

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parents, on behalf of Student,¹)	
)	
Petitioners,)	Date Issued: March 24, 2015
)	
v.)	
)	
District of Columbia Public Schools,)	
)	
Respondent.)	Hearing Officer: Michael Lazan

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving a _____ student who, as of last month, is eligible for services as a student with an Intellectual Disability.

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 January 8, 2015 in regard to the Student. On January 13, 2015, Respondent filed a response. A resolution meeting was held on February 5, 2015. The resolution period expired on February 7, 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

¹ Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

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

III. Procedural History

On January 26, 2015, this Hearing Officer held a prehearing conference.

 counsel for Petitioners, appeared. counsel for Respondent, appeared.

A prehearing conference order issued on January 29, 2015 summarizing the rules to be applied in this hearing and identifying the issues in the case.

Two hearing dates followed, on March 6 and 9, 2015. This was a closed proceeding.

Petitioners moved into evidence exhibits 1-15.

Respondent objected to Exhibit 14 on the grounds that the document was unreliable hearsay. This objection was sustained. Exhibits 1-13 and 15 were admitted.

Respondent moved into evidence Exhibits 1-7. There were no objections by Petitioners. These exhibits were admitted.

The parties presented closing statements orally, on the record, after completion of testimony on March 9, 2015.

Petitioners presented as witnesses: Mother; Father; Witness A, Director, School E; and Witness B, a psychologist. Respondent presented as witnesses: Witness C, a psychologist; and Witness D, DCPS representative.

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. I found Witness B to be particularly credible since he was unaffiliated with any party and had no incentive to shade his testimony one way or another. While I found Witness C to be truthful, I found her assessment of the Student to be incomplete. In particular, Witness C did not address whether this Student's attendance issues might be related to her extremely low IQ and achievement testing scores.

V. Issues

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

1. Did DCPS fail to locate, identify and evaluate the Student pursuant to the Child Find requirements in the IDEA for the two years prior to the filing of the Complaint? If so, did DCPS deny the Student a FAPE?

2. Did DCPS fail to conduct a timely evaluation of the Student after the parents requested an evaluation orally and in writing in January and September, 2013? If so, did DCPS deny the Student a FAPE?

As relief, Petitioners seek placement at School E, and 2000 hours of compensatory education.

VI. Findings of Fact

1. The Student is eligible for services as a student with an intellectual disability. Previously, she was not eligible for services. (Testimony of Mother; Testimony of Father)

2. The Student has a difficult personal history. She has removed from her mother's home due to allegations of neglect, and she has allegedly been the subject of abuse. (P-12-3-4)
3. She has been diagnosed with Bi-Polar Disorder and Manic Depression, and is currently taking medication to address these issues. (P-12-6)
4. She has also been diagnosed with Post-traumatic Stress Disorder Features with Superimposed Persistent Depressive Disorder, moderate Cannabis Use Disorder, and a mild Intellectual Disability. (P-12-15-17)
5. Pursuant to the WISC-IV from October, 2014, the Student's Full Scale IQ is a 58. This is in the Extremely Low range at the .3 percentile. The Verbal Comprehension Index score is even lower, at the .1 percentile. (P-12-8)
6. Pursuant to the Vineland-II Adaptive Functioning Measure from October 2014, the Student's adaptive functioning skills are in the low to moderately low range. In terms of her adaptive behavior composite, she is at the 2nd percentile. (P-12-10)
7. Pursuant to the Woodcock-Johnson Tests of Achievement, Third Edition, the Student is at the extremely low range for overall academic achievement, in the second percentile. (P-12-10)
8. The test found that that the Student's broad reading skills were in the borderline range, with a standard score of 76, at the 5.2 grade level equivalent, at the 6th percentile. Her reading comprehension skills were in the extremely low range, at the 3.3 grade level equivalent, below the first percentile. (P-12-12)

9. The test found that the Student's broad math skills were in the extremely low range, with a standard score of 46, at the 2.8 grade level equivalent, below the first percentile. (P-12-13)

10. The Student is especially delayed in math reasoning and calculation.
(Testimony of Witness B)

11. She started having behavioral difficulties in school She began to get suspended and showed an increase in "attitude," fighting, and overall aggressive behavior. (P-12-4)

12. The Student is sad about feeling different from other students in the school when she does not know the answer and everyone else does. (P-12-5)

13. The Student has poor school attendance. (P-12-4)

14. The Student's father tried to get the Student to go to school by driving her to school, and by giving her incentives such as a meal at a favorite restaurant.
(Testimony of Father)

15. The Student's attendance would improve if she were to have an appropriate placement because she would not be embarrassed about her performance in school. (Testimony of Witness B)

16. The Student has not had a lack of appropriate instruction in reading or math. She has not failed to progress academically as a result of cultural factors, economic factors, or environmental disadvantage. (P-10-1)

17. The Student is slow to process information in class and rarely submits classwork or participates in group discussion. (R-4-5)

18. The Student needs “targeted” language and reading instruction to help her understand the meaning behind the words she is reading. (P-10-6)

19. The Student requires 1:1 direct teacher student support within a classroom that has a low teacher to student ratio. (Testimony of Witness B; P-12-17)

20. For the 2010-2011 school year, for sixth grade, at School B, the Student received straight F grades in academic subjects. She was excessively absent, with 98 absences in Reading Workshop, 68 absences in Science, 28 absences in Math, and 52 absences in World Geography and Cultures. (P-1-1)

21. For the 2011-2012 school year, for seventh grade, at School C, the Student performed similarly. Though there were some D grades in Term 2, a C- in English in Term 1, and a D as a final grade for English, the majority of the Student’s grades were F. She failed Science, Mathematics, and Reading Workshop. The Student was absent for 57 days in English, and 6 days in Reading Workshop. There were 12 days of absences in Mathematics and 20 days of absences in Science. (P-2-1)

22. She was suspended 7 times during seventh grade for fighting. (P-12-5)

23. In or about 2012, the Student’s father was concerned about the Student’s academic progress and submitted a letter to School Administrator A at School C. The letter requested that the Student be evaluated for special education. (Testimony of Father)

24. For the 2012-2013 school year, the Student attended ninth grade, at School A. She was absent _____ and her grades were poor, with F grades in many classes. Her behavior ranged from excellent to poor. (P-4-1-3; P-5-1)

26. The Student continued at School A for the 2013-2014 school year, in general education classes only with no supports. (Testimony of Father, Testimony of Mother)

27. On September 2, 2013, the Student's mother gave the Student a note to give to the School A requesting an evaluation. This note specifically requested that the child be evaluated for special education. The note requested dates so that "we may begin the process as soon as possible." The Student gave two notes from her mother to the school staff during the school year. (Testimony of Mother; Testimony of Student; P-7-1)

28. During the 2013-2014 school year, the Student's father submitted a letter to Administrator B at the school requesting that the Student be evaluated for special education services. (Testimony of Father)

29. No evaluation was conducted of the Student during the 2013-2014 school year. (Testimony of Mother; Testimony of Father)

31. The Student continued at School A for the 2014-2015 school year. (Testimony of Mother; Testimony of Father)

32. Small group instruction was provided to the Student for the 2014-2015 school year in English. (P-8-1)

33. During this year, she was provided interventions as if she were a special education student in an inclusion class, with additional support on an individual basis. (P-9-1)

34. The Student would come into the special education office and ask for help herself, and her father was very diligent to make sure that the school staff was aware of the Student's needs. (P-9-1)

35. The Student is still enrolled at School A but does not currently attend. She does not feel safe at the school, she is not provided with enough instruction at the school, and she has difficulty focusing on the work. (Testimony of Student)

36. Even with the interventions that were provided, the Student cannot complete the assigned work at School A. (Testimony of Student)

37. A meeting in February, 2015 found the Student to be eligible for special education as a student with an Intellectual Disability. The Student's IEP dated February 9, 2015 contains goals in mathematics, reading, written expression, "cognitive," and emotional, social and behavioral development. It recommends that the Student receive 25 hours of specialized instruction per week outside general education, with 240 hours per month of behavioral support services. Also recommended is interpretation of oral direction, reading of test questions, repetition of directions, simplification of oral directions, calculation device and mathematics tools on math assessments, a location with minimal distractions, small group testing, and extended time on tests. (P-15)

38. At the meeting, there was focus on the Psycho-Educational evaluation of the Superior Court of the District of Columbia Family Court – Court Social Services Division Child Guidance Clinic, which was written by Witness B and his staff. The evaluation found that the Student had a Full Scale IQ is a 58, which is at the .3 percentile. The Student's adaptive functioning skills were found to be in the low to moderately low range. The Student performed in the extremely low range for overall academic

achievement, equivalent to a fourth grade level. The Student's broad reading was in the borderline range, at the 5.2 grade level equivalent. Her reading comprehension skills were in the extremely low range, below the first percentile. The Student's broad math skills were in the extremely low range, below the first percentile. The evaluators found that the Student is sad about feeling different from other students in the school when she does not know the answer and everyone else does. (P-12)

39. Still, some of the team were concerned about there being insufficient documentation at the review, including an observation, an adaptive behavior scale from the teacher, and certain teacher reports from the classroom setting. These team members felt that the Student's issues may not have had any educational impact on her.

(Testimony of Witness C)

40. The Student's teacher, at the meeting, said the Student was slow to process information. (Testimony of Witness C)

41. The District's written Review of Independent Evaluation focused on, among other things, the fact that there was no teacher input in connection to the adaptive scales and the fact that a classroom observation would "prove challenging" due to the Student's attendance issues. (R-4)

42. The Review of Independent Educational Evaluation did not include analysis of whether the Student's extremely low cognitive ability had anything to do with her attendance issues. The report also failed to consider whether the Student met any of the criteria necessary to be eligible for services as a Student with a Specific Learning Disability. (R-4)

43. School E is a non- public school located in Maryland. Tuition at the school is \$38,804 yearly. The school services grades 2-12, has eight classrooms, and there are no more than nine students in a class. There are two staff members in each class. All teachers at the school are certified in special education. (Testimony of Witness A)

44. The school offers two reading resource teachers that provide students with “pull-out” services. These teachers provide individual and small group instruction in reading and have experience in reading techniques such as the Wilson and/or Lindamood-Bell methodologies. (Testimony of Witness A)

45. Individualized instruction is also provided in math. (Testimony of Witness A)

46. The school offers counseling and can implement the requirements of the current IEP. (Testimony of Witness A)

47. The school offers specific programs to address truancy issues. Students are provided specific rewards such as a homework pass, free lunch from a favorite restaurant, or a book. There are no truancy issues at this school. (Testimony of Witness A)

48. The District has proposed the SLS Program at School D, with contains classrooms with twelve students, one teacher, and one paraprofessional. Classifications vary in these classrooms. (Testimony of Witness D)

49. If the Student had been provided with appropriate services during the two years prior to filing, she would have been a year to a year and a half further along in

broad reading, written expression and academic fluency, and a half a year further along in math. (Testimony of Witness B).

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. Child Find.

The "child find" provisions of the IDEA require each State to have policies and procedures in effect to ensure that "[a]ll children with disabilities residing in the State . . . who are in need of special education and related services, are identified, located, and evaluated." 20 U.S.C. Sect. 1412(a) (3) (A); 34 C.F.R. Sect. 300.111(a). Child find must include any children "suspected of being a child with a disability under Section 300.8 and in need of special education, even though they are advancing from grade to grade." 34 C.F.R. Sect. 300.111(c) (1).

Federal case law indicates that these provisions impose an affirmative duty to identify, locate, and evaluate all such children. Reid v. District of Columbia, 401 F.3d 516, 518-19 (D.C. Cir. 2005); Hawkins v. District of Columbia, 539 F. Supp. 2d 108 (D.D.C. 2008). Consistent with the statutory language, the "child find" obligation "extends to all children suspected of having a disability, not merely to those students who are ultimately determined to have a disability." N G. v. District of Columbia, 556 F. Supp. 2d 11 (D.D.C. 2008).

In this matter, there is persuasive evidence that the District should have located, identified and evaluated this Student for the two years prior to the filing of the Due Process Complaint. The Student's IQ has recently been tested at only 58, which is at the .3 percentile – less than 997 of every 1000 students to be tested. Testing also revealed that the Student performed in the extremely low range for overall academic achievement, in the 2nd percentile. Her reading comprehension skills were in the extremely low range, at the 1st percentile. The Student's Broad Math skills were even lower -- below the 1st percentile.

Moreover, there is evidence that these limited skills were manifesting themselves in class. The Student's grades for the past two school years were very poor, with F grades in most classes. The Student is slow to process information in class and rarely submits classwork or participates in group discussion. By listening to the Student, assessing the Student's listening skills, reading the Student's writing, assessing the Student's reading skills, and assessing the Student's math skills, it should have been apparent to all the Student's teachers that she – at the very least – needed at least to be *considered* as a candidate for special education.

The District points out that the Student was not attending regularly, suggesting that the Student's problems were about attendance, not learning, and that it could not administer testing of the Student. The record does show that the Student's attendance was poor. However, there is no testimony or evidence to suggest that the Student was *never* in school, that the Student was resistant to testing in any way, or that DCPS ever tried to test her. In fact, the record shows that the Student was actually interested to go to school if the instruction was appropriate. At School A, the Student would come into the special education office and ask for help herself. The report of Witness B also contains a reference to the Student being embarrassed about her poor performance in the general education classes. Consistent with this, there is evidence pointing out that the Student's father has been very diligent in pointing out the Student's needs to school staff. I find that this is not a situation where the student simply does not want to attend. Compare Garcia v. Albuquerque Public Schools, 520 F.3d 1116, 1127 (10th Cir. 2008)(Student's patterns of misbehavior would have prevented her from getting an educational benefit no matter what the District did).

It is noted that, after the filing of this Due Process Complaint, DCPS finally classified the Student as a student with an Intellectual Disability. Intellectual Disability, a.k.a. mental retardation, is defined as:

significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior, which is manifested during the developmental period and adversely affects a child's educational performance.

34 CFR300.8(c)(6); 5-E DCMR Sect. 3001.1

The record is clear that the Student should be classified as a student with Intellectual Disability. The Student has “significantly sub-average intellectual” functioning, as tested by Witness B through the WISC-IV. Moreover, there are deficits in adaptive behavior, as tested by Witness B through the Vineland-II Adaptive Functioning Measure. It is also obvious from the testimony of the Student, the report of Witness B, the testimony of Witness B, and the IEP that these deficits have adversely affected the Student’s educational performance. The Student does not understand much of what is going on in class, is slow to process information, and has failed most of her classes over the past two years.

Alternatively, the Student also should have been considered for classification as a student with a specific learning disability. As defined in the DCMR, a Specific Learning Disability (SLD) is:

a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. SLD does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural or economic disadvantage should have been deemed eligible for services as a Student with a

specific learning disability.

5-E DCMR Sect. 3001.1, 3006.4; see also 20 USC Sect. 1401(30).

Under regulations pursuant to IDEA, a specific learning disability may be found if a child "does not achieve adequately for the child's age" in basic language or mathematics skills or if the child fails "to meet age or State-approved grade-level standards" in such skills. 34 CFR Sect. 300.309(a). In forming a determination, a school district should "[d]raw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior." 34 CFR Sect. 300.306(c)(i).

Certainly, on this record, the Student has not met age or State-approved grade level standards and has exhibited an imperfect ability to listen, think, read, write, and do mathematical calculations. DCPS should have also located, identified and evaluated this Student to determine whether the Student should be eligible as a student with a Specific Learning Disability.²

² Additionally, to support a determination that a student has a specific learning disability, the child should "not make sufficient progress" to meet such standards "when using a process based on the child's response to scientific, research-based intervention" or the child "exhibits a pattern of strengths and weaknesses" in relevant areas. 34 CFR Sect. 300.309 (a)(2). Also, the team should determine that such findings are not primarily the result of other factors such as a visual or hearing disability, emotional disturbance, or environmental or cultural factors. 34 CFR Sect. 300.309 (a)(3). Also, to ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider 1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and 2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents. 34 CFR Sect. 300.309(b).

It is noted that, upon classifying the Student, DCPS immediately provided the Student with a considerable amount of services (25 hours of specialized instruction outside of general education) in what has to be characterized as an admission that DCPS should have classified this Student all along.

As a result of the foregoing, I find that DCPS should have located, identified, and evaluated the Student as of January 8, 2013. After such evaluation, an IEP meeting should have been conducted classifying the Student as a Student with an Intellectual Disability. DCPS's failure to do so denied this Student a FAPE.

2. Failure to Evaluate.

Federal regulations at 34 C.F.R. Sect. 300.301(b) provide that, "(c)onsistent with the consent requirements in 34 C.F.R. Sect. 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability." District of Columbia law, at DC Code Sect. 38-2561.02(a) implements this provision. The Code reads, in part, as follows: "DCPS shall assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment."

Both parents testified that they provided DCPS with written requests for evaluation during the 2013-2014 school year. The mother was able to produce a copy of her written request, which clearly states that she was requesting an evaluation for special education purposes. There was no testimony to the contrary from DCPS, and no evidence was presented by DCPS to contest the parents' position on this issue.

Moreover, there is no dispute that, on this record, no evaluation was conducted of the Student during the 2013-2014 school year.

The only issue is whether there has been a violation of the Student's substantive rights. Lesesne ex rel. B.F. v. District of Columbia, 447 F.3d 828, 834 (D.C.Cir.2006); Smith v. District of Columbia, 2010 WL 4861757 (D.D.C. 2010); Holdzclaw v. District of Columbia, 524 F.Supp.2d 43, 48 (D.D.C.2007); Kruvant v. District of Columbia, 99 Fed. Appx. 232, 233 (D.C. Cir.2004). However, since I have found that the Student should have been determined to be eligible for services for the 2013-2014 school year, there can be no question that this failure to evaluate resulted in a deprivation of educational benefit, which amounts to substantive FAPE denial. I find that DCPS denied the Student a FAPE when it failed to evaluate the Student, per the parental requests, during the 2013-2014 school year.

VIII. Relief

As a remedy, Petitioner asserts that appropriate relief in this matter is to order placement at School E and 2000 hours of compensatory education.

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

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

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

In Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005), the Circuit laid forth rules for determining when it is appropriate for IHOs to order funding of non-public placements. First, the court indicated that “(i)f no suitable public school is available, the [school system] must pay the costs of sending the child to an appropriate private school.” Id. At 9 (citing Jenkins v. Squillacote, 935 F.2d 303, 305 (D.C.Cir.1991)). The Circuit then explained that such relief “must be tailored” to meet a student’s “unique needs.” Id. At 11-12 (citing to Florence County School Dist. v. Carter, 510 U.S. 7, 16 (1993)). To inform this individualized assessment, courts must consider “all relevant factors” including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment. Id. at 12.

Moreover, a non-public school placement may be available to students as compensatory education where a school district has failed to address a Student’s special education needs for an extended period of time. Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1287-88 (11th Cir. 2008). In Draper, the 11th Circuit awarded multiple years of tuition at a private school on a compensatory education theory. The Student had been misdiagnosed by the school district for five years through an evaluation that was “spectacularly deficient.” The Court found that “(t)he persistent refusal of the School System to acknowledge the substantial evidence of its misdiagnosis borders on incredible.”

Draper is consistent with the standards set forth by the D.C. Circuit. In Reid v. District of Columbia, 401 F.3d 516 (D.C. Cir. 2005), the Court held that the hearing

officer may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid, 401 F.3d at 521-23. The court found that, in every case, 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'").

I have found Witness B to be particularly credible in this matter. An employee of the Superior Court of the District of Columbia, he has nothing at stake in this proceeding. Still, he passionately urged that the Student receive intensive services to make up for her lack of progress during the last two years. Among other things, Witness B stated that the Student requires 1:1 direct teacher support, and suggested that the Student’s truancy issues would end if she were placed in an appropriate program.

The record indicates that School E would provide the Student with appropriate interventions. The school provides instruction with a favorable student to teacher ratio, with are no more than nine students and two staff members in each class. All teachers at the school are certified in special education. The school offers two reading resource teachers that provide students with “pull-out” services. These teachers provide individual and small group instruction in reading and have experience in reading methodologies such as Wilson and/or Lindamood-Bell. Individualized instruction is also provided in math, which is the Student’s weakest subject . The school offers counseling

and can implement the requirements of the current IEP. Further, the school offers programs to address truancy issues. Students are provided specific rewards such as a homework pass, free lunch from a favorite restaurant, or a book. Witness A testified, without rebuttal, that there are no truancy issues at this school.

In response, DCPS presented Witness D, who described the SLS Program at School D. This program contains classrooms with twelve students, one teacher, and one paraprofessional. Classifications vary in these classrooms. However, there was no testimony about specific reading interventions in this program, there was no testimony about 1:1 teacher attention in this program, and there was no testimony about anti-truancy measures in this program. Given this Student's special education needs, I agree with the Petitioner that the appropriate placement for this Student is School E.

Moreover, since the Student received no special education services at all at School A during the past two school years, I find that the deprivation here is severe enough that a non-public placement for both the remainder of the 2014-2015 school year and the 2015-2016 school year on a compensatory education theory.

Petitioner also requests 2000 hours of compensatory tutoring. I have already awarded the Petitioner tuition at School E for the remainder of the current school year and the following school year. Moreover, Witness B's request to provide the Student with 2000 hours of compensatory education appears to be the product of pure speculation as opposed to measured analysis. Further, it is unclear how the proposed 2000 hours can be used by this Student, who will be in school full time and has exhibited no inclination to spend upwards of 50-60 hours per week absorbing instruction. Under the circumstances, I find it incumbent upon myself as the Hearing Officer to fashion an

appropriate additional compensatory education award that is in harmony with the award of tuition at School E. I will therefore order that the Student receive 100 hours of compensatory tutoring, by a certified special education teacher, in the areas of math, reading, and writing.

IX. Order

As a result of the foregoing, I hereby order the following:

1. Respondent shall fund the Student's placement at School E for the remainder of the 2014-2015 school year and the 2015-2016 school year;
2. The Student is hereby awarded 100 hours of tutoring by a certified special education teacher.

Dated: March 24, 2015

Michael Lazan
Impartial Hearing Officer

X. Notice of Appeal Rights

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

Date: March 24, 2015

Michael Lazan
Impartial Hearing Officer