District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parent, on behalf of Student,[1]	)	
Petitioner,	)	
	)	**Hearing Date: 11/4/19, Room 111 and**
	)	**Room 112**
	)	**Hearing Officer: Michael Lazan**
	)	**Case No. 2019-0210**
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 Specific Learning Disability (the "Student"). A Due Process Complaint ("Complaint") was received by District of Columbia Public Schools ("Respondent" or "DCPS") pursuant to the Individuals with Disabilities Education Act ("IDEA") on August 22, 2019. The Complaint was filed by the Student's parent ("Petitioner"). On August 30, 2019, Respondent filed a response. The resolution period expired on September 21, 2019.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 USC 1400 et seq., its implementing regulations, 34 CFR 300 et

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

seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

III. Procedural History

A prehearing conference was held on October 9, 2019. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on October 12, 2019, summarizing the rules to be applied in the hearing and identifying the issues in the case. The original Hearing Officer Determination ("HOD") due date was November 5, 2019. On November 4, 2019, Petitioner moved, on consent, for a continuance allowing the HOD to be issued on November 18, 2019. This Hearing Officer granted the motion on November 5, 2019.

The hearing proceeded on November 4, 2019. Petitioner was represented by Attorney A, Esq. Respondent was represented by Attorney B, Esq. After the hearing, oral closing arguments were presented on the record. This was a closed proceeding. Petitioner moved into evidence exhibits 1-73. There were no objections. Exhibits 1-73 were admitted. Respondent moved into evidence exhibits 1-14. There were no objections. Exhibits 1-14 were admitted. Petitioner presented as witnesses: herself and Witness A, an advocate (expert: special education, eligibility, Individualized Education Programs ("IEPs"), programming, and placement). Respondent presented as a witness: Witness B, Special Education Coordinator at School B (expert: special education and school psychology).

IV. Issues

As identified in the Prehearing Order and in the Due Process Complaint, the issues to be determined in this case are as follows:

1. Did Respondent violate "Child Find" when it failed to identify, locate, and evaluate the Student as a student with a disability as of August 22, 2017? If so, did Respondent violate 20 USC 1412(a)(3)(A), 34 CFR 300.111(a), and related provisions of the IDEA? If so, did Respondent deny the Student a Free Appropriate Public Education ("FAPE")?

Petitioner asserted that DCPS should have evaluated the Student's reading and writing issues.

2. Did Respondent fail to provide Petitioner with educational records? If so, did the Local Educational Agency ("LEA") violate 34 CFR 300.501 and related provisions? If so, did Respondent deny the Student a FAPE?

V. Findings of Fact

1. The Student is an X-year-old who is currently eligible for specialized instruction as a student with Specific Learning Disability. The Student is generally "no trouble" and does not have significant behavior problems at school, though the Student does not always do his/her schoolwork, particularly in language-based classes. The Student has recently been determined to have an average IQ but has been below grade level in reading and mathematics throughout his/her educational career. Testimony of Petitioner; P-5-21; P-8-1; P-26; P-27-2; P-28-2.

2. When the Student attended School A, a DCPS public elementary school, s/he was retained in one grade because s/he was behind, particularly in reading, and needed more time to catch up. Still, for the remainder of the Student's time at School A, s/he continued to be below grade level in reading. The Student received an intervention plan from School A to address these issues. Additionally, the Student received after-

school instruction in reading, and for the 2014-2015 school year, the Student received push-in and pull-out reading support to work on comprehension and fluency. The Student's PARCC scores in the 2014-2015 school year reflected this difficulty in reading. The Student received a score of 704 on the PARCC assessment for English Language Arts ("ELA"), which equated to "Level 2" and was at the 26th percentile in the District of Columbia. The Student's PARCC score in mathematics was relatively better. Though the Student's score of 705 also equated to "Level 2," that score was at the 48th percentile in the District of Columbia. Testimony of Petitioner; Testimony of Witness A; P-20; P-58-6; P-59-3.

3. On June 15, 2015, staff at School A met and formulated a revised Response to Intervention ("RTI") plan for the Student. The team noted that the Student made progress during the year and was compliant, but struggled with reading comprehension, fluency, oral reading, and multi-syllabic words. The team also noted that the Student lacked organizational skills in writing and would include non-relevant information in writing. The RTI plan recommended that the Student receive, among other things: small-group instruction for ELA; co-taught classes; teacher previews of literary content; access to audio books; access to leveled text; advanced copies of teacher notes; graphic organizers; samples of expected work; segmented writing assignments; and an "oral brainstorm" of ideas prior to independent work. Testimony of Witness A; P-50; P-51; P-58.

4. For the 2015-2016 school year, the Student attended School B, a DCPS public school. At the start of this school year, the Student's Scholastic Reading Inventory ("SRI") score was 266, in the "below basic" range. At the end of the school year, the

Student's SRI score was 468, also in the "below basic" range. The Student's PARCC score for mathematics was 715, at "Level 2" and at the 41st percentile in the District of Columbia. The Student's PARCC score for ELA was 703, at "Level 2" and at the 24th percentile in the District of Columbia. The Student's final grades in academic subjects included two "B" grades (in mathematics and language arts), one "C" grade (in science), and one "B-" grade (in world geography and histories). In the report card, the Student's mathematics teacher and the Student's language arts teacher indicated that the Student had excellent behavior and was a pleasure to have in class, but the Student's science teacher said that the Student did not bring materials to class, and the Student's world geography and histories teacher said that the Student lacked initiative and did not do homework. The Student was absent for twelve days during this school year, during which the Student took a class called "reading workshop." Petitioner expressed concern about the Student's academics and asked teachers if anything more could be done for the Student, though the Student's academic performance did improve during this school year. Testimony of Petitioner; P-16-2; P-17-1; P-18; P-21-9.

5. The Student continued to attend School B for the 2016-2017 school year. The Student suffered a concussion during this year in physical education class, which caused the Student to miss some school. The Student's SRI scores were in the "below basic" range at the beginning of the year (562), in the middle of the year (583), and at the end of the year (647). The Student's PARCC scores declined during this school year. In the PARCC ELA measure, the Student scored 678, at "Level 1" and at the 7th percentile in the District of Columbia. In the PARCC mathematics measure, the Student scored 703, at "Level 2" and at the 23rd percentile in the District of Columbia. The Student

received final academic grades of "B-" (in mathematics and science), "C" (in English and U.S. history and geography), and "C+" (in science). In mathematics, the teacher reported that the Student was a pleasure to have in class but lacked initiative. In English, the teacher reported that the Student was excessively tardy and needed to study more. In science, the teacher reported that the Student had excellent behavior, and in U.S. history and geography, the teacher considered the Student a pleasure to have in class, though the Student needed to study more. The Student again was in a class called "reading workshop." Petitioner again asked for additional services during this school year, though the Student again made some improvement. By the end of the school year, the Student was deemed to be at the Y grade level in reading, four levels behind. Testimony of Petitioner; P-16; P-17; P-18; P-66; R-4.

6. For the 2017-2018 school year, the Student continued at School B. The Student was invited to join an afterschool homework club on Mondays and Tuesdays. On October 16, 2017, Petitioner received an email from School B indicating that the Student was one to three grade levels behind in reading, and that the Student had been selected to be in school's "ASAP" program, which provides students with extra help after school. The Student was accepted into the ELA portion of the ASAP program, which was held on Wednesdays and Thursdays, from 3:30 p.m. to 4:30 p.m., beginning November 1, 2017. Nevertheless, Petitioner again asked for more services during this school year. Petitioner also paid for the Student to be tutored privately. The Student's SRI score was 726 at the beginning of the year and 727 in the middle of the year. The Student's PARCC score in ELA was 691, still at "Level 1." The Student's PARCC assessment in mathematics declined to "Level 1," with a score of 694. The Student's

final grades in academic subjects included one "B" (in Spanish), one "C-" (in mathematics), and three "C" grades (in U.S. history and geography, science, and English). The Student's Spanish teacher indicated that the Student was a pleasure to have in class but had to study more. The Student's math teacher indicated that the Student was a pleasure to have in class but was failing. The Student's U.S. history and geography teacher said that the Student was excessively absent and did not complete class assignments. The Student's science teacher indicated that the Student lacked initiative. The Student's English teacher indicated that the Student was a pleasure to have in class but did not do homework. The final report card for the 2017-2018 school year indicated that the Student was five grade levels behind in reading (still at the Y level, the same reading level reported in the Student's final report card for the 2016-2017 school year). The Student was absent for twenty-five days during this school year. Testimony of Petitioner; Testimony of Witness A; P-19; P-21-1-3; P-27; P-54; P-55; P-57-1; R-4-2.

7. For the 2018-2019 school year, the Student changed schools and attended Public Charter School C, a charter school. The Student exhibited issues with reading literary texts and answering text-dependent questions based on determining the theme of the text. The Student had significant issues reading grade level text. As a result, the Student was evaluated by Public Charter School C. A comprehensive psychological evaluation of the Student was conducted on January 11 and January 30, 2019. On the Wechsler Intelligence Scale for Children, Fifth Edition ("WISC-V"), the Student's full scale IQ was 101, at the 53rd percentile, in the average range, with a weakness in working memory (at the 27th percentile). On the Woodcock-Johnson Test of Achievement-IV ("WJ-IV"), the Student's overall achievement was in the below average

range, with scores at the 13th percentile in broad reading, 27th percentile in broad math, and 23rd percentile in broad written language. The Student was determined to meet the criteria for Specific Learning Disability on the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition ("DSM-V"), both in reading (specifically, "reading rate" or fluency) and mathematics (specifically, "accurate or fluent calculation"). The evaluator recommended fourteen different areas of intervention, including that an IEP "be considered," that a neurological evaluation be conducted, and that the Student receive tutoring twice a week for sixty minutes in reading, math, and writing. The evaluator also recommended a variety of classroom accommodations, including directing teachers to preview material, read along with the Student, provide the Student with background knowledge about topics, give the Student additional time for tests, use prompts, eliminate unnecessary clinical tasks, and reduce the number of tasks generally. Testimony of Petitioner; Testimony of Witness A; P-5; P-8-5-6.

8. Public Charter School C held an eligibility meeting for the Student on February 7, 2019. The eligibility team determined the Student to be eligible for services as a student with Specific Learning Disability because of his/her issues with reading fluency and math calculation. P-9; P-10.

9. Public Charter School C held an IEP meeting for the Student on March 18, 2019. The IEP team recommended the Student for instruction through assistive technology (including speech-to-text software) and nine hours per week of specialized instruction inside general education. The IEP indicated that the Student lacked critical skills in reading and needed extra time and support to access the general curriculum, including graphic organizers, staff prompting, and extended time. The IEP also

suggested that the Student needed individual instruction, modified pacing, and modified assignments. The IEP also indicated that the Student's challenges in working memory and processing speed affected his/her mathematics work. The IEP indicated that the Student needed more explicitly taught math strategies, with repetition and visual aids. The IEP contained math goals as well as reading goals. The IEP also recommended that the Student receive "read aloud" for literacy assessments, "markup tools," a calculation device, small group testing, and extended time. The IEP also included a post-secondary transition plan. P-8.

10. A speech and language evaluation of the Student was conducted on May 21, 2019. The evaluator determined that the Student's "General Language Ability" was at the 8th percentile in the Comprehensive Assessment of Spoken Language, Second Edition ("CASL-2"), in the below average range. On the Comprehensive Receptive and Expressive Vocabulary Test, 3rd Edition ("CREVT-3"), the Student's "General Vocabulary Standard" was at the 5th percentile, in the "poor" range. The evaluator recommended ten different interventions, including using several modalities in class, doing frequent comprehension checks, providing visual supports, providing access to vocabulary building resources, and providing small group activities. P-4

11. The IEP team at Public Charter School C reconvened in July, 2019, to review the Student's speech and language evaluation. The team amended the Student's IEP to include 120 minutes per month of speech and language therapy outside general education. P-73-5.

VI. Conclusions of Law

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

The burden of persuasion for District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. With the passage of this legislation, in special education due process hearings initiated by a parent, the burden of persuasion falls on the public agency if the dispute concerns "the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency" (provided that the parent establishes a *prima facie* case). The burden of persuasion must be met by a preponderance of the evidence. D.C. Code 38-2571.03(6)(A)(i).

Issue #1, relating to "Child Find," does not *directly* involve the appropriateness of the Student's educational program or placement. As a result, the burden of persuasion for Issue #1 must be on Petitioner. Schaffer v. Weast, 546 U.S. 49 (2005). Issue #2, relating to educational records, does not involve the appropriateness of the Student's educational program or placement. As a result, the burden of persuasion for Issue #2 is on Petitioner.

1. Did Respondent violate "Child Find" when it failed to identify, locate, and evaluate the Student as a student with a disability as of August 22, 2017? If so, did Respondent violate 20 USC 1412(a)(3)(A), 34 CFR 300.111(a), and related provisions of the IDEA? If so, did Respondent deny the Student a FAPE?

Petitioner maintained that DCPS should have evaluated the Student's reading and writing issues. The "Child Find" provisions of the IDEA require each state to have policies and procedures in effect to ensure that "[a]ll children with disabilities residing in the State...who are in need of special education and related services, are identified, located, and evaluated." 20 U.S.C. Sect. 1412(a)(3)(A); 34 C.F.R. Sect. 300.111(a).

"Child Find" must include any child "suspected of being a child with a disability under Section 300.8 and in need of special education, even though they are advancing from grade to grade." 34 C.F.R. Sect. 300.111(c)(1). These provisions impose an affirmative duty to identify, locate, and evaluate all such children. Reid v. District of Columbia, 401 F.3d 516, 518-19 (D.C. Cir. 2005). The "Child Find" obligation "extends to all children suspected of having a disability, not merely to those students who are ultimately determined to have a disability." N G. v. District of Columbia, 556 F. Supp. 2d 11 (D.D.C. 2008). Procedural violations of the "Child Find" obligation are actionable only if they affect a student's substantive rights. Simms v. D.C., No. 17-CV-970 (JDB/GMH), 2018 WL 4761625, at *12 (D.D.C. July 26, 2018), report and recommendation adopted, No. CV 17-970 (JDB)(GMH), 2018 WL 5044245 (D.D.C. Sept. 28, 2018). To find a violation, a school district must have "overlooked clear signs of disability" or been "negligent in failing to order testing," or there must have been "no rational justification for not deciding to evaluate." Mr. P. v. W. Hartford Bd. of Educ., 885 F.3d 735, 750 (2d Cir. 2018) (quoting Bd. of Educ. of Fayette Cnty., Ky. v. L.M., 478 F.3d 307 (6th Cir. 2007) (S.D.N.Y. Oct. 15, 2018), *reconsideration denied*, No. 15 CV 9679 (NSR), 2019 WL 2171140 (S.D.N.Y. May 20, 2019).

Even if a school district has employed RTI to instruct a student, and even if the RTI has allowed such student to progress, a student can still be determined to be a student with a disability. For instance, in Greenwich Board of Education v. G.M., No. 3:13-CV-00235, 2016 WL 3512120 (D. Conn. June 22, 2016), *appeal withdrawn*, No. 16-2548 (2d Cir. Oct. 11, 2016), a student was experiencing difficulties with reading, but was making some progress pursuant to an RTI program. The court held that the parents offered

adequate evidence that there was at least enough grounds to raise a suspicion that child was failing to make sufficient progress under RTI, including a report by an expert who determined that, despite months of intervention, the child was well below the expected reading level.

Similarly, in Avaras v. Clarkstown Cent. Sch. Dist., No. 15 CV 9679 (NSR), 2018 WL 4964230, at *10 (S.D.N.Y. Oct. 15, 2018), *reconsideration denied*, No. 15 CV 9679 (NSR), 2019 WL 2171140 (S.D.N.Y. May 20, 2019), the court reversed a hearing officer and state review officer who relied on the student's progress in RTI to rule that the school district did not violate "Child Find." The court found that the "Child Find" obligation "extends to all children suspected of having a disability requiring special education, even though they are advancing from grade to grade" and that the "school district must begin the evaluation process within a reasonable time after the district is on notice of a likely disability," notwithstanding the RTI instruction.

Though the Student in this case did make some progress with the additional reading instruction provided at School B,[2] the Student did not make *significant* progress, particularly in reading. Witness A, Petitioner's expert in special education, eligibility, IEPs, programming, and placement, pointed out that, despite the additional instruction, the Student's PARCC scores in ELA actually declined to the 7th percentile during the 2016-2017 school year, indicating that the Student "did not yet meet expectations." Two months later, in the Student's final report card for the year, the Student's teacher stated that the Student was reading at Y grade level, four grade levels below where s/he should

[2]In the District of Columbia, once an LEA determines that a student could require specialized instruction, the LEA may "use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures." 5-E DCMR 3006.4(d).

have been at the time. There is nothing in the record to suggest that the Student had ever been so far below grade level in reading before, nor is there anything in the record to contradict Petitioner's testimony that she repeatedly asked School B staff for extra help for her child.

Respondent's Witness B, an expert in special education and school psychology, indicated that the Student made some progress and did not "necessarily" need specialized instruction services. But Witness B did not clearly defend the decision not to even test the Student, especially after the Student was found to be four grade levels behind in reading. Moreover, Respondent failed to acknowledge that the U.S. Supreme Court has held that "some" progress is not necessarily enough to establish that a student with special needs has been provided with an appropriate educational program. Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-I, No. 15-827, 2017 WL 1066260137 S. Ct. 988 (2017) (reversing the Tenth Circuit Court of Appeals that had applied a "merely more than *de minimis*" standard for the duty under the IDEA to provide a free appropriate public education to children with disabilities served by public school districts).

Respondent also pointed to the fact that the Student had passing grades, which is accurate, though the Student's report cards showed declining grades during the Student's three years at School B. But Endrew makes it clear that passing grades by themselves do not establish that a student is ineligible for special education. Endrew, 2017 WL 1066260137, at 11 n.2. Moreover, none of the Student's teachers were called as witnesses to explain how the Student was able to pass without being able to understand grade level text. Those teachers could also have presented their views on whether the

Student should have been evaluated for special education services after the 2016-2017 school year, or their views on whether the Student had a learning disability, as was diagnosed less than two years later.

Respondent also criticized the testimony of Witness A, which included an inaccurate statement about the legal standards for determining whether a student has received a FAPE. Even though Witness A's statement on the law was not reliable, Witness A's opinion on the facts was. As previously stated, Witness A's view that the Student should have made more progress in reading during his/her time at School B is corroborated by a significant amount of evidence in the record, including the Student's report cards, PARCC scores, and SRI scores (all of which were deemed to be "below basic"). Witness B argued that the Student's PARCC scores are not relevant to an analysis of whether the Student may have required special education because the PARCC measures different skills for every grade. But Witness B did not explain why the two page report that is issued for each PARCC score result contains an entire section comparing the student's current PARCC score to the student's previous PARCC score. P-19-2.

Respondent also argued that the Student had not been harmed by its failure to evaluate him/her. But Respondent's failure to evaluate the Student caused him/her to attend general education classes for the entire 2017-2018 school year, after which the Student again scored at "Level 1" on the PARCC assessment in ELA despite additional interventions after school. The Student also scored at "Level 1" in the PARCC mathematics assessment that year, a decline from the previous year. One of the Student's teachers indicated in the Student's final report card that s/he was at the Y level in reading,

five grades behind.[3] It was only in the following year, at a different LEA, that the Student's learning disability was finally acknowledged through an evaluation, which included a comprehensive psychological evaluation. As a result of that evaluation, Public Charter School C determined the Student to be eligible for services and recommended that the Student receive nine hours of specialized instruction per week outside general education. Public Charter School C then evaluated the Student's speech and language abilities and found that the Student needed speech and language services as well. Public Charter School C then amended the Student's IEP to provide the Student with 120 minutes per month of speech and language therapy for the 2019-2020 school year.

In sum, given the Student's persistently low reading level, Respondent ought to have responded to Petitioner's requests for services by offering to evaluate the Student. As a result of the foregoing, this Hearing Officer finds that Respondent violated "Child Find" when it failed to evaluate the Student after the 2016-2017 school year.

2. Did Respondent fail to provide Petitioner with educational records? If so, did Respondent violate 34 CFR 300.501 and related provisions? If so, did the LEA deny the Student a FAPE?

A school district must grant parents access to the educational records of their children no more than forty-five days after the request. 20 USC 1232g(a)(1)(A). The IDEA regulations provide in pertinent part: "(t)he parent of a child with a disability must be afforded, in accordance with the procedures of Sects. 300.613 through 300.621, an opportunity to inspect and review all education records with respect to the identification,

[3]The Student's SRI scores also indicated that the Student did not make progress in reading in the first half of the school year. The Student's SRI score was 726 on September 1, 2017, and 727 on January 22, 2018, an increase of only one point, despite four months of instruction.

evaluation, and educational placement of the child and the provision of FAPE to the child." 34 CFR 300.501(a). However, to prevail on a claim that the failure to produce records denied the Student a FAPE, a petitioner must show that the failure seriously hampered the parents' opportunity to participate in the IEP formulation process or caused a deprivation of education benefits. Simms v. District of Columbia, No. 17-CV-970 (JDB/GMH), 2018 WL 4761625, at *23 (D.D.C. July 26, 2018), report and recommendation adopted, No. CV 17-970 (JDB)(GMH), 2018 WL 5044245 (D.D.C. Sept. 28, 2018).

Petitioner indicated during her closing argument that she was not pursuing this claim. Additionally, neither Petitioner nor Witness A testified about Petitioner's requests to Respondent for educational records. Petitioner therefore did not meet her burden of persuasion on this issue, which must be dismissed.

RELIEF

As relief, Petitioner is seeking 360 hours of compensatory tutoring for the Student, as well as forty hours of compensatory counseling services. Petitioner is also seeking a neurological evaluation of the Student. Hearing officers have wide discretion to ensure that students receive a FAPE. As the U.S. Supreme Court has stated, the statute directs a hearing officer to "grant such relief as [he or she] determines is appropriate." Sch. Comm. of Town of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 371 (1985). The ordinary meaning of these words confers broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be "appropriate."

In regard to the request for compensatory education, hearing officers may award "educational services to be provided prospectively to compensate for a past deficient program." Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). Every case is "fact specific" and the 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. Under the IDEA, if a student is denied a FAPE, a hearing officer may not simply refuse to grant a compensatory education award. Henry v. District of Columbia, 750 F. Supp. 2d 94, 98 (D.D.C. 2010).

Petitioner's request for 360 hours of compensatory tutoring is premised on the Student receiving nine hours per week of specialized instruction during the current school year. Witness A calculated that, for the 2017-2018 school year, the Student should have received nine hours per week of specialized instruction for a forty-week school year. Witness A therefore calculated that the Student was owed 360 hours of specialized instruction services. However, this Hearing Officer has not determined that the Student should have received extended school year services for the summer of 2017 (accounting for four weeks in question). Additionally, Witness A's calculation uses a "quantitative" approach rather than the "qualitative" approach suggested by Reid. Also considering that the Student did make some progress during the 2017-2018 school year, and that individual tutoring is more intensive than specialized instruction within a large public school classroom (especially since the special educator may be assigned to several students in the class), this Hearing Officer will award the Student 250 hours of tutoring to

compensate for Respondent's failure to provide the Student with an IEP during the 2017-2018 school year.

Petitioner also seeks compensatory counseling, pointing to the comprehensive psychological evaluation written for Public Charter School C on February 4, 2019. This evaluation suggested that the Student would benefit from individual therapy to address school-related issues. However, compensatory education awards should compensate students for instruction or services that should have been provided but were not, and this Hearing Officer did not rule that the Student was denied a FAPE because s/he did not receive counseling during the 2017-2018 school year. As a result, this request for relief is denied.

Finally, Petitioner contended that the Student requires a neurological evaluation, which was also recommended by the evaluator who wrote the Student's comprehensive psychological evaluation for Public Charter School C. But this evaluator was not called as a witness, and the report was issued in 2019, well after the Student had departed from DCPS. DCPS therefore had no notice of the need to conduct a neurological evaluation of the Student after the 2016-2017 school year. As a result, the request for a neurological evaluation must be denied.

VII. Order

As a result of the foregoing:

1. Respondent shall pay for 250 hours of compensatory academic tutoring for the Student, to be delivered by a qualified provider at a reasonable and customary rate in the community;

2. The tutoring must be completed by December 31, 2020;

3. Petitioner's requests for relief are otherwise denied.

Dated: November 18, 2019

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
OSSE Division of Specialized Education
[redacted]

VIII. 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: November 18, 2019

Michael Lazan
Impartial Hearing Officer