

**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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OSSE  
Office of Dispute Resolution  
May 14, 2020

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

Date Issued: May 14, 2020

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2020–0016

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Online Video Conference Hearing

April 30 and May 1, 2020

Respondent.

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PETITIONER,  
on behalf of STUDENT,

Petitioner,

v.

Case No: 2020–0068

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Respondent.

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**HEARING OFFICER DETERMINATION**

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

**INTRODUCTION AND PROCEDURAL HISTORY**

This is the final Hearing Officer Determination in Case No. 2020-0016 and Case No. 2020-0068, which were consolidated for hearing by the undersigned Impartial Hearing Officer. These matters came to be heard upon the separate Administrative Due Process Complaint Notices filed by the Petitioner (MOTHER) 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.”). In her due process complaint in Case No. 2020-0016, Petitioner seeks relief for DCPS’ allegedly not timely providing an appropriate educational placement for Student upon Student’s transfer from a Maryland school district to DCPS at the start of the 2019-2020 school year and for not implementing Student’s individualized education program (IEP). In Case No. 2020-0068, Petitioner seeks relief for DCPS’ allegedly denying the request of Mother’s designee to observe Student’s special education program at CITY SCHOOL 1.

Petitioner’s Due Process Complaint in Case No. 2020-0016 was filed on January 27, 2020. Her complaint in Case No. 2020-0068 was filed on March 10, 2020. DCPS was named as Respondent in both complaints. The undersigned hearing officer was appointed on January 29, 2020 for Case No. 2020-0016 and was assigned Case No. 2020-0068 on March 11, 2020. On March 17, 2020, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and

other matters. On March 26, 2020, the parties met for a resolution session and were unable to resolve the issues in dispute.

On April 10, 2020, I granted DCPS' unopposed continuance motion to extend the final decision due date in Case No. 2020-0016 to May 21, 2020. The decision in Case No. 2020-0068 is due by May 24, 2020.

On March 26, 2020, DCPS, by counsel, filed a motion to dismiss Petitioner's complaint in Case No. 2020-0068 on the asserted grounds that the Petitioner's allegation, that DCPS denied a request by Petitioner's designee to observe Student in the DCPS school setting to develop a compensatory education plan for Student, failed to state a claim cognizable under District of Columbia law. By order issued April 2, 2020, I denied DCPS' motion.

On April 10, 2020, Petitioner, by counsel, filed a motion for summary judgment in Case No. 2020-0068, which I denied by order issued April 16, 2020. In that order, I ordered, *pendente lite*, that upon the reopening of DCPS schools for classes, DCPS shall promptly provide access to the parent's designee for observing Student's special educational programming at City School 1.

Due to the closing of the hearing rooms at the Office of Dispute Resolution in the wake of the Coronavirus outbreak, the due process hearing in these cases was held online and recorded, using the Microsoft Teams video conference platform. The hearing, which was closed to the public, was convened before this hearing officer on

May 7 and May 11, 2020. Mother appeared online for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Counsel for the parties made opening statements. Mother testified at the hearing and called EDUCATIONAL ADVOCATE as an additional witness. After the Petitioner rested, DCPS made a motion for a directed finding in Case No. 2020-0016 that the Petitioner had not made a *prima facie* showing of entitlement to relief, which motion I took under advisement. DCPS called CASE MANAGER and LEA DESIGNEE as witnesses. In Case No. 2020-0016, Petitioner's Exhibits P-1 (A)<sup>2</sup> through P-8 (A), P-10 (A) through P-13 (A), P-15 (A) and P-16 (A) were admitted without objection. I sustained DCPS' objection to Exhibit P-1 (A). Exhibits P-9 (A) and P-14 (A) were withdrawn. In Case No. 2020-0068, Exhibits P-9 (B) and P-11 (B) were admitted without objection. I sustained DCPS' objections to Exhibits P-1 (B) through P-8 (B) and P-10(B). DCPS filed a single disclosure of exhibits for both cases. Exhibits R-5 through R-10 and R-15 through R-19 with admitted without objection. I admitted Exhibits R-2 through R-4 and Exhibit R-22 over Petitioner's objections. Exhibits R-1, R-11 through R-14, R-20 and R-21 were withdrawn. The taking of the evidence was concluded on May 7, 2020. On May 11, 2020, I reconvened the hearing to receive oral closing argument.

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<sup>2</sup> To reduce confusion from the numbering of Petitioner's exhibits in the separate cases, in this decision I have added the "A" designation to Petitioner's exhibits offered in Case No. 2020-0016 and "B" designation to Petitioner's exhibits offered in Case No. 2020-0068.

The parties were permitted, upon Petitioner's request, to submit additional citations to authorities by May 12, 2020. Petitioner's counsel submitted by email a citation to a hearing officer determination in another case.

### **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 issues for determination in this case, as clarified on the record by Petitioner's Counsel at the start of the hearing on May 7, 2020, are:

- Whether DCPS denied Student a free appropriate public education (FAPE) by failure to implement Student's IEP special education services in the 2019-2020 school year (Case No. 2020-0016);
- Whether DCPS denied Student a FAPE by failure to provide Student an appropriate special education placement during the 2019-2020 school year (Case No. 2020-0016).
- Whether Student has been denied a FAPE by DCPS' denial of the request for the parent's designee to observe the Student's special education program at City School 1 (Case No. 2020-0068).

For relief, Petitioner requests an order for DCPS to provide an appropriate educational placement for Student and that DCPS be ordered to provide access to Educational Advocate to observe Student's special educational programming at City School 1. Petitioner also seeks a compensatory education award.

**FINDINGS OF FACT**

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE youth, resides with Mother in the District of Columbia.

Testimony of Mother.

2. Student is eligible for Special Education and Related Services as a student with Multiple Disabilities (Specific Learning Disability and Other Health Impairment).

Exhibit R-6.

3. Student has received special education services since attending first grade at a DCPS school. Since fourth grade, Student's DCPS IEPs provided for 20 hours per week of Specialized Instruction as well as Behavioral Support Services, Occupational Therapy and Speech-Language Pathology. Exhibit P-2 (A).

4. Student moved to Maryland for the 2018-2019 school year and was enrolled in a public school in Prince George's County, Maryland. Student was evaluated in January 2019 by Prince George's County Public Schools. Results from cognitive testing yielded a General Intellectual Ability standard score in the Very Low range (SS = 65). Results from the educational testing yielded a Basic Reading Skills standard score in the Very Low range (SS = 68) and the Reading Comprehension (SS = 74), Broad Mathematics (SS = 72), and the Broad Written Language (SS = 73) standard scores all in the Low range. The Conners Comprehensive Behavior Rating Scales yielded Clinically

Significant difficulties in Academic Difficulties, Language, Social Anxiety, and ADHD, Predominately Inattentive, in both home and school environments. Student's math teacher's rating responses also indicated Clinically Significant scores on the Defiant/Aggressive Behaviors, Perfectionistic and Compulsive Behaviors, Violent Potential Indicator, and ADHD Predominantly Hyperactive/Impulsive Presentation. Prince George's County continued Student's special education services under the educational classification of Other Health Impairment (Attention Deficit Hyperactivity Disorder). Exhibit P-2 (A).

5. Prince George's County developed a revised IEP for Student in May 2019 (the Maryland IEP). Under the Maryland IEP, Student was to receive 7.5 hours daily of special education in the general education classroom, 30 minutes quarterly of Occupational Therapy and 30 minutes monthly of Counseling Services. Exhibit P-2 (A).

6. After the 2018-2019 school year, Student returned to the District of Columbia. Mother applied for Student's admission to City School 1, a DCPS school which combines a college preparatory curriculum with career technical education. Potential students must apply for admission to City School 1. To avoid discrimination concerns, City School 1 does not obtain data on special education needs until after a student is granted admission. Testimony of Principal.

7. Principal conducted the admissions interview of Student, with Mother, in summer 2019. Mother mentioned to Principal that Student had an IEP at the Prince

George's County school. Mother did not provide the IEP to Principal. Mother told Principal that at the Prince George's County School, Student was in co-taught inclusion classes. Principal explained to Mother that City School 1 provided inclusion, co-taught, classes primarily in English and Math. City School 1 extended an offer for Student to enroll for the 2019-2020 school year. Testimony of Principal.

8. After Student was admitted to City School 1, before the start of the 2019-2020 school year, Mother went to City School 1 two times. The first time was to submit Student's enrollment paperwork. The second time was back-to-school night. Mother testified that she did not go to City School 1 again until November 4, 2019 for a multidisciplinary team (MDT) meeting, but the evidence establishes that Mother also attended a September 17, 2019 Analysis of Existing Data (AED) meeting at the school. Testimony of Mother, Testimony of Case Manager.

9. The date when City School 1 received Student's Maryland IEP is disputed. Mother testified that she provided the Maryland IEP to City School 1 staff in an envelope with other documents when she turned in Student's enrollment paperwork before school started. Case Manager testified City School 1 initially did not receive any documents from Prince George's County except Student's report card and that beginning August 27, 2019, she reached out to Prince George's County to request Student's IEP-related documents. Case Manager testified that she had to follow up with Prince Georges County and did not receive the Maryland IEP until about September 30,



2019. The DCPS Contact Log, Exhibit R-15, documents that Case Manager left a telephone message with the Maryland school on August 29, 2019 to request Student's IEP-related documents. On September 5, 2019, a special educator from City School 1 sent an email to Mother stating that City School 1 did not have access to the Maryland IEP and requesting that Mother provide a digital copy. Also on September 5, 2020, LEA Designee spoke by telephone with Mother to request Student's most recent IEP-related documents from the Maryland school. Mother indicated that she would contact the Maryland school for the necessary documents. On September 6, 2020, Case Manager reached out to Mother again and left a voice mail to request the Maryland school IEP documents. On this evidence, I find the testimony of Case Manager regarding the delayed receipt of the Maryland IEP more credible than that of Mother and I find it more likely than not that City School 1 was not able to obtain the Maryland IEP until late September 2019.

10. On September 17, 2019, City School 1 convened an Analysis of Existing Data (AED) meeting for Student. Mother attended the meeting. At that time, City School 1 did not have a copy of the Maryland IEP. Mother said she would reach out to the Maryland School to obtain the IEP. Exhibit R-9, Testimony of Case Manager. Mother provided written consent for DCPS to evaluate Student for special education eligibility. Exhibit R-10.

11. DCPS conducted a psychological evaluation of Student on October 10,

2019 (Exhibit P-2), an OT evaluation on October 10, 2019 (Exhibit P-3 (A)), a Social Work assessment on October 29, 2019 (Exhibit P-4 (A)) and a Speech/Language assessment begun on September 24, 2019 (Exhibit P-5 (A)).

12. On November 4, 2019, City School 1 convened an eligibility meeting for Student. Mother attended this meeting. The eligibility team determined that Student met IDEA special education eligibility criteria for Multiple Disabilities, based upon a Specific Learning Disability and an Other Health Impairment - ADHD. Mother was reported to agree with the eligibility determination. Exhibit P-6 (A).

13. At the November 4, 2019 meeting, the MDT team proceeded to develop an IEP for Student. The IEP team determined that Student needed 24 hours per week of Specialized Instruction outside general education, 120 minutes per month of Behavioral Support Services, 60 minutes per month of Speech and Language Services and 120 minutes per year of OT consultation services. Testimony of Case Manager, Exhibit P-7 (A).

14. At the November 4, 2019 MDT meeting, Mother was told that City School 1 could not provide all of the special education services that Student required. At the end of the meeting, Case Manager told Mother that they did not have a say in the ongoing school location and they would need to wait for DCPS to make a school location assignment. It was understood that Student would remain at City School 1 until DCPS determined a new location of services. Testimony of Case Manager. Mother testified

that nothing was said at the November 4, 2019 meeting about Student's changing schools. I did not find this aspect of Mother's testimony to be credible.

15. On January 3, 2020, DCPS issued a location of services (LOS) letter informing the parent that City School 2 had been identified as Student's ongoing location of services to implement Student's November 4, 2019 IEP. Exhibit P-8. Mother did not receive the LOS letter, which was mailed to Mother's prior apartment address. Testimony of Mother.

16. Beginning January 8, 2020, LEA Designee made numerous attempts by telephone and text messages to contact Mother regarding DCPS' January 3, 2020 LOS letter changing Student's school location to City School 2. LEA Designee was not able to reach Mother. LEA Designee was able to reach Student's sister and left messages with her. Mother did not return LEA Designee's calls. Finally, on January 23, 2020, LEA Designee had Student call Mother on Student's cell phone. Mother answered and LEA Designee took the phone. Mother stated she had retained an attorney and would not attend any meetings at City School 1 without the lawyer. Mother also stated she had no desire to move Student to another school as Student had been accepted into City School 1. LEA Designee asked Mother to have her attorney reach out to the school to schedule a meeting to discuss their concerns and next steps. Testimony of LEA Designee, Exhibit R-15. Petitioner's Counsel filed the due process complaint in Case No. 2020-0016 on January 27, 2020. Hearing Officer Notice.

17. In the first two terms of the 2019-2020 school year at City School 1, Student failed all courses except Developmental Reading (Both terms) and Chemistry (Term 2) and Air Conditioning, and Heating & Refrigeration (Term 2). Petitioner's Exhibits P-10 (A), P-11 (A).

18. On March 7, 2020, Petitioner's Counsel sent an email to DCPS stating that Mother had retained Educational Advocate to develop a compensatory education plan for Student and that Educational Advocate would like to observe Student in the school setting and speak to at least one of Student's teachers. See April 15, 2020 Hearing Officer Order on Petitioner's Motion for Summary Judgment in Case No. 2020-0068.

19. On March 9, 2020, DCPS' counsel responded via email and denied the requested observation because the parties were currently in litigation. *Id.*

20. Since on or about March 16, 2020, DCPS' school buildings have been closed for classes due to the Coronavirus outbreak. Hearing Officer Notice.

21. In my April 15, 2020 Order on Petitioner's Motion for Summary Judgment in Case No. 2020-0068, I concluded that DCPS' denial of the request for Educational Advocate to make the observation of Student at City School 1 contravened the D.C. Special Education Student Rights Act and was a procedural violation of the IDEA. I denied Petitioner's motion for summary judgment because Petitioner had not made a showing that she was entitled to judgment as a matter of law that Student had been denied a FAPE by this procedural violation. I ordered, *pendente lite*, that upon the

reopening of DCPS schools for classes, DCPS shall promptly provide access to Educational Advocate for observing Student's special educational programming at City School 1. *Id.*

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and argument 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 the local education agency, in this case DCPS, the agency 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 agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

Analysis

Case No. 2020-0016

1. Did DCPS deny Student a FAPE by failure to provide Student an appropriate special education placement during the 2019-2020 school year?

Petitioner's claim in Case No. 2020-0016 is that DCPS denied Student a FAPE by not providing Student an appropriate special education placement after Student moved back from Maryland to the District of Columbia in the summer of 2019. In May 2019, the Prince George's County, Maryland school division developed an IEP for Student (the Maryland IEP) which provided, *inter alia*, for Student to receive full-time, 7.5 hours per day, of special education services in a co-taught inclusion classroom setting. Petitioner contends that DCPS was obliged, initially, to provide Student services comparable to the Maryland IEP.

Both Petitioner and DCPS assume erroneously that the IDEA's interstate transferee provision governs this case. Under the interstate transferee provision, when a child with a disability, who had an IEP that was in effect in another state, transfers to a local education agency (LEA) in the District *within the same school year*, the new LEA in the District must provide the child with FAPE, including services comparable to those described in the child's IEP from the other state. *See* 34 CFR § 300.323(f).<sup>3</sup> The

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<sup>3</sup> IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP

interstate transferee requirement is generally not applicable when children transfer between jurisdictions over summer vacation. When Student moved back to the District in the summer of 2019, it was not “within the same school year” as when the Maryland IEP was in effect. Therefore, the IDEA’s interstate transferee provision was not applicable.

Notwithstanding, an LEA needs to have a means for determining whether children who move into the LEA’s jurisdiction during the summer are children with disabilities and for ensuring that an IEP is in effect at the beginning of the school year. *See* U.S. Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46539, 46682 (August 14, 2006). An appropriate IEP must specify the child’s “educational placement,” that is, at least, the general type of educational program in which the child is to be placed. *See* 34 CFR § 300.320(a)(7); *T.A. v. New York City Dept. of Educ.*, 584 F.3d 412, 419-420 (2<sup>nd</sup> Cir. 2009) (Term “educational placement” in the regulations refers only to the general type of educational program in which the child is placed.)

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from the previous public agency), until the new public agency—

(1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

34 CFR § 300.323(f).

When Mother met with City School 1 Principal in Summer 2019 for Student's admissions interview, she told Principal that Student had an IEP at the Prince George's County school. Moreover, for four school years before moving to Maryland for the 2018-2019 school year, Student had nearly full-time DCPS IEPs. DCPS was, therefore, on notice that Student was a student with a disability and was obligated to ensure that Student was provided an appropriate IEP after Mother enrolled Student at City School 1 for the beginning of the 2019-2020 school year. *See, e.g., Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015) (Officials must have an IEP in place for each student with a disability at beginning of each school year.)

In this case, DCPS did not develop a 2019-2020 school year IEP for Student, or offer a special education placement, until November 4, 2019, after the end of the first term.<sup>4</sup> DCPS seeks to justify this delay because of the time it took for City School 1 to obtain the Maryland IEP and because the MDT team decided to conduct a new evaluation of Student. However, even if DCPS did not have access to the Maryland IEP, it had enough information to develop a preliminary IEP for Student, including Student's 2017-2018 DCPS school year IEP, which provided for 20 hours per week of Specialized Instruction as well as Behavioral Support Services, Occupational Therapy and Speech-Language Pathology. I conclude that DCPS' failure to ensure that an

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<sup>4</sup> Because City School 1 is not able to implement a full-time IEP, on January 3, 2020, DCPS changed Student's location of services to City School 2. (In this proceeding, the parent does not contest the appropriateness of the November 4, 2019 DCPS IEP or that City School 2 is capable of implementing the IEP.)



appropriate IEP and educational placement were developed for Student, for the beginning of the 2019-2020 school year was a procedural violation of the IDEA. *See Leggett, supra.*

A procedural violation, such as a school district's failure to provide an IEP educational placement by the beginning of the school year, will constitute a denial of a free appropriate public education only if it "result[s] in loss of educational opportunity" for the student. *Leggett, supra*, quoting *Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C.Cir.2006) (internal quotation marks omitted). Procedural violations may only be deemed a denial of FAPE 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 § 300.513(a)(2).

When the City School 1 MDT team met on November 4, 2019, the team determined that Student needed a full time, outside general education, special education placement, as well as 120 minutes per month of Behavioral Support Services, 60 minutes per month of Speech and Language Services and 120 minutes per year of OT consultation services. DCPS' failure to provide these services, or a comparable program, from the start of the 2019-2020 school year, necessarily deprived Student of educational

benefit. In fact, Student failed almost all courses in the first two terms of the school year. I find that DCPS' procedural failure to ensure that Student was timely provided an appropriate IEP educational placement from the beginning of the 2019-2020 school year was a denial of FAPE.

2. Did DCPS deny Student a FAPE by failure to implement Student's IEP special education services in the 2019-2020 school year?

The IDEA regulations provide that an IEP must be implemented "as soon as possible following development of the IEP." 34 C.F.R. § 300.323(b)(2); *See Spiegler v. District of Columbia*, 866 F.2d 461, 466 (D.C. Cir. 1989). A material failure to implement a student's IEP constitutes a denial of a FAPE. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268–69 (D.D.C. 2013). To meet its burden of persuasion on a failure to implement claim, the parent "must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Beckwith v. District of Columbia*, 208 F.Supp.3d 34, 49 (D.D.C. 2016) (quoting *Hous. Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). *See, also, Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 144 (D.D.C. 2018).

The November 4, 2019 City School 1 IEP provided for Student to receive, *inter alia*, full-time special education services outside of the general education setting. Principal testified that City School 1 never had the capability to provide Student full-time special education services. It was not until after DCPS' winter break, on January 3, 2020, that DCPS issued a Location of Services letter changing Student's school location

to City School 2, which allegedly is able to implement the November 4, 2019 IEP. Therefore, for a period of some six school weeks, Student's November 4, 2019 IEP was not implemented. I find that this was a failure to implement substantial provisions of the November 4, 2019 IEP, resulting in a further denial of FAPE.

#### Remedy

For relief in Case No. 2020-0016, Petitioner seeks an award of compensatory education. "Once a hearing officer finds that a school district has denied the student a FAPE, she is required to craft an award that will place a student 'in the position she would be in absent the FAPE denial.' *B.D. v. District of Columbia*, 817 F.3d 792, 798 (D.C. Cir. 2016)." *Shaw v. District of Columbia*, No. CV1700738DLFRMM, 2019 WL 498731 (D.D.C. Feb. 8, 2019), *report and recommendation adopted*, No. 17-CV-0738 (DLF/RMM), 2019 WL 935418 (D.D.C. Feb. 26, 2019). An award of compensatory education aims to put a student in the position he or she would be in absent the FAPE denial. *See Collette v. District of Columbia*, No. CV 18-1104 (RC), 2019 WL 3502927 (D.D.C. Aug. 1, 2019). *See, also, Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005) ("[U]ltimate 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.")

Educational Advocate recommended that Student be awarded 300 hours of academic tutoring because Student had lost "a full year of schooling." However, Student

was deprived of an appropriate IEP educational placement only until DCPS issued the January 3, 2020 LOS letter assigning Student to City School 2 – about 40 percent of the 2019-2020 school year. DCPS cannot be faulted for the parent’s decision not to enroll Student at City School 2 after DCPS issued the January 3, 2020 LOS letter. (The parent claims, she did not receive the January 3, 2020 LOS letter, but the hearing evidence established that she ignored numerous attempts by City School 1 staff in January 2020 to communicate with her about the proposed change in Student’s school location.)

Educational Advocate also recommends compensatory social, emotional and behavioral support because this school year, Student has allegedly developed school avoidance and other more significant behavioral issues. Based on Educational Advocate’s recommendation for tutoring and considering the hours of Behavioral Support Services which the November 4, 2019 IEP team determined Student needed, I conclude that an appropriate compensatory education award for the denials of FAPE established in Case No. 2020-0016 would be 120 hours of academic tutoring and 8 hours of individual counseling.

In light of my determinations herein, I deny DCPS’ oral motion, made at the hearing, for a directed finding in Case No. 2020-0016.

Case No. 2020-0068

– Was Student denied a FAPE by DCPS’ denial of the request for the parent’s designee to observe Student’s special education program at City School 1?

On March 7, 2020, after filing the due process complaint in Case No. 2020-0016,

Petitioner's counsel sent an email to DCPS stating that Mother had retained Educational Advocate to develop a compensatory education plan for Student and that Educational Advocate would like to observe Student in the school setting and speak to at least one of Student's teachers. On March 9, 2020, DCPS' counsel responded via email and denied the requested observation because the parties were currently in litigation.

In my April 15, 2020 Order on Petitioner's Motion for Summary Judgment in Case No. 2020-0068, I concluded that DCPS' denial of the request for Educational Advocate to make the observation of Student at City School 1 contravened the D.C. Special Education Student Rights Act of 2014, D.C. Code § 38-2571.03(5), and was a procedural violation of the IDEA. I confirm that holding now. I denied Petitioner's motion for summary judgment because Petitioner had not made a showing that she was entitled to judgment as a matter of law that Student had been denied a FAPE by this procedural violation.

As noted above in this decision, procedural violations may only be deemed a denial of FAPE 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 § 300.513(a)(2). Petitioner continues to maintain that the March 9, 2020

refusal by DCPS to allow Educational Advocate to observe Student's special education program denied Student a FAPE. Since March 16, 2020, five school days after the classroom observation request was made, DCPS' school buildings have been closed for classes due to the Coronavirus outbreak. It is highly improbable that if DCPS had honored Educational Advocate's request to visit Student's classroom, the visit could have occurred before Student's school closed on March 16, 2020. In these unusual circumstances, I find that Petitioner has not shown that DCPS' improper refusal of the classroom observation request impeded Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process or caused a deprivation of educational benefit. I conclude that this procedural violation may not be deemed a denial of FAPE to Student.

In my April 2, 2020 order on Petitioner's motion for summary judgment in Case No. 2020-0068, I ordered, *pendente lite*, that upon the reopening of DCPS schools for classes, DCPS shall promptly provide access to Educational Advocate for observing Student's special educational programming at City School 1. In this final decision, I will make permanent my *pendente lite* order. Because Student may transfer to City School 2 or another school to implement the November 4, 2019 IEP, I will enlarge this requirement to require DCPS to allow the observation to occur at City School 1 or at the DCPS school to which Student may transfer after schools are reopened.

**ORDER**

Case No. 2020-0016

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

ORDERED:

1. DCPS's oral motion for a directed finding is denied.
2. As Compensatory Education for the denial of FAPE in this case, within 21 days of the date of this decision, DCPS shall provide funding authorization for the parent to obtain for Student, from qualified providers, 120 hours of individual academic tutoring and 8 hours of individual counseling services;
3. All other relief requested by the Petitioner in Case No. 2020-0016 is denied.

Case No. 2020-0068

1. Upon the reopening of DCPS schools for classes, DCPS shall promptly provide access to Educational Advocate for observing Student's special educational programming at City School 1 or, if Student transfers, at the DCPS school to which Student may transfer;
2. All other relief requested by the Petitioner in Case No. 2020-0068 is denied.

Date: May 14, 2020

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

Case No. 2020-0016  
Case No. 2020-0068  
Hearing Officer Determination  
May 14, 2020

**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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