E, an advocate and Expert in educational programming for students with special needs. Respondent presented as witnesses: Witness F, a teacher; and Witness G, a Compliance Case Manager.

IV. Credibility

I found all the witnesses credible in this proceeding. There were no material inconsistencies uncovered in connection to any witness, and all witnesses 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 provide the Student with reasonably calculated educational services in his IEPs dated December, 2013, February, 2014, March, 2014, December, 2014, and February, 2015 pursuant to such case law as Board of Education of the Hendrick Hudson Central School District v. Rowley? If so, did DCPS deny the Student a FAPE?

2. Did DCPS fail to revise the Student's IEPs pursuant to 34 CFR Sect. 300.324 after triggering events in or about September, 2014, December, 2014, February, 2015 and March, 2015? If so, did DCPS deny the Student a FAPE?

3. Did DCPS fail to provide the Student with an appropriate educational placement from December, 2014 through the present pursuant to Rowley and its progeny? If so, did DCPS deny the Student a FAPE?

4. Did DCPS fail to assess the Student in all areas of suspected disability by conducting an occupational therapy assessment after the issuance of the Assistive Technology Evaluation on November 2014? If so, did DCPS violate 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?

5. Did DCPS fail to create an appropriate Behavior Intervention Plan ("BIP") pursuant to 20 U.S.C. Sect. 1414(d)(3)(B)(i) and 34 C.F.R. Sect. 300.324(a)(2)(i) after completion of the FBA in November, 2014?

6. Did DCPS deny the Student a FAPE by delegating decisions about the educational placement to an "LRE team" in violation of case law such as Eley v. District of Columbia? If so, did DCPS deny the Student a FAPE?

As relief, Petitioner is seeking placement in a full-time therapeutic non-public day school and transportation to that school placement; a Prior Written Notice placing the student at the full-time therapeutic non-public day school; a revision of the student's IEP including hours of specialized instruction, and related services; compensatory education in a form to be determined; and an occupational therapy assessment and a meeting to review that assessment upon its completion. Alternatively, Petitioner has requested a revision of the IEP and a new school setting.

VI. Findings of Fact

1. The Student is a [redacted] year old who is eligible for services as a Student with Other Health Impairment. (P-25-1)

2. He has very low functional levels in academics. Woodcock-Johnson III testing from May 21, 2015 indicated that the Student's reading was on the first percentile in terms of word attack and oral reading, the ninth percentile in spelling, and the fourth percentile in math computation. (P-48-2)

3. In class, he is impulsive, hyperactive, and inattentive. He will cause major disruptions and show a lot of anger which will impair his judgment. When he does not get his way, he is explosive, oppositional, and combative and may run away from the classroom. (P-24-4)

4. Large classroom settings overwhelm him. (P-47-1)

5. He will act out because he wants to get out of what work he has to do. (Testimony of Witness F)

6. If there is a computer in the classroom, he will try and go on it to play computer games. (Testimony of Witness F)

7. He needs individualized reading instruction. (P-10-7)

8. When he is on medication, he is able to focus in a small group. He will do better with a partner than with a small group. (Testimony of Witness C; P-10-7)

9. The Student was tested in January, 2012 through the Young Children's Achievement Scale, when he was [redacted] old. Testing showed that he was performing within a year of expectation in all areas, except writing. (P-40)

10. During first grade, for the 2012-2013 school year, the Student attended School A. (Testimony of Petitioner)

11. The IEP dated February 11, 2013 recommended five hours per week of specialized instruction outside general education, with four hours per month of speech and language pathology. Also recommended were interventions such as repetition of directions, simplification of oral directions, and small group testing. (P-5-6)

12. The Student remained at School A for second grade, during the 2013-2014 school year. (Testimony of Petitioner)

13. The Student began to have difficulty in class in second grade. Sometimes the Student would simply not answer a question. When he responded, his response would have nothing to do with the question being asked. Most of the time he would not even respond when given a simple "one-step" question. He was up out of his seat "constantly." (P-10-7)

14. Another IEP meeting was held on December 12, 2013. This IEP provided the same basic level of service as the February 11, 2013 IEP. (P-9-8)

15. At about this time, the Student would play games on the computer instead of work. He would also get upset and not do what he was told. The parent received many phone calls from school because of the Student's behavioral problems. (P-11-2-5)

16. A psychological reevaluation was conducted of the Student in January, 2014. The Student's composite intelligence index score was 81 on the Reynolds Intellectual Assessment Scale, which was low average. His academic functioning scores showed that he was reading at the three percent success rate in oral fluency, and that his overall ability to read and perform math was better than only one percent of his peers. His writing scores were even lower, with the Student performing better than less than .1 percent of his peers. (P-43-14-15)

17. There was another meeting on February 7, 2014, where the Student's teachers, the parent, a paralegal, and school staff met to discuss his performance. It was decided that a behavior contract would be implemented. Two hours of push-in for math were to be provided. No changes were made to the IEP. (P-11-2-7)

18. By February 7, 2014, his teacher -- Teacher A -- was expressing concern that hat he had never been so defiant before. His teacher stated that he will "throw his work around" and that he was not responding to redirection. (R-10-1-2)

19. Another IEP meeting was held on March 31, 2014, during which Teacher A said that he was "so distractible" and "does much better with one on one." She also said that at the end of the day, he is "very confused." (P-13-2)

20. The IEP from March 31, 2014 did not increase specialized instruction and eliminated speech and language pathology, though it added sixty minutes per month of behavioral support services. (P-14-7)

21. Over the summer, 2014, the Student's stepfather was murdered. (P-24-4)

22. During the 2014-2015 school year, the Student remained at School A, still receiving five hours of specialized instruction, outside general education. (Testimony of Witness A)

23. Behavior worsened further during 2014-2015. The Student was unable to stay in his seat at all. He was "out of control" and engaging in "bizarre" conduct such as grabbing students and hitting them. He would run out of his classroom. There was a suspicion that he was not on his medication. The loss of his stepfather also caused him distress. (P-17-1, P-19-2)

24. Meetings were held on September 11, 2014 and September 16, 2014 to discuss the Student's behaviors. Teacher A said the Student needed an aide at this time. (P-17-19; Testimony of Witness A)

25. A Functional Behavioral Assessment by Social Worker A on November 13, 2014, indicated that classrooms with more than five children in it will overwhelm him. (P-47-1)

26. A BIP was created by Social Worker A on November 13, 2014. The plan offers a visual schedule, redirection, small group instruction, security to lead him to an escort room, and collaboration between school staff and the parent. The BIP provides for an approach to dealing with the Student's outbursts. (P-22)

27. Nevertheless, the Student's behaviors continued to worsen, to the point that he was starting to get physical with staff. (Testimony of Witness A)

28. Another IEP meeting was held on December 11, 2014. A more restrictive setting was mentioned, but the IEP team members from the District remarked that, to find a more restrictive setting, they had to consult the "LRE team." Social Worker A recommended a 1:1 aide and ABA for the Student. Eventually, the team decided to give the Student additional specialized instruction. He now was eligible for ten hours per week of specialized instruction outside of general education, and behavior support services were set to 240 minutes per month. (Testimony of Witness F; Testimony of Witness A; P-25)

29. Still, the Student continued to do poorly. He would refuse to participate without "constant" redirection and reinforcement. In the general education environment

he spent most of his time on the computer to play games. When he would not be allowed on the computer, he would go into "fight mode." (P-28-2-3, P-29-2)

30. In fact, during visits of the Student's counselor to the school, the Student was typically playing on a computer. (Testimony of Witness C)

31. The parent was called so much that she did not want to be contact anymore unless there was a suspension. (Testimony of Witness A)

32. He had numerous suspensions during the 2014-2015 school year, including a recent suspension where he threw sand at a teacher. (Testimony of Witness F)

33. The police even became involved, and there were threats to report the Petitioner to "family services" so she could better address the Student's behavior. (Testimony of Petitioner)

34. Another meeting was held on February 9, 2015, which meeting also included discussion of suspensions. The Student's IEP was changed to require twenty hours of specialized instruction per week. (P-30)

35. During this time, the Student's performance was better in the resource room with Witness F. He would, in fact, become upset when he had to leave Witness F's room. He would resist going to classes with general education students, such as in "specials." (Testimony of Witness E; Testimony of Witness F)

36. He was in Witness F's class most of the day. This was a resource room with different students going in and out of class at different times of the day. (Testimony of Witness E; Testimony of Witness F)

37. The proposed BES program at School B for 2015-2016 has a classroom that is capped at about 10 students, with a teacher, an aide for classroom, and a behavior technician in each room. (Testimony of Witness G)

38. The Student would mix with general education students in this program. Lunch, recess and "potentially" specials might be with general education students. (Testimony of Witness G)

39. The BES Program at School B provides a third through fifth grade classroom. The classroom program includes the use of computers for instruction. (Testimony of Witness E)

40. School C is a private, eleven month program for children with emotional and behavioral problems. There are thirty-seven children with various disorders in the school, with grades ranging from kindergarten to 7th grade. (Testimony of Witness D)

41. There are no more than five students in a class. (Testimony of Witness D)

42. The school has five social workers to provide therapy and work with the parents. It has ten behavior support specialists who are in the hallways. (Testimony of Witness D)

43. Staff are trained in take-down techniques such as CPI. Teachers in the school are special education certified. (Testimony of Witness D)

44. The school has their own consulting psychiatrist, who prescribes medicine and confers with staff on a weekly basis. (Testimony of Witness D)

45. If a student leaves the classroom, school staff will try to work with them in the hallway and then they take them to a counseling room to help them deal with the problem. (Testimony of Witness D)

46. Disruptive children are either taken out of the classroom or left in the classroom while the rest of the class is taken out. (Testimony of Witness D)

47. The school has reading specialists on staff. (Testimony of Witness D)

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. IEPs/Revisions/Placement/BIP.

Petitioner alleges that DCPS fail to provide the Student with reasonably calculated educational services in his IEPs dated December, 2013, February, 2014, March, 2014, December, 2014, and February, 2015. Petitioner also alleges that DCPS failed to revise the Student's IEPs pursuant to 34 CFR Sect. 300.324 after triggering events in or about September, 2014, December, 2014, February, 2015 and March, 2015. Petitioner also alleges that the Student's educational placement was inappropriate during this time period.

The Student began having trouble, at the latest, toward the beginning of his second grade year. He would not respond when given a simple one-step question. He was a "wanderer." He was up out of his seat constantly. All this was discussed at the December, 2014, IEP meeting, which should have alerted DCPS that more services might have been needed for this Student. No changes were made to the IEP at that time.

By February, 2014, things had gotten worse. The Student started to go off-task and would sneak to the computer to play games – during class time. The parent began to receive a lot of phone calls from school. Moreover, testing during this time showed that the Student was functioning at a low academic level. The Student tested at only at the first percentile in reading and math – and he tested even lower in writing, at less than .1 percentile.

A meeting was held in February, 2014 to discuss the Student's issues. At this point, I find, it should have been clear to DCPS that the Student needed more services.

At the very least, I find, the Student should have been getting special education support in all of his academic classes so that 1) closer attention could be paid to him in class to manage his many behavioral issues; 2) work could be modified so that he could understand it rather than avoid it.

However, the IEP did not change at this time. The result, as is clear from all reports in the record, was that the Student's behaviors escalated and he made little progress in reading, math and writing during 2013-2014.

Nevertheless, for the 2014-2015 school year, the Student remained at School A. He continued to be in general education classes with no special education support (except for one period of resource room per day). Things went awry immediately. He went "out of control" and engaged in "bizarre" conduct such as grabbing students and hitting them. He was suspended multiple times and would frequently run out of the classroom. He would refuse to leave his resource room classroom to go back to a general education classroom, very likely feeling stigmatized by his lack of academic skills. He would spend much of his time on the computer, playing games instead of working. As is clear from the recent testing by Witness B's Lindamood-Bell instruction center, (P-48) the Student made little progress academically during this year.

DCPS argues that the Student's issues were a function of the murder of his stepfather, who tragically died over the summer of 2014. However, the record shows that the Student's behavioral issues were on the verge of extreme before that unfortunate death. The Student's teacher was alarmed at his behavior back in February, 2014. Moreover, if the death of the Student's stepfather exacerbated his disabling condition, it is still DCPS's responsibility to address all of the Student's special education needs, even

if they are made worse by events at home. There is certainly no support for the proposition that home problems vitiate the need for special education services.

DCPS points out that a BIP[2] was written for the Student to address his behavior in November, 2014. However, as Petitioner points out, a behavior plan should have been issued for this Student by February 2014 at the latest, when Teacher A became alarmed about the Student's behavior. Moreover, the BIP that was written was not especially helpful or, as it turned out, successful. The BIP did not address the statement in the FBA that the Student requires a small classroom with less than 6 students. Moreover, the BIP did not address the Student's tendency to waste time on the computer, one of the Student's main issues at the time.

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[2] Courts in the District of Columbia have held that it is "essential" for the LEA to develop an FBA for a child with behavioral problems. The FBA's role is to determine the cause, or "function," of the behaviors and then the consequences of that behavior. Harris v. Dist. of Columbia, 561 F. Supp. 2d 63, 68 (D.D.C. 2008); see also 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) . The FBA should focus on the antecedents to the behaviors, on the theory that a change in the antecedents can lead to a change in the behaviors. C.F. ex rel. R.F. v. New York City Dep't of Educ., 2011 WL 5130101 at *9 (S.D.N.Y. 2011); R.K. ex rel. R.K. v. New York City Dep't of Educ., 2011 WL 1131492 at *19 (S.D.N.Y. 2011). The information gleaned from the assessment is central to formulating an IEP tailored to the needs of individual disabled children. Harris, 561 F.Supp. 2d at 68.

In addition to an FBA, if the behavior of a student impedes the student's learning or the learning of other students, 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. 20 U.S.C. Sect. 1414(d)(3)(B)(i); 34 C.F.R. Sect. 300.324(a)(2)(i). According to DCMR Sect. 5-3007.3, if a student's behavior impedes the child's learning or the learning of others, the IEP team shall consider strategies, including positive behavioral intervention, strategies, and supports, to address that behavior. An individual behavior plan shall be developed and incorporated into the IEP. A copy of that individual behavior plan shall be provided to the child's parents and to each teacher and service provider.

DCPS also suggests that it appropriately increased services as the Student's needs became more apparent. The December, 2014 IEP did increase the number of hours of specialized instruction to ten, and then the March, 2015 IEP increased that number to twenty. However, the program remained inappropriate for the Student. As implemented, this program merely meant that the Student was put in a resource room for most of the day in an *ad hoc* arrangement given the school's limited resources. After the March, 2015 IEP, the Student apparently had little or no group instruction in academic subject matter areas. Resource room instruction is not meant to constitute an entire academic schedule, but to supplement an already existing schedule. 34 CFR Sect. 300.115(b)(2)(resource room is a "supplementary service").

I agree with Petitioner that DCPS has violated the Student's right to a FAPE by failing to provide sufficient specialized instruction and interventions since February, 2014.

2. Failure to Assess/OT.

Petitioner alleges that DCPS fail to assess the Student in all areas of suspected disability by failing to conduct an occupational therapy assessment.

The IDEA indicates that a local educational agency ("LEA") shall ensure that a reevaluation of each child with a disability is conducted if: 1) the LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or 2) if the child's parents or teacher requests a reevaluation. 28 U.S.C. §1414(a)(2); 34 C.F.R. §300.303; see also 5 DCMR Sect. 3005.7. Reevaluations must be conducted in accordance with the basic IDEA provisions governing evaluations. 28 U.S.C. §1414(a)(2)(A); 34 C.F.R.

§300.303(a). An LEA is accordingly required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining (i) whether the child is a child with a disability; and (ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities. The LEA should not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child, and use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 28 U.S.C. §1414(b)(2); 34 C.F.R. §300.304(b).

According to Petitioner, the need for this assessment is established through the DCPS Assistive Technology Assessment of November 6, 2014. (P-46) However, that assessment did not recommend an occupational therapy assessment. No occupational therapist was called by Petitioner to support this claim, Petitioner did not explain this claim clearly during the closing argument, and Petitioner did not support this claim with documentary evidence. This claim is without merit.

3. Delegating to the LRE team.

Petitioners contend that Respondent's IEP team improperly delegated its functions to an "LRE" team, which needed to be consulted when the team was considering a new placement for the Student.

The record confirms this charge. At the December, 2014 IEP meeting, Respondent's own staff indicated that the Student might be more appropriate placed in a different, more restrictive setting. However, Respondent's staff explained that they could not discuss this matter at the IEP meeting, and that the matter had to be referred to the "LRE" team.

Some courts hold that school districts may unilaterally designate schools for students as long as such schools may implement a Student's IEP. T.Y. v. New York City Department of Educ., 584 .3d 412 (2d Cir. 2009). Other courts take the position that the Student's school setting must be on the IEP. Eley v. D.C., 2012 WL 3656471, at *8 (D.D.C. Aug. 24, 2012) However, no court states, or could state, that IEP issues can be delegated to a team of school district personnel. A parent must be allowed to meaningfully participate in the IEP process, and all decisions relating to that document must be discussed with the parent *in the room*.

Moreover, IEP decisions are not driven by what is available in the public school system at that particular time. They are driven by what the Student needs, whether available in the public school system or not. Here, the team stopped short of a discussion on a programmatic issue and referred the matter to what is in essence a school placement team. This team did not include the parent. I agree with Petitioner that Respondent improperly delegated IEP issues to the "LRE team" in relation to the December, 2014 IEP meeting.

4. Relief.

Petitioner asserts that appropriate relief in this matter is to order that placement of the Student at School C and a compensatory education, among other more limited relief.

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

> The statute directs the court to "grant such relief as [it] determines is appropriate." The ordinary meaning of these words 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 regard to compensatory education, 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 compensatory education in the form of 250 hours of tutoring through the Lindamood- Bell methodology. Petitioner suggests that the 250 hours would be sufficient to remedy the Student's FAPE denial, as explained by Witness B, who provides Lindamood-Bell Instruction. According to Witness B, the Lindamood-Bell program is designed to help students with learning issues through individualized instruction. Witness B explained that the Student would benefit from 160-200 hours of this program, which would amount to about a year's worth of gains. Witness B also explained that the program has a behavioral modification system in place for students, including rewards and physical breaks. There is nothing in the record to suggest that this program is a bad fit for the Student or that Witness B's calculation is inappropriate for a compensatory education award. Accordingly, I find that 160 hours of individualized Lindamood-Bell instruction is appropriate compensatory education for the FAPE denial going back to February, 2014. [3]

Petitioner also seeks placement of the Student at School B, a non-public school that provides for special education.

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

[3] Petitioner suggests that, if one year's gain is not accomplished after 160-200 hours, additional services should be required in this order. I find that request to be overly speculative and must deny it.

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.

Going forward, the District has proposed the BES Program at School B, but the program seems a poor match for this Student. First, this program uses computers, and no assurances were given at the hearing that these computers would be secured so that the Student could not end up playing computer games on them. This has been a persistent problem for the Student. Second, the program requires some "specials" with general education peers. This is concerning since the Student has resisted going to classes with general education peers in 2014-2015. Third, no special emphasis or programs on reading was mentioned in connection to the BES Program at School B. Given statements by Teacher A that the Student needs 1:1 reading instruction, special attention in reading is necessary for this Student. Finally, I would have to agree with Petitioner that the class size here, set at ten, is too large for the Student. Social Worker A admitted as such in his FBA from November, 2014.

School C, on the other hand, does appear to be a good fit for the Student. There was no mention of any special orientation toward computers at this school, which provides very small classes (no more than five in a class), reading specialists, and behavioral support staff including five social workers and ten behavior support specialists. This is an intense level of service given that there are only thirty-seven children in the program. The school also has their own consulting psychiatrist, who prescribes medicine and confers with staff on a weekly basis. Given the Student's serious behavioral problems and his lack of educational progress in the last two years, I agree with Petitioner that a major change is due here, and that the intensive services offered by School C are appropriate for him. I will therefore order that the Student be placed at School C for the 2015-2016 school year, with transportation thereto.

Petitioner also asks for a revision of the Student's IEP. I agree the IEP should be revised to reflect the Student's attendance at School C. Finally, as noted earlier in this decision, Petitioner has shown no basis for an occupational therapy assessment. This request is hereby denied.

VIII. Relief

As a result of the foregoing, Respondent is hereby ordered:

1. The Student shall be placed by DCPS in School C for the 2015-2016 school year;

2. Transportation shall be provided by Respondent;

3. Respondent will reimburse the parent for 160 hours of individualized tutoring through the Lindamood-Bell methodology. Provider(s) selected by the parent shall charge the reasonable and customary rate in the community;

4. The Student's IEP shall be amended to reflect the program at School C;

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

Dated: June 29, 2015

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Alana Hecht, Esq.
Tanya Chor, Esq.
OSSE Division of Specialized Education
Contact.resolution@dc.gov
Chief Hearing Officer