

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
1050 First Street, NE, 3<sup>rd</sup> Floor  
Washington, DC 20002

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PARENT,  
on behalf of STUDENT,<sup>1</sup>

Petitioner,

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Respondent.

Date Issued: May 2, 2018

Hearing Officer: Peter B. Vaden

Case No: 2018-0021

Hearing Date: April 17, 2018

Office of Dispute Resolution, Room 112  
Washington, D.C.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (D.C. Regs.).

Student, an AGE child, is a resident of the District of Columbia. In her January 31, 2018 due process complaint, Petitioner alleges that DCPS has denied Student a free appropriate public education (FAPE) by failing to provide Student an appropriate Individualized Education Program (IEP) in the 2017-2018 school year.

Petitioner and DCPS met for a resolution session on February 15, 2018 but DCPS was unable to resolve the dispute that was the basis for the due process complaint. On February 12, 2018, I convened a telephone prehearing conference with counsel to

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<sup>1</sup> Personal identification information is provided in Appendix A.

discuss the hearing date, issues to be determined and other matters. The final decision in this case was originally due by April 16, 2018. Because of inclement weather on the originally scheduled hearing date, I continued the due process hearing to April 17, 2018 and extended the final decision due date to May 4, 2018. The due process hearing was convened before this Impartial Hearing Officer on April 17, 2018 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The parent appeared in person and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Mother testified and called as additional witnesses EDUCATIONAL ADVOCATE 1, EDUCATIONAL ADVOCATE 2 and INDEPENDENT PSYCHOLOGIST. DCPS called LEA REPRESENTATIVE as its only witness. Petitioner's Exhibits P-1 through P-70 and DCPS' Exhibits R-1 through R-20 were all admitted into evidence without objection. Counsel for the respective parties made opening statements and closing arguments. On the request of Petitioner's counsel, the parties were granted leave to submit post-hearing written argument no later than April 20, 2018. I advised counsel that I would not draw any inference should either party decide not to file written argument. Only the Petitioner elected to file a post-hearing brief.

### **JURISDICTION**

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

## **ISSUES AND RELIEF SOUGHT**

The following issue for determination was certified in the February 12, 2018

Prehearing Order:

Whether DCPS denied Student a FAPE, at meetings on or about October 23, 2017, November 2, 2017 or December 19, 2017, or during the 2017-2018 school year, when the IEP team failed to provide an IEP, with services in a full time or close to full time, inside of general education, setting, appropriate goals and present levels of performance that addressed Student's deficits.

For relief in this case, Petitioner requests that DCPS be ordered to develop an IEP for Student that is consistent with the parent's claims or, in the alternative, that DCPS be ordered to convene an IEP team meeting to develop an appropriate IEP to provide that Student's least restrictive environment setting is the general education classroom and that DCPS be ordered to provide a suitable placement for Student to implement the revised IEP. The Petitioner also seeks an award of compensatory education for the denials of FAPE alleged in the complaint.

## **FINDINGS OF FACT**

After considering all of the evidence admitted at the due process hearing in this case, as well as the arguments of counsel, this hearing officer's findings of fact are as follows:

1. Student, an AGE child, resides with Mother in the District of Columbia. Testimony of Mother. Student is eligible for special education and related services as a student with Multiple Disabilities, including Autism Spectrum Disorder and Other Health Impairment - Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder (OHI-ADHD). Exhibit P-7, Testimony of Educational Advocate 1.
2. Student currently attends SCHOOL 2, where Student is in GRADE. For the 2016-2017 school year, Student was enrolled in SCHOOL 1. Student was transferred

from SCHOOL 1 to SCHOOL 2 on October 30, 2017. Testimony of Mother, Exhibit P-58.

3. Student underwent a multi-disciplinary team evaluation through DCPS in March 2016 to determine eligibility for special education services. Results from the psychological assessment, via the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition suggested that Student's overall intellect fell within the Average range (Full Scale IQ Standardized Score [SS] = 104). Student's overall language skills also fell within the Average range (Clinical Evaluation of Language Fundamentals, Preschool, Second Edition, Core Language SS = 98). Student's academic skills, as measured by the Woodcock-Johnson, Fourth Edition fell at or above expectations, indicating no significant concerns with Student's learning. Student was evaluated at PEDIATRIC CENTER in October 2016<sup>2</sup> for diagnostic clarification via a diagnostic interview and administration of the Autism Diagnostic Observation Schedule, Second Edition, due to concerns with Student's behavior and social skills. Despite exhibiting important strengths, Student also presented with deficits in the area of social communication and interaction (*e.g.*, inconsistent eye contact, limited range of directed facial expressions, limited use of gestures, understanding of typical social relationships was less developed than expected given Student's age, slightly unusual quality of social overtures and social responses) and restricted and repetitive patterns of behavior (*e.g.*, occasional use of unusual phrases, somewhat repetitive speech, strong interests in certain topics, sensitivity to sounds and fabric). The DSM-5 diagnosis of Autism Spectrum Disorder was provided. Additionally, as Student continued to present with attentional

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<sup>2</sup> On Student's IEPs, this Pediatric Center Psychology Report is cited as "dated 11/15/2017." *See, e.g.*, Exhibit P-7, p. 2; Exhibit R-5, p.2. This was a typographical error. Presumably the date of the Psychology Report was November 15, 2016.

difficulties and hyperactivity, Student's prior diagnosis of Attention-Deficit Hyperactivity Disorder was maintained. Exhibit R-13.

4. Student's initial IEP was developed at School 1 on February 9, 2017. The initial IEP identified Mathematics, Reading, Written Expression and Emotional, Social and Behavioral Development as Areas of Concern. The February 9, 2017 IEP provided 20 hours per week of Specialized Instruction Services, including 5 hours inside general education, and 240 minutes per month of Behavioral Support Services. Exhibit P-7.

5. The February 9, 2017 IEP reported concerns about Student's behaviors in school; that Student's disabilities sometimes created challenges with peer interactions; that Student was able to adjust to changes in routine and schedule to some degree – however, when something changed that Student was not expecting or agreeable to, Student would become defiant, emotionally dysregulated, and sometimes physically aggressive; that Student struggled with flexibility; that Student's struggle with impulse control, emotional regulation, and compliant behaviors made it difficult for Student to access the general education curriculum; that Student needed a great deal of structure, routines, and a high degree of predictability to learn in the general education setting; that when Student would become defiant or physically aggressive, Student was often removed from the classroom for safety concerns, thus missing additional learning opportunities and potentially impacting educational progress. Exhibit P-7.

6. Under the initial IEP, Student's school team found that Student's behavior was a challenge, including elopement, not attending to instruction and physical aggression. LEA Representative made a referral to DCPS' Least Restrictive Environment (LRE) Support Team. A Support Team member conducted an observation of Student at School 1 on April 26, 2017. This observer recommended that the school

develop a Behavior Intervention Plan and a safety plan for Student. She did not recommend that Student's educational placement be more restrictive. Exhibit R-14.

7. In April 2017, School 1 developed an Elopement Protocol for Student. Exhibit R-15. On June 2, 2017, Student's IEP team developed a BIP for Student. Exhibit R-17.

8. At an IEP team meeting on June 21, 2017, the School 1 IEP team changed Student's Specialized Instruction hours to all (20 hours per week) outside general education. Exhibit P-52. (Note, this meeting minutes form is dated, incorrectly, February 21, 2017. The meeting was held on June 21, 2017. Testimony of LEA Representative.) Although Student was then above grade level in reading, Student was not making the progress the team expected, and was slightly below grade level, in math and writing. The IEP team's concern was that Student was not accessing the curriculum and would not be able to continue growth. Elopement was a daily concern, sometimes occurring 6-7 or more times in a day. Testimony of LEA Representative. Although Mother agreed with the IEP amendment, she did not understand at the time that as a result of the IEP amendment, Student would not remain at City School 1. Testimony of Mother.

9. On July 16, 2017, Mother received a letter, dated June 30, 2017, from DCPS informing her that the CES classroom at School 2 had been identified as the location of services for Student for the 2017-2018 school year. Exhibit R-18, Testimony of Mother. Although School 2 is Student's neighborhood school, Mother objected to the change in schools. At Mother's request, an IEP team meeting was convened at School 1 on August 17, 2017. Several school location options were discussed, but Mother would not consider the CES program at School 2. The IEP team agreed that Student would

remain in the general education setting at School 1, on an interim basis, and that a behavior tech would be assigned to Student's classroom. Until a behavior tech was identified, two paraprofessionals would be assigned to the classroom to allow for a lower student-to-teacher ratio. Exhibit P-49.

10. On or about August 3, 2017, Mother filed a complaint with the D.C. Office of the State Superintendent of Education (OSSE) State Complaint Office objecting to, *inter alia*, the decision to place Student in a full-time self-contained classroom and the change in school location to School 2. Exhibits P-61, P-4. On October 4, 2017, the State Complaint Office issued a Letter of Decision finding that DCPS had complied with the IDEA regulations with regard to Student's changed school location, because the location assignment and placement followed placement requirements and were appropriately based on student data. Exhibit P-4.

11. DCPS did not effect Student's transfer from School 1 to the CES classroom at School 2 while consideration of Mother's OSSE complaint was pending. DCPS issued a new location of services letter on October 10, 2017 confirming that Student's location of services would be the CES program at School 2. Exhibit R-6.

12. School 1 convened an IEP team meeting for Student on October 23, 2017 to discuss Student's academics, behaviors and location of services. It was reported that Student's behavior at School 1 had not improved. LEA Representative discussed Student's off-task behaviors, elopement and physical aggression. He reported that occurrences of these behaviors peaked on random days and that even on a day where the behaviors occurred less frequently, the number of occurrences was still significant. He stated that off-task behavior impacted Student's ability to attend to instruction and that the rate of physical aggression and elopement made it difficult to keep Student and

other students and adults safe. The IEP team left Student's Special Education Services (20 hours per week outside general education) and Behavioral Support Services (240 minutes per month) unchanged. Exhibits R-4, R-5. About one week later, Student started in the CES program at School 2. Testimony of LEA Coordinator.

13. On November 2, 2017, the IEP team at City School 2 convened for a transition meeting for Student. At the time, Student was in the CES classroom with 4 other students, all of whom had ASD disabilities. The CES classroom teacher reported that Student was above grade level for reading and at grade level for math. The CES classroom teacher reportedly stated that Student did not need to be in her classroom because Student was above the class academically. Over Mother's objection, the School 2 team decided that Student would remain in the CES classroom until a 30 day review meeting. Testimony of Educational Advocate 1, Exhibit P-47.

14. In August 2017, Student received an Independent Educational Evaluation (IEE) Neuropsychological Assessment at Pediatric Center, where Student was previously evaluated in October 2016. This evaluation report was completed on or about September 28, 2017. The evaluating psychologist reported that Student presented with a history of attention and behavior regulation difficulties and social concerns. Student had a diagnostic history of ADHD, Combined Presentation, and Autism. Student was found to have intellect, new learning and memory, language skills, and academics that were at or above expectations. Student struggled with sustained attention, task persistence, flexibility, and social communication. Student's prior diagnoses of Autism Spectrum Disorder (ASD) and ADHD were maintained. Student's neuropsychological profile was notable for considerable strengths including memory abilities and reading skills. Student's core intellectual functioning, language skills, fine motor speed, and

visual-motor integration all fell at or above expectations. Student's skills for independent functioning in day-to-day life (*i.e.*, adaptive skills) were also largely age appropriate, per parent report. Student struggled with attentional and behavioral regulation and executive functioning. Student struggled greatest on a task of switching and mental flexibility. Behavioral observations throughout testing were remarkable for poor sustained attention, elevated activity level, impulsivity, disinhibition (*e.g.*, talkativeness), and inflexibility. Particularly as the day progressed, Student required increased support including prompting, redirecting, and behavioral contingencies. The assessor predicted that Student was likely to show more variable performance outside of the testing environment and to have greater difficulty in typical day-to-day settings. Student also presented with longstanding difficulties with social communication and social interaction, including difficulty across the testing day initiating and maintaining conversation, poorly modulated eye contact and a limited range of facial expressions, poor insight into social relationships, and limited social overtures and responses. Student demonstrated some restricted/repetitive interests. Diagnostically, Student's profile of cognitive and behavioral strengths and weaknesses were thought to reflect nonprogressive neurodevelopmental conditions (*i.e.*, other encephalopathy), suggesting inefficiency in the integration and coordination of different brain regions and systems to function as a smooth, integrated network. Student met criteria for autism, given deficits in social communication and social interaction. In addition, there was a history and ongoing concern of repetitive, restricted and routine behaviors and interests that was consistent with autism. Student also demonstrated significantly impairing symptoms of inattention and concerns with executive functioning consistent with the diagnosis of ADHD. The assessor predicted that Student's intact intellectual abilities were currently

compensating for those areas of difficulty; however, Student would require intervention for both diagnoses, particularly as academic, executive, and social demands increased over time. The assessor noted that although Student possesses intact knowledge and reasoning skills, and many aspects of developmental functioning appeared to be age-appropriate or above, Student had much more trouble with consistent production and thus may not be able to consistently demonstrate Student's knowledge and skills, especially in less structured settings. The assessor concluded that although Student possesses several neurocognitive strengths, the areas of difficulty place Student at considerable risk for underachievement, poor adaptive outcomes, and heightened psychosocial difficulties, particularly as the demand for attention and behavior regulation, executive functioning, and social skills increase as Student advances through school. Student was also at risk of social isolation and emotional concerns as Student matures and starts to become more aware of some of those social difficulties. The assessor predicted that while Student has the ability to make academic and adaptive gains, Student would likely require intensive support and would likely respond best to interventions developed and validated for children with autism and ADHD (*i.e.*, applied behavior analysis, ABA, discrete trial training, behavioral therapy and accommodations). The assessor recommended, *inter alia*, that Student has the cognitive capacity to manage a grade-appropriate academic curriculum, that Student would benefit from a structured, predictable and routinized learning environment, preferential seating, opportunities to work in quiet areas and small group or one-on-one instruction and consistent behavioral support. The assessor recommended that Student be provided these interventions, both as more individualized pull-out as well as push-in services, to maximize Student's ability to generalize the skills to the classroom and

community environment. Exhibit R-13.

15. On December 19, 2017, a 30 day review meeting was convened for Student at School 2. The team reviewed Student's IEE neuropsychological evaluation from Pediatric Center. The parent and Educational Advocate 2 asked for Student's placement to be changed immediately to enable Student to attend classes with nondisabled peers. The school members of the IEP team refused this request. Exhibit P-46.

16. On December 15, 2017, TESTING CENTER tested Student's cognitive functioning using the Wechsler Intelligence Scale for Children-Fifth Ed. (WISC-V). Student's overall cognitive functioning was in the Average range. Student demonstrated relative strengths in the areas of vocabulary, two-dimensional puzzles and quantitative, logical reasoning. A relative weakness appeared to be Student's processing speed of novel information. Overall, Student's attention span, impulse control, activity level and frustration tolerance were all within normal limits. Student required many of the testing instructions to be repeated multiple times. Exhibit P-8.

17. After Petitioner's request for a due process hearing was filed in this case on January 31, 2018, School 2 convened additional IEP team meetings in February and March 2018. At an IEP team meeting on March 6, 2018, it was agreed that Student would be placed in the general education setting for most of the school day, where Student would be provided push-in Specialized Instruction Services for math. As of the due process hearing date, the revised IEP had not yet been finalized, but Student had already transitioned back to the general education setting. Testimony of Educational Advocate 1, Exhibit P-42. In the three weeks preceding the due process hearing, Student had a difficult week on return from spring break but had done very well in the general education setting for the other two weeks. Testimony of Mother.

## CONCLUSIONS OF LAW

Based upon the above findings of fact, argument and legal memoranda of counsel, as well as this hearing officer's own legal research, my conclusions of law are as follows:

### Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by DCPS, the District shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the District. The burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

### Analysis

Whether DCPS denied Student a FAPE, at meetings on or about October 23, 2017, November 2, 2017 or December 19, 2017, or during the 2017-2018 school year, when the IEP team failed to provide an IEP, with services in a full time or close to full time, inside of general education, setting, appropriate goals and present levels of performance that addressed Student's deficits.

The root cause for the Petitioner's requesting a due process hearing in this case is the parent's strong objection to DCPS' transfer of Student from School 1 to the CES classroom at School 2. At an IEP team meeting at School 1 on June 21, 2017, which Mother attended, the IEP team increased Student's outside-of-general-education Specialized Instruction from 15 hours per week to 20 hours per week. This change was

based on the decision of School 1 staff that due to Student's behavior issues – elopement, inattention to instruction and physical aggression – the school could not meet Student's needs if Student were placed in the general education classroom for any part of the school day and that the appropriate placement for Student would be a full time self-contained program. The parent did not object at the time the change in placement was decided.

Following DCPS' notice to the parent in July 2017 that the new location of services for Student would be the CES program at School 2, the parent attempted to reverse the June 21, 2017 IEP amendment, so that Student would not be placed in a full-time self-contained classroom and could remain at School 1. Mother first filed a complaint with OSSE's State Complaint Office and, when that office found in favor of DCPS, Mother continued to lobby for Student's placement back in a general education setting at IEP team meetings at School 1 and at School 2.

“To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). In her due process complaint, Mother did not allege that the School 1 IEP team's June 21, 2017 IEP amendment was not appropriate.<sup>3</sup> However, she alleges that at IEP team meetings beginning October 23, 2017, DCPS denied Student a FAPE because the IEP teams failed to revise Student's IEP to provide

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<sup>3</sup> In his post-hearing brief, Petitioner's Counsel argues that the June 21, 2017 IEP was inappropriate at the time it was developed. This contention was not identified as an issue in the Due Process Complaint and was not certified for decision in the Prehearing Order. Therefore I do not reach this claim. *See Prehearing Order*, February 12, 2018 (The parties and their counsel will be held to the matters agreed upon, ordered, or otherwise set forth in this Order.)

for services in a full time or close to full time, general education, setting. On March 6, 2018, Student's IEP team at School 2 agreed that Student would be placed in the general education setting for most of the school day. What must be decided in this case is whether at some point earlier in the 2017-2018 school year, DCPS denied Student a FAPE by not revising Student's June 21, 2017 IEP to rescind the decision to remove Student completely from the general education classroom setting. DCPS has the burden of persuasion that at the time of Student's IEP team meetings in the 2017-2018 school year, Student's existing IEP remained appropriate.

The IDEA does not set a time frame for revising a student's IEP, except that the IEP must be reviewed at least annually. *See* 34 CFR § 300.324(b)(1). In an analogous analysis of the timeliness of a parent-requested special education reevaluation, the U.S. District Court for the District of Columbia decided that in light of the lack of statutory guidance, a Local Education Agency (LEA) must conduct a special education reevaluation, when requested by a parent, in a "reasonable period of time," or "without undue delay," as determined in each individual case. *See Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005). I conclude that, similarly, the IEP team must revise a student's IEP, as appropriate, in a reasonable period of time, or without undue delay, upon receipt of significant new information about the student's needs. Before amending a child's IEP, the IEP team is required to identify what additional data are needed "to determine any additions or modifications to the special education and related services . . . needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum." *See* 34 CFR § 300.305(a)(2).

At the beginning of the 2017-2018 school year, Student remained at School 1,

pending OSSE's decision on the parent's State Complaint. On October 23, 2017, after that decision was issued, School 1 convened an IEP team meeting to discuss Student's academics, behaviors and location of services. It was reported that Student's behavior at School 1 had not improved. LEA Representative discussed Student's off-task behaviors, elopement and physical aggression. He reported that occurrences of these behaviors peaked on random days and that even on a day where the behaviors occurred less frequently, the number of occurrences was still significant. He stated that off-task behavior impacted Student's ability to attend to instruction and that the rate of physical aggression and elopement made it difficult to keep Student and other students and adults safe. The October 23, 2017 IEP team did not revise the June 21, 2017 IEP and left Student's Special Education Services (20 hours per week outside general education) and Behavioral Support Services (240 minutes per month) unchanged. This decision was in line with the OSSE State Complaint Office's October 4, 2017 Letter of Decision finding that the June 21, 2017 educational placement decision complied with IDEA regulations and was appropriately based on student data.

The only evidence offered by the parent that the October 23, 2017 IEP team's decision not to revise Student's IEP was inappropriate was the assertion of Educational Advocate 1 that at the time of the meeting, Student's behaviors had "improved significantly." Educational Advocate 1 did not attend that October 23, 2017 meeting and I found her characterization of Student's improved behavior less credible than the testimony of LEA Representative, who worked with Student at School 1, that as of the meeting date, Student's behavior at School 1 had not improved. I find that DCPS has met its burden of persuasion that as of the October 23, 2017 IEP team meeting, there was not significant new information about Student's needs which required revision of

Student's IEP.

Student transferred to the CES Program at School 2 on October 30, 2017. On November 2, 2017, School 2 convened a transition meeting for Student. At that meeting, the CES classroom teacher reportedly said that Student did not need to be in her classroom because Student was above the class academically. Over Mother's objection, the School 2 team decided that Student should remain in the CES program. At the time of the November 2<sup>nd</sup> transition meeting, it was only Student's 4<sup>th</sup> day at School 2. The team agreed to meet again when it had more data and to review the Pediatric Center IEE neuropsychological report completed at the end of September 2017. Before amending a child's IEP, the IEP team is required to identify what additional data are needed "to determine any additions or modifications to the special education and related services . . . needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum." See 34 CFR § 300.305(a)(2). Based on the limited information available to Student's School 2 IEP team when it met on November 2, 2017, I find that DCPS has met its burden of persuasion that the School 2 IEP team acted appropriately in not revising Student's IEP at the transition meeting.

On December 19, 2017, a 30-day review meeting was convened for Student at School 2. The team reviewed Student's IEE neuropsychological evaluation report from Pediatric Center. The IEE evaluator had recommended, *inter alia*, that Student receive some push-in special education services to maximize Student's ability to generalize the skills to the classroom and community environment. The parent and Educational Advocate 2 asked for Student's placement to be changed immediately to enable Student to attend classes with nondisabled peers. The DCPS members of the IEP team refused

this request. In her testimony, Educational Advocate 2, a psychologist, opined that the CES program at School 2 targets lower-functioning children with communication deficits and was not an appropriate fit for Student, who did not need a communication program and was at or above grade level academically. LEA Representative, who, like Educational Advocate 2, attended the meeting by telephone, still thought that a CES self-contained program was appropriate for Student.

I conclude that by December 19, 2017, DCPS had sufficient new information about Student's needs to require that Student's IEP and, specifically, Student's least restrictive environment be revisited and that DCPS did not meet its burden of persuasion that the June 21, 2017 IEP remained appropriate for Student. This new information included the neuropsychological evaluation results as well as information from the CES classroom teacher that Student did not need to be in the CES classroom because of Student's academic levels. Student's IEP team did revise Student's IEP in March 2017 to permit Student to attend classes with nondisabled peers in the general education setting, but this was only after the parent filed her due process complaint. If the IEP had been revised at the time of the December 19, 2017 30-day review meeting, a reasonable period of time to implement a less restrictive environment for Student would have been in early January 2018, when the children returned to school at the end of the DCPS Winter Break. I find that DCPS' failure to make appropriate revisions to Student's IEP between December 2017 and March 2018 was an undue delay and resulted in a denial of FAPE to Student.

#### Remedy

DCPS has already acceded to Petitioner's primary request for relief, to place Student in the general education setting for most of the school day. Petitioner also seeks

a compensatory education award to compensate Student the alleged denials of FAPE in this case. “If a hearing officer concludes that the school district denied a student a FAPE, he has ‘broad discretion to fashion an appropriate remedy,’ which may include compensatory education. *See B.D. v. District of Columbia*, 817 F.3d 792, 800 (D.C. Cir. 2016). The compensatory education inquiry requires ‘figuring out both [(1)] what position a student would be in absent a FAPE denial and [(2)] how to get the student to that position.’ *Id.* at 799.” *Butler v. District of Columbia*, Case No. 16-cv-01033 (D.D.C. Aug. 14, 2017).

In this decision, I have found that DCPS denied Student a FAPE by not ensuring that Student’s educational placement was changed by early January 2018, from the CES classroom to a mostly general education setting. Student’s placement was changed on March 6, 2018. Therefore the period of harm was approximately two months. Independent Psychologist developed a compensatory education plan for Student which would include an award of 64 hours of academic tutoring, 21 hours of counseling and funding for a summer camp program to give Student extra exposure to typically developing peers. The premise of Independent’s Psychologist’s recommended award is that Student’s original placement in the CES program was inappropriate and that the period of harm began when Student was enrolled in School 2 on October 30, 2017. Since I have determined that DCPS only had sufficient new information about Student’s change in needs to require that Student’s IEP be revised as of December 19, 2017 and that Student should have been placed in the less restrictive environment by the end of DCPS’ winter break, I find that the period of harm in this case began in January 2018. Therefore, I will reduce Independent Psychologists recommended tutoring award by half. Because there was no satisfactory evidence at the due process hearing that Student

suffered social, emotional or behavioral harm from being placed in the CES program at School 2,<sup>4</sup> I decline to award Student compensatory counseling services or placement in a summer camp.

**ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED:

1. As compensatory education for the denial of FAPE in this case, beginning not later than 21 school days from the date of this decision, DCPS shall provide Student 32 hours of individual academic tutoring by a tutoring professional qualified to work with young children with autism and ADHD disabilities. DCPS may provide these services directly or provide funding authorization to the parent to obtain the services for Student,
2. All other relief requested by the Petitioner herein is denied.

Date: May 2, 2018

s/ Peter B. Vaden  
Peter B. Vaden, Hearing Officer

**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).

cc: Counsel of Record  
Office of Dispute Resolution  
OSSE - SPED  
DCPS Resolution Team

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<sup>4</sup> Independent Psychologist, who offered the compensatory education plan, never met or evaluated Student.