District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
810 First Street, NE, 2nd Floor, Washington, DC 20002
(202) 698-3819 www.osse.dc.gov

Parent, on behalf of Student,[1]	)	**Room: 2003**
Petitioner,	)	**Hearings: 3/15, 3/25**
	)	**HOD Due: March 29, 2016**
v.	)	**Hearing Officer: Michael Lazan**
	)	**Case No.: 2016-0003**
District of Columbia Public Schools,	)	
	)	
Respondent.	)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X year old student who is currently eligible for services as a Student with 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 January 14, 2016 in regard to the Student. On January 27, 2016, Respondent filed a response. A resolution meeting was held on January 29, 2016. The resolution period expired on February 13, 2016.

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 February 1, 2016, this Hearing Officer held a prehearing conference. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order issued on February 17, 2016, summarizing the rules to be applied in this hearing and identifying the issues.

There were two hearing dates, March 15, 2016 and March 25, 2016. This was a closed proceeding. Petitioner was represented by Attorney A, Esq. Respondent was represented by Attorney B, Esq. Petitioner moved into evidence Exhibits 1-36. There were no objections. Exhibits 1-36 were admitted. Respondent moved into evidence Exhibits 1-31. Petitioner objected to Exhibits 22-24, and 27-28 on relevance grounds. The objection to Exhibit 22 was overruled. The other objections were sustained. Exhibits 1-22, 25-26, and 29-31 were admitted.

At the close of testimony, Respondent presented an oral closing statement and Petitioner presented a written closing statement. Petitioner presented a supplemental written closing statement on March 27, 2016.

Petitioner presented as witnesses: Petitioner; Witness A, an advocate; and Witness B, a psychologist (Expert: Educational Psychology and Assessments). Respondent presented: Witness C, a psychologist, and Witness D, a Special Education Coordinator.

IV. Credibility.

In this case, featuring psychologists from both sides, both psychologists were articulate and credible but also strained to justify their respective positions. Witness B, for Petitioner, somewhat overstated the Student's deficits, pulling out the Student's subtest scores and highlighting them. Witness C, for Respondent, neglected to put grade level equivalents, age level equivalents, or percentiles into her testing and failed to acknowledge the Student's difficulties in his prior setting. Witness D, the Special Education Coordinator for Respondent, was also credible but failed to acknowledge or explain the Student's academic difficulties in his prior setting. I found the remaining witnesses to be credible without any inconsistencies in their positions or prior statements.

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 deny the Student a FAPE through its IEP dated January 22, 2015? If so, did DCPS act in contravention of 34 CFR 300.320 and Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

Petitioner contended that DCPS inappropriately reduced the Student's special education hours at this meeting.

2. Did DCPS inappropriately determine that the Student was no longer eligible for services as a student with a disability as a result of the IEP meeting on April 3, 2015? If so, did DCPS violate 34 CFR Sect. 300.8(c)(10) and related regulatory provisions? If so, did DCPS deny the Student a FAPE?

Petitioner contended that the Student has severe emotional and academic difficulties, and points out that DCPS again determined the Student to be eligible in December, 2015.

As relief, Petitioner requested that the Student receive compensatory education in the form of academic tutoring and behavioral support.

VI. Findings of Fact

1. The Student is an X year old who is currently eligible for services as a student with Other Health Impairment. He has been eligible for special education services for much of his academic career. He first received an IEP as a young child, during grade A, when he went to School A. (Testimony of Petitioner; P-10-2)

2. He then transitioned to School B PCS, where he received IEP services for speech and language, reading, and math issues. His IQ was found to be well below level at this time. A neuropsychological and educational evaluation from August, 2011 found that the Student had an IQ on the WISC-IV, of 70, in the 7th percentile. On the Woodcock-Johnson III Normative Update Tests of Achievement, the Student scored below his age level equivalent on every measure, with standard scores of 73 (oral language), 74 (broad reading), 78 (broad math), and 79 (broad written expression). (Testimony of Petitioner; P-30)

3. The Student's IEP for November 26, 2013 found the Student eligible for services as a student with Specific Learning Disability and called for 5 hours per week of specialized instruction outside general education, and 5 hours per week of specialized instruction inside general education. 60 minutes per week of speech-language pathology

and 60 minutes per month of behavioral support services were required, as was a location with minimal distractions and testing accommodations. (P-14-10-11)

4. At this time, there were concerns about the Student's academic performance at the school notwithstanding the special education interventions. There was accordingly a meeting on September 6, 2014, where a team decided that the Student was in need of additional evaluations in addition to a hearing screening. (Testimony of Witness A)

5. The Student had continued difficulties at School B PCS during the 2014-2015 school year. He had C and D grades, and failed all but two of his classes at this time. There were reports of increased anxiety in the classroom. He was having tantrums at school, he had headaches and stomachaches, and was suspended three times. (P-27; Testimony of Witness A)

6. A Due Process Complaint was filed by Petitioner during this time. The complaint resulted in a settlement agreement between Petitioner and School B PCS on November 4, 2014 which required compensatory education consisting of 30 hours of specialized instruction outside general education, and 6 hours of speech and language services. (R-1-2; Testimony of Witness D)

7. Shortly thereafter, an IEP was written increasing the Student's services. The new IEP, dated November 25, 2014, again determined that the Student was eligible as a student with a Specific Learning Disability. It contained goals in mathematics, written expression, communication/speech and language, and emotional, social and behavioral development. The Student was now recommended for 10 hours per week of specialized instruction outside general education, and 5 hours per week of specialized

instruction inside general education. Speech-language pathology was recommended for 30 minutes per week, and behavior support services were recommended for 300 minutes per month. A location with minimal distractions was recommended, as were testing accommodations and repetition of directions. The Student was also recommended for Extended School Year services. (P-15; P-16-1)

8. The IEP stated that the Student's difficulty with numbers impacts on his ability to access grade level curriculum and requires small group instruction with modeling and modifications. In writing, it stated that he has difficulty "linking relevant information to his topic" and trouble with word choice. It stated that he needed small groups and 1:1 instruction in writing. In speech and language, it stated that he needs visual aids and manipulatives to learn grade level concepts and is unable to perform on grade level. It also stated that he is easily distracted and demonstrated impulsivity requiring redirection and prompting. (P-15)

9. Shortly thereafter, Petitioner took him out of School B PCS, in part because she saw a message on the teacher's cell phone that offended her. As a result, he transferred to School C, his local school under the control of Respondent. (Testimony of Petitioner)

10. He found School C to be an entirely different environment. The work was easier since many students were not on grade level. One third to one-half were at least a year below level, "if not two." There was very different homework, which he did once or twice a week. He was no longer upset during the school day. Still, the Student had some focusing issues during classes. (Testimony of Witness C; Testimony of Petitioner)

11. An IEP and "thirty-day meeting" was held shortly thereafter, in January, 2015. The team reviewed the old IEP and informal assessments such as DIBELS and computer based testing. Based on this, they determined that the Student was performing at or above grade level. As a result, the District determined to reduce by half the Student's specialized instruction hours. Some staff from School C were "incredulous" that he was ever a student with an IEP. A teacher did indicate, however, that he was missing some math skills.

12. During this meeting, the team had virtually no information about the Student's performance at School B PCS. They had not received any of his evaluations from School B PCS and no teachers or administrators from School B PCS were at the meeting. No classroom grades were reviewed, whether for School B PCS or School C, because he had not been at School C long enough. The parent objected to the reduction and asked that the Student be evaluated for services. DCPS then agreed that he would be reevaluated. (P-23; Testimony of Witness A; Testimony of Witness C; Testimony of Witness D)

13. An IEP cover page was then issued on January 22, 2015. However, this document made no reference to a reduction in specialized instruction. Instead, it only stated that DCPS would reduce his speech and language services to 60 minutes a month. The one-page document, mostly an attendance list, did not reference the Student's Present Levels of Performance or goals. Another such document was produced on March 2, 2015, which required questions read (in math and science) and extended time for the upcoming PARCC assessment. (R-6-1; R-9-1; R-10-1; R-11-1; Testimony of Witness C)

14. While the Student was at School C, Special Education Coordinator Witness D called School B PCS once to get the Student's records. She also followed up with the School C registrar numerous times to find out whether School C had obtained a copy of the records. No records were obtained. (Testimony of Witness D)

15. During this time, the Student was "starting to understand" math procedures and concepts. He was receiving "RTI" services though myLexia and ST Math software programs, and was getting 5 hours per week of specialized instruction outside the general education setting. (R-16-4-5; Testimony of Witness C)

16. Respondent then proceeded to evaluate him. A speech and language evaluation from February, 2015 found that the Student's speech was in the average range on the Goldman-Fristoe Test of Articulation and in the Comprehensive Receptive and Expressive Vocabulary Test-3. On the Clinical Evaluation of Language Fundamentals-5th Edition, most testing was in the average range though two subtests were well below the mean. (R-12)

17. Witness C conducted psychological testing of the Student in or around March, 2015. RIAS intelligence testing revealed standard scores ranged from 86 (18th percentile) in verbal intelligence to 110 (75th percentile) in composite memory, with a 92 (30th percentile) overall score. Woodcock-Johnson-III achievement testing found that the Student received 92 to 104 in standard scores. No grade equivalents, age equivalents, or percentiles were reported. Behavior Rating Inventory of Executive Function testing put the Student at least in the 50th percentile in all areas. His teacher indicated that he exhibited some difficulty remaining on task or staying focused for an extended period of

time, and required extended instruction, verbal redirection, and modified seating. (R-16-5, 9-12)

18. DCPS also prepared an "evaluation summary report" on March 6, 2015. Based on TRC/DIBELS assessments and a psychological assessment from Witness C, the student's reading was deemed "one level below grade level." The report also stated that the Student did not have any significant academic concerns. The report indicated that the Student was observed in the classroom setting and had no incidents or altercations and was generally appropriate. (P-17)

19. A MDT meeting was held in April, 2015. Relying on the recent evaluations, testing reports and informal assessments indicating that the Student was doing well at School C, the team determined that the Student was ineligible for services. There was no review of the student's work samples or progress reports, and they did not assess whether he might be eligible for services as a student with Other Health Impairment. The parent objected and sought an I.E.E, which Respondent agreed to provide. (Testimony of Witness A; Testimony of Witness C; Testimony of Witness D; P-24)

20. Also in or about Spring, 2015, the Student took a PARCC assessment. On this assessment, the Student scored 693 in Math, at Level 1 out of 5 (did not meet expectations), and 707 in ELA, level 2 out of 5 (partially met expectations). Level 4 is considered to be "met expectations." This assessment is based on the "common core." Most students in the District of Columbia did poorly on the PARCC, across all ages. (P-22-1-2; Testimony of Witness C; Testimony of Witness B)

21. Toward the end of the school year, the Student became bored with the work at School C and was anxious for the year to be over. His attendance became "spotty" during this time. (Testimony of Witness D; P-33-9)

22. A speech and language evaluation by Evaluator A dated June 16, 2015 found that the Student's overall language skills were below average on the CASL measure, but in the average range on all other assessments. (P-32)

23. The Student enrolled in yet another school, School D PCS, for the 2015-2016 school year. As with School B PCS, the Student started to have problems with academics. He was having difficulty attending, completing assignments, was overwhelmed, and his academic functioning was considered to be below grade level. (Testimony of Witness A; Testimony of Petitioner)

24. A comprehensive psychological evaluation was conducted by Witness B dated October 13, 2015. This assessment found that the Student was in the average range in broad reading, with a standard score of 90, and in the low average range in broad math, with a standard score of 84. His calculation score was well below grade level. In broad writing, he was in the low average range, with a standard score of 88. This was two grade levels below expectation. BASC-2 testing found that the Student was at-risk in terms of Attention Problems, School Problems, Attitude to School and Sense of Inadequacy. His testing put him in the clinically significant range in attention problems and hyperactivity. (P-33; Testimony of Witness B)

25. An MDT meeting was held on November 17, 2015, and an IEP was developed several days later, on December 6, 2015. The IEP again found the Student eligible for services, this time as a Student with Other Health Impairment. The team

determined that he had Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder. Eight hours of specialized instruction inside general education, and two hours of specialized instruction outside general education, were recommended in additional to two hours per month of behavioral support services. (P-18-1)

26. As a result of the services in the new IEP, the Student's grades improved from D level to B level. (Testimony of Petitioner)

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-EDCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005). However, in reviewing a decision with respect to the manifestation determination, the hearing officer must determine whether DCPS has demonstrated that the child's behavior was not a manifestation of such child's disability. 5 DCMR Sect. 2510.16

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).

Issue 1: Did DCPS deny the Student a FAPE through its IEP dated January 22, 2015? If so, did DCPS act in contravention of 34 CFR 300.320 and Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

Under the Supreme Court's decision in Rowley, a public school district need not guarantee the best possible education or even a "potential-maximizing" one. 458 U.S. at 197 n. 21. Instead, an IEP is generally "proper under the Act" if "reasonably calculated to enable the child to receive educational benefits." Id. at 207.

The question here is whether the decision to reduce the Student's services -- not two months after an *increase* in services – was reasonable. I do not believe it was. The hasty reduction was based mainly on a month of informal teacher observations of his work, and failed to consider the reasons behind the earlier increase in services. There was no formal testing conducted at this time to assess the Student's levels and needs, and Witness C, testifying for Respondent, stated that the Student was missing some math skills.

The math difficulty is consistent with the Student's IEP from November, 2014, which indicated that the Student scored in the 8th percentile range in mathematics. In addition to the math deficits, the November, 2014 IEP stated that the Student struggles

with appropriate word use in writing, and has trouble with clear and coherent writing in the classroom. In regard to speech and language issues, it stated that he is unable to perform on grade level. It also stated that he is impulsive and needs redirection. Given this kind of IEP, it was incumbent on the school district to thoroughly assess the Student to determine his needs before making any sort of judgment on the services he required. No such evaluation had been conducted by this time, when the Student was still getting acquainted with the school.

It is noted that DCPS failed to comply with basic procedure when initiating this change. In connection to the reduction of services, Respondent presented, in the record, only a sign-in form entitled Amended Individualized Education Program. The rest of the IEP was not changed from the IEP written by School B PCS. As a result, it appears that the Student's Present Levels of Performance and goals – which suggest significant deficits – were adopted by the DCPS team. DCPS never explained how all these goals could possibly be met with half of the special education hours that were originally recommended, or why the Present Levels of Performance section of the IEP was not rewritten given the Student's recent performance.

Moreover, the amendment page does not even state the Student's special education hours were to be reduced. This form related only to a reduction in speech and language therapy -- a reduction which, according to Witness D during cross-examination, never actually occurred.

Accordingly, I find that DCPS denied the Student educational benefit, and therefore a FAPE, when it reduced the Student's special education hours in January, 2015.

2. Did DCPS inappropriately determine that the Student was no longer eligible for services as a student with a disability as a result of the IEP meeting on April 3, 2015? If so, did DCPS violate 34 CFR Sect. 300.8(c)(10) and related regulatory provisions? If so, did DCPS deny the Student a FAPE?

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 aphasis. 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)[2].

[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). 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-

Additionally, 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).

DCPS contended that the Student was at or above grade level in *all* academic areas, and that therefore he could not possibly be found to have a specific learning disability. This is not entirely true. By April, 2015, the District had in fact conducted thorough testing of the Student by the psychological testing of Witness C and the testing of a speech and language pathologist. There were also teacher interviews, parent interviews, a student interview, a classroom observation, and informal assessments.

Witness C's testing on the Woodcock-Johnson-III testing did find the Student scored from 92 to 104 in standard scores, which are in the average range. However, Witness C's testing did not include grade level equivalents[3]. The DCPS evaluation report, which analyzed the TRC/DIBELS assessments, said that the student's reading was on Level S, "one level below grade level." (P-17-2) Behavior Rating Inventory of Executive Function testing put the Student at least in the 50th percentile in all areas, but his teacher indicated that he exhibited some difficulty remaining on task or staying focused for an extended period of time, and required extended instruction, verbal redirection, and modified seating.

---

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).

[3] In fact, some of the most important special education cases in this Circuit specifically rely on grade level equivalents in decisions. Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 519-20 (D.C. Cir. 2005); Branham v. Government of the Dist. of Columbia, 427 F.3d 7, 9 (D.C. Cir. 2005).

Still, Respondent has a point here. There is nothing in the record to hint at any academic difficulties at School C, even though he had been there for several months by then. Additionally, almost certainly because the work was easier at School C, the Student's behavioral and anxiety issues mostly disappeared -- though the record also shows that he became bored at the end of the year because the work might have been too easy. The parent accordingly then moved him to another charter school, where he has been challenged, has struggled, and is now again eligible for services.

The question here is whether the Student should continue to be eligible for special education services when he is in an "unchallenging" general education environment which he can handle without specialized instruction. In the District of Columbia, it is apparent, all general education environments are not alike. On these facts, where standardized testing shows that the Student is average to low average in all areas, I must conclude that DCPS was justified in concluding that the Student did not need specialized instruction after it had thoroughly evaluated him and he had been functioning in the new environment for a significant amount of time. The Circuit, and the Supreme Court, has made clear that the focus here should be whether the child can "achieve passing marks and advance from grade to grade." Reid, 401 F.3d at 519. To require specialized instruction in an environment where the Student is able to pass and advance is at odds with Reid, Rowley and the overall construct of the IDEA.

Parenthetically, I will add that Petitioner presented no evidence that the Student was not making any meaningful academic progress while at School C. Were Petitioner to show, say, that the instruction at School C was so basic as to be meaningless and that he did not genuinely "advance" in math, reading or writing, my conclusion might have

been different here. However, no such testimony was presented. Petitioner, who bears the burden here, failed to call any witnesses to establish that the Student's education at School C was in effect "warehousing" and that the Student required specialized instruction to make true academic progress.

Petitioner points to the Student's poor scores on the PARCC assessments in arguing that he is functioning well below grade level. These assessments, which represent testing on the "common core" requirements, have resulted in widespread difficulties for students in the District of Columbia. According to the undisputed testimony in the record, most students in this LEA have failed to pass the PARCC assessments. Moreover, I have found no caselaw anywhere where difficulty on a "common core" assessment is used as proof that a student should be eligible for services. As a result, I decline to find that the Student must be eligible merely because he did poorly on the PARCC assessments.

In sum, I find that DCPS was justified in finding that the Student was ineligible for services in April, 2015. Accordingly, Issue #2 is dismissed.

VIII. 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).

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, 401 F.3d at 521-23. 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"). In the recent case of B.D. v. District of Columbia, 2016 WL 1104846 (March 22, 2016)(D.C. Cir. 2016), the Circuit elaborated on the appropriate way to calculate compensatory education. Judge Tatel explained that a proper award not only makes up for educational services that were missed, but also compensates for any regression suffered by the Student as a result of the deprivation. Id. @ *5.

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.

In connection to the time period corresponding to Issue # 1, Petitioner seeks fifty hours of academic tutoring in reading, writing, and math tutoring, and twenty hours of mentoring. In support, Petitioner has submitted a compensatory education plan and testimony from Witness B.

In regard to the specialized instruction, fifty hours is considerably less that the amount of educational hours actually missed by the Student during the period of FAPE denial. While Witness B did not align this plan perfectly within the Reid standard, it is a reasonable award for a Student who missed three months of services. Witness B has expertise in assessing students, and her testimony and plan reveal a careful, deliberative process that supports the plan sufficiently.

In regard to the request for mentoring, there is no claim in this case alleging that the Student missed behavioral services during the period of time corresponding to the FAPE violation, which is January 22, 2016 through April 3, 2016. The record also shows that the Student's behavior actually improved while he was at School C. As a result, I cannot find that there is any basis for compensatory education in regard to mentoring.

Finally, it is appropriate, in this instance, to require that the providers of this service be appropriately qualified. As a result, I will order that the academic tutoring be provided by a licensed special education teacher.

IX. Order

As a result of the foregoing:

1. Respondent is hereby ordered to provide the Student with fifty hours of 1:1 individualized tutoring, services to be completed by December 31, 2017;

2. All tutoring shall be directly provided by a certified special education teacher who shall be paid at a reasonable and customary rate;

3. Petitioner's other requests for relief are hereby denied.

Dated: March 29, 2016

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
OSSE Division of Specialized Education
Contact.resolution@dc.gov
Chief Hearing Officer

X. Notice of Appeal Rights

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

Date: March 29, 2016

Michael Lazan
Impartial Hearing Officer