

**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
June 05, 2018

<i>Student</i> , ¹)	Case No.: 2018-0096
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 6/5/18
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Date: 5/24/18 & 5/29/18
("DCPS"),)	ODR Hearing Room: 111
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”) because Student had not been comprehensively evaluated and provided a sufficiently restrictive Individualized Education Program (“IEP”) that was fully implemented. DCPS responded that it had sufficiently evaluated Student and provided an appropriate IEP.

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 3/30/18, the case was assigned to the undersigned on 4/2/18. Respondent filed a timely response on 4/5/18 and did not challenge jurisdiction. The resolution session meeting was held on 5/16/18 without success. The 30-day resolution period ended on 4/29/18. A final decision in this matter must be

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

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reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 6/13/18.

The due process hearing took place on 5/24/18 and 5/29/18 and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in only the first day of the hearing.

Petitioner’s Disclosures, submitted on 5/17/18, contained documents P1 through P63, which were admitted into evidence without objection. Respondent’s Disclosures, submitted on 5/17/18, contained documents R1 through R67, which were also admitted into evidence without objection.²

Petitioner’s counsel presented 3 witnesses in Petitioner’s case-in-chief (*see Appendix A*):

1. *Clinical Psychologist* (qualified without objection as an expert in Clinical Psychology)
2. *Educational Advocate* (qualified over objection as an expert in Special Education Programming and Placement)
3. Parent

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

1. *Social Worker at Public School* (qualified without objection as an expert in Social Work)
2. *Local Education Agency (“LEA”) Representative at Public School* (qualified without objection as an expert in Special Education Programming and Placement)
3. *School Psychologist at Public School* (qualified without objection as an expert in School Psychology)

Petitioner’s counsel recalled Parent as the only rebuttal witness.

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

Issue 1: Whether DCPS denied Student a FAPE by failing to timely and/or comprehensively evaluate Student where (a) DCPS obtained Parent’s consent in September

² References herein to Petitioner’s documents are indicated by a “P” followed by the exhibit number, a hyphen, and the exhibit page (or pages, separated by commas). By contrast, Respondent’s documents are consecutively Bates numbered throughout, so are referenced by an “R” followed by the exhibit number, followed immediately by a “p” (for page) and the Bates number without leading zeros.

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2017 but did not complete evaluations until 3/8/18, during which time Student received “Fs” in most academic classes and behaviors worsened, (b) the 3/8/18 psychological evaluation did not contain updated cognitive data but relied on data from October 2011 even though the evaluator had warned that the cognitive testing may not be reliable, and/or (c) adaptive testing was not conducted despite Student’s Low to Borderline IQ.³ *Petitioner has the burden of persuasion on this issue.*

Issue 2: Whether DCPS denied Student a FAPE by providing an inappropriate IEP and/or placement on 3/9/18, which did not provide sufficient services or a sufficiently restrictive educational environment to address Student’s worsening behaviors and lack of academic progress. *Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.*

Issue 3: Whether DCPS denied Student a FAPE by failing to fully implement Student’s IEP during 2017/18⁴ to date, when it (a) provided English instruction in an inclusion class despite the IEP requiring pull-out for ELA (English Language Arts), (b) refused to provide Student’s schedules prior to and after March 2018 showing the classes in which Student received specialized instruction. *Petitioner has the burden of persuasion on this issue.*

Issue 4: Whether DCPS denied Student a FAPE by failing to provide access to Student’s educational records, including academic progress and class schedules, in response to a formal written request on 1/24/18 and a further request at the March 2018 IEP meeting.⁵ *Petitioner has the burden of persuasion on this issue.*

The relief requested by Petitioner is:

1. A finding that Student was denied a FAPE.
2. DCPS shall supplement the March 2018 psychological evaluation with (a) the Woodcock-Johnson Tests of Cognitive Abilities, and (2) Parent’s responses on the Behavior Assessment System for Children.
3. DCPS shall convene an IEP team meeting to revise Student’s IEP to provide a full-time level of services outside general education to remediate Student’s very low levels of academic achievement, as well as address Student’s behaviors, and begin implementing the revised IEP.⁶
4. DCPS shall change Student’s placement to a self-contained, therapeutic environment to address Student’s pattern of avoiding class and defiant, disrespectful conduct.

³ This incorporates both issues A and B from page 7 of the due process complaint.

⁴ All dates in the format “2017/18” refer to school years.

⁵ At the beginning of the due process hearing, Petitioner expressly withdrew “disciplinary history” from the educational documents she had not received.

⁶ This sentence includes both paragraphs 3 and 5 on page 6 of the due process complaint.

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5. DCPS shall fund or provide compensatory education for any denial of FAPE.⁷
6. Any other just and reasonable relief.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact⁸ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁹ Student is *Age*, *Gender* and in *Grade* at Public School where Student began at the beginning of 2017/18 after transferring from *Public Charter School*.¹⁰

2. IEPs. Student has been eligible for special education and related services for a number of years, with the disability classification of Specific Learning Disability ("SLD").¹¹ Student's team also considered Multiple Disabilities ("MD"), based on SLD and Other Health Impairment ("OHI") due to Attention Deficit Hyperactivity Disorder ("ADHD").¹²

3. Student's 4/11/17 IEP at Public Charter School provided for 7.5 hours/week of specialized instruction outside general education and 2.5 hours/week of specialized

⁷ Petitioner's request for compensatory education is considered herein except to the extent that it depends on the findings of assessments that have not yet been completed and determination of any impact on the appropriate level of special education services, which are reserved.

Petitioner's counsel was put on notice at the prehearing conference that at the due process hearing Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was encouraged to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE was found.

⁸ 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.

⁹ Parent.

¹⁰ *Id.*

¹¹ R4p21 (11/13/15); P6-1; P5-1; R44p160 (3/9/18).

¹² P4-1; P13-1,2,3 (MD eligibility confirmed on 3/9/18); R38p151 (ADHD and SLD on 3/9/18); R39p152-53.

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instruction inside general education, along with 120 minutes/month of Behavioral Support Services (“BSS”).¹³ On 11/7/17, Public School kept the same hours of specialized instruction on Student’s IEP, but increased BSS to 180 minutes/month.¹⁴ On 3/9/18, Student’s IEP was modified to 13.5 hours/week of specialized instruction inside general education, plus the 7.5 hours/week of specialized instruction outside general education and 180 minutes/month of BSS.¹⁵

4. Evaluations. Parent signed DCPS’s form giving consent for evaluation/reevaluation on 9/20/17.¹⁶ The November 2017 IEP meeting notes stated that Student’s eligibility meeting was scheduled for 3/1/18.¹⁷ Student’s previous eligibility determination was on 5/5/15.¹⁸ Parent refused to sign a consent to evaluate in November 2017 because she had already signed the consent form in September; Parent refused to sign the consent form on 3/1/18.¹⁹ DCPS relied on the 9/20/17 consent to conduct the reevaluation.²⁰

5. TP conducted the Triennial Psychological Reevaluation on 3/6/18, with a Triennial Psychological Reevaluation Addendum on 3/8/18; new cognitive testing was not included and the reevaluation relied on the 2012 measure of cognitive functioning.²¹ Clinical Psychologist credibly testified that updated cognitive testing of Student was needed; the previous data was 6 years old.²² School Psychologist did not conduct an adaptive measure with Student during the Triennial Psychological Reevaluation because the IQ score was not below 70 when previously evaluated.²³ Petitioner’s advocates sent a dissent letter on 3/22/18 seeking an updated cognitive assessment and adaptive measure.²⁴

6. Due to concerns about lack of cognitive and adaptive testing in the Triennial Psychological Reevaluation, School Psychologist completed a Comprehensive Psychological Evaluation of Student on 5/21/18, after the deadline for inclusion in the record in this case; the evaluation included both an adaptive measure and cognitive testing as requested.²⁵ Educational Advocate had reviewed the 5/21/18 results and testified that Student’s overall cognitive score was a standard score of 76 or 78.²⁶ Clinical Psychologist unambiguously testified that a standard score of 70 is the level at which adaptive

¹³ P6-1,12.

¹⁴ P5-1,9.

¹⁵ P4-1,9.

¹⁶ P60-1.

¹⁷ R28p119.

¹⁸ P5-1.

¹⁹ P29-1; P8-5; P60-1; Parent.

²⁰ R1p1.

²¹ P8-4; P8-1.

²² Clinical Psychologist; P8-6.

²³ P23-4.

²⁴ P28-2.

²⁵ School Psychologist.

²⁶ Educational Advocate.

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functioning should be tested.²⁷ The 2012 GIA standard score of 77 was the basis for Educational Advocate to seek an adaptive assessment.²⁸

7. Student's cognitive ability in 2012 was in the low range with a general intellectual ability ("GIA") standard score of 77, which was considered likely to be an underestimation of Student's abilities due to variability in Student's cognitive profile, with scores between 70 and 107.²⁹ Given Student's cognitive profile, it was projected that Student was likely to have difficulty with certain academic skills.³⁰ Student's low academic functioning may be causing Student to act out in the classroom.³¹

8. Parent refused to fill out a parent questionnaire for the Triennial Psychological Reevaluation in early 2018, stating she would not be filling out anything until the March 2018 meeting.³² On 5/16/18 the IEP team noted that School Psychologist was trying to get rating scales back from Parent without success.³³

9. Achievement Scores. Student's 3/8/18 Triennial Psychological Reevaluation Addendum included a WJ-IV achievement test in which Student was found to be Low in written language and Low Average in writing samples; the other 10 subtests were all Very Low.³⁴ Student's overall reading skills were about 7 grades behind, with a standard score of 62; overall math skills were over 6 grades behind, with a standard score of 60; overall writing skills were about 6 grades behind with a standard score of 71.³⁵ Student's reading, math and writing skills are well below grade level expectations.³⁶ Student made academic progress over the years while receiving specialized instruction and scientifically-based interventions.³⁷

10. Student's special education teacher at Public Charter School noted that Student does not take benchmark assessments seriously, rushing through tests which skews the results.³⁸ Student's MAP score in May 2015 was 227; it declined in September 2016 to 193 (or 187, depending on source); and in early 2017 was 165.³⁹ Student's MAP score was 198 on 9/5/17, while the average DC score was 202.⁴⁰ Student's middle-of-year ("MOY") 2017/18

²⁷ Clinical Psychologist.

²⁸ P28-2.

²⁹ P8-6; P46-4; Clinical Psychologist.

³⁰ P8-6,9.

³¹ P23-4.

³² P8-7.

³³ R63p227.

³⁴ P8-1,2.

³⁵ P8-2.

³⁶ P8-9.

³⁷ *Id.*

³⁸ R11p52.

³⁹ P6-3; P6-6.

⁴⁰ P59-1; P4-3; P5-3; P8-6.

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MAP score was 196.⁴¹ Scores of 198 and 196 were both 6 years below Student's grade level.⁴² In Fall 2015, Student was reading at Fountas and Pinnell level Q, which was 6 years below Student's grade level.⁴³ Student's SRI on 10/6/17 was listed as BR (Beginning Reading), which School Psychologist considered a score of zero due to not completing the assessment.⁴⁴ Student often volunteered to read aloud in class.⁴⁵

11. Grades. Student's grades were very low in 2017/18, with 4 "Fs" out of 8 grades in term 1, 6 "Fs" out of 8 grades in term 2, and 5 "Fs" out of 8 grades in term 3.⁴⁶ Student's Grade Point Average ("GPA") in 2017/18 term 1 was 1.00, term 2 was 0.46 and term 3 was 0.69 (on a 4.0 point scale).⁴⁷ Student's IEP Progress Report generally indicated that Student was not progressing in 2017/18 term 3 (and term 2 to the extent available).⁴⁸ Student's IEP Progress Report for term 1 found that Student had "mastered" nearly every academic goal, noting that the goals were set for Student the previous year; the reading goals contained only comments about math.⁴⁹

12. Attendance. The 3/30/17 MDT meeting (during 2016/17 at Public Charter School) noted that attendance was not a concern for Student; Student only had 1 unexcused absence (out of 5 total absences), although by 4/11/17 Student had been tardy 80 times.⁵⁰ At Public School, between 8/22/17 and 3/13/18, Student had 28 unexcused absences and 47 tardies.⁵¹ By Student's 5/16/18 report card, Student had 51 unexcused absences and 160 tardies.⁵² DCPS policy is that more than 30 unexcused absences in a school year results in automatic course failure.⁵³ Student demonstrated work avoidant behaviors due to limited academic skills and deficits.⁵⁴ School Psychologist testified that after the change in Student's IEP and class schedule on 3/9/18, Student began attending class more often.⁵⁵

13. Behavior. In 2016/17, Student's teachers described Student as hard-working, organized and very independent in academics.⁵⁶ Student had previously been considered a "well behaved student"; by 3/9/18 Student's attitude and behavior were "unacceptable" in

⁴¹ P59-1; P40-3.

⁴² P40-3; Educational Advocate.

⁴³ P6-6.

⁴⁴ P17-10; P4-4; P5-4; Educational Advocate; School Psychologist.

⁴⁵ P6-6; R6p38.

⁴⁶ P47-2,3; P8-6.

⁴⁷ P47-1.

⁴⁸ P53.

⁴⁹ P54; P54-5,6,7.

⁵⁰ R6p38; R11p52.

⁵¹ P14-1,2,3.

⁵² P47-1.

⁵³ P48-8; LEA Representative.

⁵⁴ P5-7.

⁵⁵ School Psychologist; P8-6.

⁵⁶ P6-3.

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Algebra, but acceptable in English where Student frequently had a positive attitude.⁵⁷ The teacher results on the BASC-3 obtained as part of the Triennial Psychological Reevaluation indicated moderate to high levels of behaviors adversely impacting Student and other children in the school setting.⁵⁸ Student had conflict with both peers and adults, used inappropriate language, and distracted peers during academic instruction, interrupting instruction and learning.⁵⁹ By 4/23/18, Student's threatening, explosive behaviors had worsened, with attacks on teachers, peers, Parent and a wall.⁶⁰ Student had 1 off-site suspension from the beginning of 2017/18 to 5/17/18, 2 in-school disciplinary actions and multiple reprimands.⁶¹

14. Student contended with intense parent-child discord.⁶² Student physically fought Parent every time Parent called the police concerning Student, which began in 2017.⁶³ Student was a "chronic" runaway and had been reported missing 150-200 times, often for missing curfew.⁶⁴ Student often disappeared from home into the night; on 3/20/18 Student ran away from home for 3 days.⁶⁵ Public School sought to support Parent in addressing Student's negative behaviors outside school, but could not impose discipline on Student for defiance of Parent at home.⁶⁶ Student was often upset at school about conflict at home; Public School could not provide family support at school.⁶⁷

15. Since Student's March 2018 schedule change, Student had many fewer behavior issues.⁶⁸ Negative interactions with teachers decreased in scope since Student's schedule change, when Student was removed from 2 teachers with whom Student had problems.⁶⁹ At the time of the 4/27/18 Functional Behavioral Assessment ("FBA"), Student's behavior profile was mixed, with multiple sources indicating that Student only had mild non-disruptive behaviors, while others noted intense anger issues, mostly triggered by certain peers.⁷⁰ As of 4/27/18, Student had begun to have an increased ability to implement behavioral control and to use appropriate problem-solving skills when faced with challenges, but continued to need BSS.⁷¹

⁵⁷ P4-3,4.

⁵⁸ P8-8.

⁵⁹ P4-7; P6-11.

⁶⁰ P7-8.

⁶¹ P52-1,2.

⁶² P9-2.

⁶³ P7-7.

⁶⁴ P7-6; Parent.

⁶⁵ P7-7,8.

⁶⁶ R2p15.

⁶⁷ Social Worker.

⁶⁸ R63p225.

⁶⁹ P10-1,2; P9-1.

⁷⁰ P10-1.

⁷¹ P10-2.

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16. Implementation of IEP. Student's schedule was revised at the beginning of 2017/18; the revised schedule was sent to Parent on 8/21/17.⁷² Parent expressed concern about implementation of Student's IEP during the November 2017 IEP meeting.⁷³ Public School proposed class changes at the November IEP meeting to provide Student additional academic support, with a self-contained class and a co-taught class; Parent refused to consent to the changes.⁷⁴

17. Parent raised concerns on 3/9/18 about Student not receiving the specialized instruction that Public School should have provided; Public School responded that it would be changing Student's schedule; Educational Advocate asked for Public School to provide information about services provided to Student, but never received the information.⁷⁵ Educational Advocate credibly testified that the hours outside general education in Student's IEPs were intended for ELA (reading and possibly writing).⁷⁶ Special education coordinator acknowledged at an IEP meeting that it didn't appear Student had received the specialized instruction services on the IEP prior to March 2018.⁷⁷ LEA Representative forthrightly testified that Student was not provided all the specialized instruction hours required by the IEP in 2017/18; Student's 7.5 hours/week outside general education were not provided; Student's 2.5 hours/week of specialized instruction inside general education were provided.⁷⁸

18. Student was making minimal progress so Student's IEP team increased Student's service hours on 3/9/18 to provide more support.⁷⁹ At the 3/9/18 IEP meeting, it was determined Student would be moved to a self-contained classroom.⁸⁰ A schedule change supported the increase in specialized instruction hours.⁸¹ Student began receiving the required specialized instruction following the 3/9/18 meeting.⁸² Since the 3/9/18 modification, Social Worker has seen growth and Student had "positive traction."⁸³

19. School Efforts. Public School provided BSS to Student using CBT (Cognitive Behavioral Therapy).⁸⁴ The Triennial Psychological Reevaluation recommended that

⁷² P48-11.

⁷³ P8-5.

⁷⁴ LEA Representative; R29p120; R2p14; R30p121 (schedule change to provide more support to Student in classes).

⁷⁵ Educational Advocate.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ LEA Representative.

⁷⁹ Educational Advocate; R45p161; P53.

⁸⁰ P48-2.

⁸¹ R48p168.

⁸² Educational Advocate.

⁸³ Social Worker.

⁸⁴ R15p62.

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Student should continue to receive BSS focusing on anger management, conflict resolution, and problem solving.⁸⁵

20. By 11/7/17, Student had been given a General Tracker to obtain attendance and behavioral data; the General Tracker was included in a 2/28/18 updated Behavioral Intervention Plan (“BIP”) when interventions were identified.⁸⁶ An updated BIP was developed on 3/22/18.⁸⁷ In April 2018, Social Worker collaborated with Student on a Behavior Contract to support positive school behaviors, including attending classes more often and having healthy interactions with others; the Behavior Contract was signed on 4/6/18.⁸⁸ Social Worker completed an FBA on 4/27/18 based on a request from Parent’s advocate.⁸⁹ A further updated BIP Level II was reviewed on 5/16/18.⁹⁰

21. An outside social worker provided support to Student at Public School, working on relationships with peers and focusing on restorative justice; Student had fewer fights since March 2018.⁹¹ Public School used mediation with Student and a peer to work through challenges.⁹² Public School has been working on mindfulness with Student and working toward meditation, to calm Student in stressful moments.⁹³

22. Outside Efforts. Wraparound services are to provide a holistic level of support for Student, including family supports.⁹⁴ In the November 2017 IEP meeting, Social Worker stated that Public School was committed to working with the family and gave several outside resources that Parent could use to help with Student.⁹⁵ The Triennial Psychological Reevaluation recommended that Student participate in intensive individual and family counseling that could be provided through private or community-based agencies to address difficulties outside the school setting.⁹⁶ Family therapy was again encouraged by the IEP team in a 5/16/18 meeting.⁹⁷ DCPS suggested the Strengthening Teens and Empowering Parents (STEM) program to support the family.⁹⁸

23. Parent had struggled to obtain effective community-based mental health services for Student.⁹⁹ Parent put Student in a psychiatric facility in November 2017 due to behavior

⁸⁵ P8-10.

⁸⁶ P5-7; P12-1,2; P8-5,6.

⁸⁷ P11-2.

⁸⁸ P50-1; P10-2; P11-4.

⁸⁹ P10-1.

⁹⁰ R65p238.

⁹¹ R63p225.

⁹² P34-2.

⁹³ R63p226.

⁹⁴ Social Worker.

⁹⁵ R28p119.

⁹⁶ P8-10; P10-4,7 (Functional Family Therapy should be considered); P9-5 (same).

⁹⁷ R63p226.

⁹⁸ P11-1,3.

⁹⁹ P10-2.

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issues, including aggression toward Parent, anger and depression.¹⁰⁰ Parent reported to the psychiatric facility that she had been through “every agency in DC” and they had refused to assist Student.¹⁰¹ The psychiatric facility made a provisional diagnosis of Disruptive Mood Dysregulation Disorder.¹⁰² Student was diagnosed with Disruptive Mood Dysregulation Disorder (“DMDD”) in a 5/2/18 Psychiatric Evaluation.¹⁰³ DMDD is characterized by severe and recurring temper outbursts that are grossly out of proportion to the situation.¹⁰⁴ The Psychiatric Evaluation concluded that Student appeared mentally unstable and posed a threat to self and others.¹⁰⁵

24. Student recently “snapped” in a courtroom, “went off” on a judge when told Student was going to a shelter home, tried to leave the courtroom and “swung” at the prosecutor, resulting in the marshals being called to contain Student.¹⁰⁶ As of the 4/27/18 FBA, Student had been in a DC group home for 3 weeks.¹⁰⁷ The 5/2/18 Psychiatric Evaluation reported that Student recently began therapy; Parent stated that Student didn’t want therapy and wasn’t going to do it.¹⁰⁸

25. Documents. At the due process hearing Petitioner’s counsel sought 2 “missing” documents: a 2017/18 MOY standard assessment in reading and the 2017/18 term 2 IEP Progress Report.¹⁰⁹ The term 2 results for academic goals were not included in the term 3 IEP Progress Report or otherwise included in the record.¹¹⁰ As of 5/9/18, Petitioner’s advocates were seeking a list of documents.¹¹¹ On 5/17/18, Petitioner’s counsel was still seeking documents “identified in the complaint,” with the addition of recently mentioned Aspen notes and omission of 2 listed documents.¹¹² Student’s 2017/18 term 3 class schedule as of 3/9/18 was printed that day; the schedule after 3/9/18 was handwritten on the page.¹¹³ In addition, Student was given a copy of the revised schedule on 3/16/18.¹¹⁴

26. Looking Forward. Student has shown progress and growth and is amenable to treatment with the right program, including support from Parent.¹¹⁵ Student can progress in

¹⁰⁰ P7-4; P24-1; P25-1.

¹⁰¹ P26-12; Parent.

¹⁰² P10-1; P8-5; R28p117.

¹⁰³ P7-8.

¹⁰⁴ P10-6; P9-3.

¹⁰⁵ P7-9.

¹⁰⁶ P7-6.

¹⁰⁷ P10-2.

¹⁰⁸ P7-4,6.

¹⁰⁹ Petitioner’s counsel; Educational Advocate (Public School did not provide MOY data on Student).

¹¹⁰ P53; Administrative Notice.

¹¹¹ P45-1.

¹¹² P27-2.

¹¹³ P15-1.

¹¹⁴ P48-1.

¹¹⁵ Social Worker.

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the current program if given steady supports.¹¹⁶ Student is doing better since the March 2018 schedule change.¹¹⁷ Student's class performance is better than testing results, because no support is allowed on the formal assessments.¹¹⁸

27. Student has done better in a smaller classroom setting with consistent teaching practices that are affirming and warm, with proximity to the teacher to give Student personalized attention.¹¹⁹ A classroom environment with a strong positive peer culture and positive peer mentoring efforts are desirable for Student.¹²⁰ More restrictive options have not been exhausted at Public School, including Behavior & Education Support ("BES") and Independence & Learning Support ("ILS") programs.¹²¹ Social Worker testified that a full-time therapeutic setting would be a "disservice" for Student, as it is not Student's LRE.¹²² Clinical Psychologist testified that Student desperately needs a small setting with a low student-to-teacher ratio and a lot of individual attention, all outside general education, with access to BSS; Student needs as much support as possible, although residential placement would be "extreme."¹²³

28. If Student had received the specialized instruction required by the IEP, Student would have done better and met at least some of Student's goals and not failed classes.¹²⁴ As compensatory education for missed specialized instruction outside general education, LEA Representative testified that Petitioner's proposal of 200 hours was excessive, as 1:1 attention requires fewer hours to make up what was missed; 100 hours delivered in 2 sessions/week would be appropriate.¹²⁵

Conclusions of Law

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

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

¹¹⁶ School Psychologist.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ P10-5; P9-3.

¹²⁰ P10-5,6.

¹²¹ Social Worker.

¹²² *Id.*

¹²³ Clinical Psychologist.

¹²⁴ Educational Advocate.

¹²⁵ LEA Representative.

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“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 recent 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, Respondent 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 extent possible).

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).

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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 timely and/or comprehensively evaluate Student where (a) DCPS obtained Parent’s consent in September 2017 but did not complete evaluations until 3/8/18, during which time Student received “Fs” in most academic classes and behaviors worsened, (b) the 3/8/18 psychological evaluation did not contain updated cognitive data but relied on data from October 2011 even though the evaluator had warned that the cognitive testing may not be reliable, and/or (c) adaptive testing was not conducted despite Student’s Low to Borderline IQ. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden of persuasion on this issue on the need for updated cognitive testing, but not on the other claims.

The recent D.C. Court of Appeals decision emphasized the importance of assessing children in all areas of suspected disability. *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 518 (D.C. Cir. 2018), *quoting* 20 U.S.C. § 1414(b)(3)(B). The Court went on to explain in *Z.B.*, 888 F.3d at 524, that failing to conduct adequate assessments, such as an FBA, was a procedural violation that could have substantive effects by preventing the IEP team from obtaining necessary information about the student’s behaviors (in the absence of an FBA), leading to them being addressed in the IEP inadequately or not at all. *See also Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60-61 (D.D.C. 2011) (“in the absence of necessary and appropriate evaluations the district cannot develop a program that is tailored to the student’s unique needs and reasonably calculated to enable [the student] to receive educational benefits” (citation omitted)); *Hill v. Dist. of Columbia*, 2016 WL 4506972, at *18 (D.D.C. 2016); 34 C.F.R. 300.304(c)(4).

The IDEA requires a 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 the LEA, here DCPS, determines that the needs of the student warrant reevaluation. 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). *See James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 143 (D.D.C. 2016) (“a reevaluation requires a new round of tests and analysis to evaluate the child”). Of course, the IDEA does not require a public agency to administer every test requested by a parent, as the public agency has the prerogative to choose assessment tools and strategies to gather relevant

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information. *See, e.g., Z.B.*, 888 F.3d at 518 (decisions on the areas to be assessed are to be made based on the suspected needs of the child).

The concerns raised by Petitioner are considered in turn.

(a) Timing of Reevaluation. Based on Student's prior reevaluations, the current triennial reevaluation was not due until the spring of 2018, which is what was noted at the November 2017 IEP meeting where the meeting notes refer to Student's eligibility meeting being scheduled for 3/1/18 (later postponed to 3/9/18). Parent did sign a DCPS form consenting to evaluation/reevaluation on 9/20/17, but there is no indication in the record – and Petitioner did not demonstrate – that this consent was for anything other than the upcoming triennial reevaluation or that the reevaluation needed to be accelerated ahead of its regular timeline. Student's prior eligibility meeting date was 5/5/15 and the new eligibility meeting was held on 3/9/18, so was timely. The undersigned concludes there was no IDEA violation here.

(b) Need for Cognitive Testing. The Triennial Psychological Reevaluation was completed on 3/6/18 with an addendum on 3/8/18. Rather than conducting new cognitive testing, the reevaluation relied on a 2012 measure of cognitive functioning, even though the 2012 evaluator warned that it might not be accurate. Based on the principles of *Z.B.* and *James*, the undersigned holds that given the age of the prior cognitive assessment and the concern of Petitioner's advocates that Student might suffer from ID,¹²⁶ the reevaluation should have included cognitive testing. The failure to include cognitive testing created uncertainty about Student's needs that significantly impeded the decision-making of Parent in the 3/9/18 IEP and is a substantive denial of FAPE pursuant to 34 C.F.R. 300.513(a). This denial contributes modestly to the compensatory education awarded below based on the unnecessary delay of the testing and the uncertainty that caused. Moreover, compensatory education to make up for possible additional harm from delay is reserved for future consideration if the new cognitive testing results in enhanced programming or additional services for Student, which would have begun earlier with earlier testing. The period of such harm would be from the previous IEP meeting on 3/9/18 until the next IEP team meeting when the new cognitive testing is reviewed and any needed adjustments made to Student's IEP.

¹²⁶ Petitioner's counsel confirmed in closing arguments that Petitioner was not seeking a change in disability classification in this case. Moreover, the IDEA is clear that LEAs such as DCPS are not required to classify children by their disability as long as they have been found eligible to receive the special education and related services they need. *See* 20 U.S.C. § 1412(a)(3)(B); 34 C.F.R. 300.111(d). It is a student's identified needs, not the disability category, that determines the services that must be provided to the child. 34 C.F.R. 300.320(a)(2)(i); *Letter to Anonymous*, 48 IDELR 16 (OSEP 2006); *Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (the "IDEA charges the school with the responsibility of developing an appropriate education, not with coming up with a proper label").

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(c) Adaptive Testing. School Psychologist did not conduct an adaptive measure during the Triennial Psychological Reevaluation because Student's IQ score was not below the standard cutoff of 70 when previously evaluated. In fact, Student's 2012 overall IQ (GIA) was 77 and the concern expressed by the evaluator was that that score might have been an underestimation. Nonetheless, Petitioner's advocates sought an adaptive measure in the 3/22/18 dissent letter based on the score of 77, so School Psychologist included an adaptive assessment in the Comprehensive Psychological Evaluation of Student completed on 5/21/18. The undersigned finds no violation for not conducting an adaptive sooner, especially given the fact that Student's updated cognitive score from the recent Comprehensive Psychological Evaluation was no less than 76, well above the 70 cutoff that Petitioner's own expert emphasized as a bright line test. However, compensatory education is also reserved on the adaptive testing claim in an abundance of caution in case the adaptive testing somehow leads to enhanced programming or additional services for Student when the recent Comprehensive Psychological Evaluation is reviewed by Student's IEP team.

Issue 2: *Whether DCPS denied Student a FAPE by providing an inappropriate IEP and/or placement on 3/9/18, which did not provide sufficient services or a sufficiently restrictive educational environment to address Student's worsening behaviors and lack of academic progress. (Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.)*

Petitioner established a prima facie case on this issue, shifting the burden to Respondent which met its burden of persuasion as to specialized instruction and placement, but not behavior support.

The applicable legal standard for analyzing the appropriateness of the IEP at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it is "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 Circuit recently emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* "raised the bar on what counts as an adequate education under the IDEA" compared to the decision under review in *Z.B.* by requiring more than "merely some" educational benefits. *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 IEP are determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See, e.g., Z.B.*, 888 F.3d at 524; *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student's IEP is analyzed by considering the specific concerns raised by Petitioner, which are considered below in turn.¹²⁷ *See* 34 C.F.R. 300.320(a)(4),(5); *Honig*, 484 U.S. at 311.

¹²⁷ 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),

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Specialized Instruction. Petitioner asserted that Student's lack of progress required additional instructional support, but the IEP team had recognized Student's minimal progress and on 3/9/18 increased Student's specialized instruction from 2.5 to 13.5 hours/week inside general education, along with the 7.5 hours/week outside general education (which Student was not receiving prior to March 2018, as discussed below). The increase in specialized instruction on 3/9/18 represented a significant change and the early reports were that the increase was making a difference for Student. Social Worker credibly testified that he had seen growth in Student since the 3/9/18 modification and that Student had "positive traction." School Psychologist convincingly testified that Student can progress in the program established on 3/9/18 if given steady supports. The undersigned thus concludes that there was no denial of FAPE based on the level of specialized instruction provided Student in the 3/9/18 IEP.

Behavioral Support Services. On the other hand, Petitioner raised legitimate concerns about whether Student was receiving adequate behavioral support. Student arrived at Public School with 120 minutes/month of BSS, which was increased to 180 minutes/month on 11/7/17. As of early March 2018, the Triennial Psychological Reevaluation found that Student needed BSS focusing on anger management, conflict resolution, and problem solving. The 4/27/18 FBA found that Student's behavior profile was mixed, with multiple sources indicating only had mild non-disruptive behaviors, while others noted intense anger issues triggered by certain peers. The situation was even worse at home in the physical altercations between Student and Parent, which caused Student to be distracted and upset at school. While Student was reportedly beginning to implement behavioral control and use appropriate problem-solving skills when faced with challenges, the Psychiatric Evaluation just weeks ago concluded that Student appeared mentally unstable and posed a threat to self and others. On balance, considering the entire record, this Hearing Officer concludes that Student needed an increase in BSS from 180 to 240 minutes/month on 3/9/18 in order to be able to access Student's education and make appropriate progress, which is a denial of FAPE. The increase in BSS is ordered below and the services that were not provided from 3/9/18 until the increase is effective contribute modestly to the award of compensatory education below.

The increase in BSS is also based on the possibility that it may improve Student's very poor school attendance. Although School Psychologist testified that Student began attending class more often after the 3/9/18 IEP and schedule changes, the documents are not so encouraging. Student's records show that between 8/22/17 and 3/13/18, Student had 28 unexcused absences and 47 tardies, but by the Student's 5/16/18 report card that had increased significantly to 51 unexcused absences and 160 tardies. *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").

quoting *Rowley*, 458 U.S. at 206-07. No specific procedural violations were alleged in this case.

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Consideration of FAPE. In considering the concerns above, the undersigned is cognizant that the analysis is not about achieving a perfect IEP, but one reasonably calculated to enable Student to make appropriate progress. *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 Hill*, 2016 WL 4506972, at *21, *quoting Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015). Here, the undersigned has analyzed the facts and claims, taking into account that DCPS bears the burden of persuasion, and concludes that there was a denial of FAPE based only on BSS and not on the level of specialized instruction.

Placement. The legal standard under the IDEA is that DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP.” *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013). *See also O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student’s IEP requirements). Here, the undersigned concludes that DCPS provided a setting in which Student’s IEP could be fulfilled, even after total specialized instruction hours for Student were more than doubled on 3/9/18 and it was determined that Student would be moved to a self-contained classroom.. DCPS also convincingly asserted that there were more restrictive options that could also be considered in that setting, such as BES and ILS programs, before turning to any nonpublic option.

Issue 3: *Whether DCPS denied Student a FAPE by failing to fully implement Student’s IEP during 2017/18 to date, when it (a) provided English instruction in an inclusion class despite the IEP requiring pull-out for ELA, (b) refused to provide Student’s schedules prior to and after March 2018 showing the classes in which Student received specialized instruction. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden of persuasion on the issue of DCPS failing to fully implement Student’s IEP. DCPS forthrightly acknowledged failing to provide Student’s specialized instruction outside general education from August 2017 until March 2018.

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

Here, DCPS acknowledged in testimony at the hearing that the 7.5 hours/week of specialized instruction outside general education on Student’s IEP was not provided from the beginning of 2017/18 until the 3/9/18 meeting. This was corroborated by the special education coordinator’s acknowledgement at an IEP meeting that it didn’t appear the

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specialized instruction services on Student's IEP had been provided. This omission of Student's specialized instruction hours outside general education certainly was not a minor discrepancy, but is a violation of IDEA and a denial of FAPE. Even if all specialized instruction were considered together, the missing hours outside general education were three-fourths of the total specialized instruction, which is certainly a material deviation. This denial of FAPE is the foundation for the award of compensatory education below.

DCPS's alleged refusal to provide class schedules is not a direct implementation issue, and presumably would have confirmed what DCPS admitted above. Moreover, as previously noted, Student's 2017/18 term 3 class schedule as of 3/9/18 was printed that day, while the schedule after 3/9/18 was handwritten on the page. There is no separate violation due to class schedules.

Issue 4: *Whether DCPS denied Student a FAPE by failing to provide access to Student's educational records, including academic progress and class schedules, in response to a formal written request on 1/24/18 and a further request at the March 2018 IEP meeting. (Petitioner has the burden of persuasion on this issue.)*

Petitioner did not meet her burden of persuasion on the issue of access to records. Although a longer list of documents had been pursued, at the due process hearing Petitioner's counsel focused this entire claim on 2 documents: the MOY 2017/18 reading assessment and the IEP Progress Report for 2017/18 term 2. DCPS did not dispute Petitioner's assertions that these documents had not been provided, nor give any explanation for why they were not. However, DCPS did provide the large majority of the documents Petitioner sought, rather than merely offering an opportunity to inspect, review and copy Student's education records. *See* 34 C.F.R. 300.501(a) (opportunity to "inspect and review" all educational documents), 300.613(a) (right to "inspect and review" records); *Jalloh ex rel. R.H. v. Dist. of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) ("parents have the right to examine records and DCPS must give parents the opportunity to inspect, review, and copy records"). Importantly, Petitioner did not show that there was any impact on Student's education from the lack of the 2 documents or that Parent's opportunity to pursue her rights was significantly impeded. *See* 34 C.F.R. 300.513(a), 300.613(a). Thus, this Hearing Officer finds no violation of the IDEA and no denial of FAPE.

Compensatory Education

As for compensatory education for the denials of FAPE found above, 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.*, 817 F.3d at 799, 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). Indeed, "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

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case.”” *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), quoting *Reid*, 401 F.3d at 523-24.

Here, Student missing 7.5 hours/week of specialized instruction outside general education from the beginning of school in 2017/18 to 3/9/18 would have been about 27 weeks or approximately 200 hours, which gives some indication of the scope of services missed, although as required by *Reid* there should be more careful analysis than hour-for-hour compensation. As LEA Representative testified, 1:1 tutoring can often make more rapid progress than the missed hours in a classroom where all attention is not on Student. This Hearing Officer also takes into account the Compensatory Education Proposal prepared by Petitioner’s expert, as adjusted to fit the denials of FAPE found in this case. Carefully considering the totality of the circumstances, the undersigned is persuaded that 175 hours of academic tutoring would be appropriate to put Student in the place Student should have been had there been no denials of FAPE. The tutoring is ordered below to be provided by an independent provider of Petitioner’s choice (or directly from DCPS if Petitioner prefers and DCPS has the capacity to provide the extra services).

All compensatory education hours are to be used within 18 months in order to ensure that the remedial services that Student needs are obtained without undue delay, along with minimizing any administrative burdens on Respondent which may result from compensatory education awards stretching over excessively long timeframes.

ORDER

Petitioner has prevailed on her claims in part, as set forth above. Accordingly, **it is hereby ordered that:**

- (1) Within 30 days, Student’s IEP shall be amended to increase the level of Behavioral Support Services to 240 minutes/month.
- (2) As compensatory education for the denials of FAPE found above, DCPS shall provide a letter of authorization for 175 hours of academic tutoring from an independent provider chosen by Petitioner, with such letter to be provided within 10 business days after Petitioner’s request. All hours are to be provided and used within 18 months; any unused hours will be forfeited.

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

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.
Hearing Officer

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NOTICE OF RIGHT TO APPEAL

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

Copies to:

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