

Office of Dispute Resolution
1050 First Street, N.E., Third Floor
Washington, D.C. 20002

<i>Student,</i> ¹)	Case No.: 2019-0219
through <i>Parent,</i>)	
<i>Petitioner,</i>)	Date Issued: 11/24/19
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates (Room): 11/14/19 (423),
(“DCPS”),)	11/15/19 (423) & 11/18/19 (teleconf.)
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student's Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") due to lack of appropriate Individualized Education Programs ("IEPs") and placement. DCPS responded that the IEPs and placement were appropriate to provide Student a FAPE.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

Procedural History

Following the filing of the due process complaint on 8/30/19, the case was assigned to the undersigned on 9/3/19. On 9/9/19, Respondent filed a timely response and did not challenge jurisdiction. The resolution meeting occurred on 10/8/19, but neither resolved the case nor shortened the 30-day resolution period, which ended on 9/29/19. A final decision in this matter must be reached no later than 45 days following the end of the resolution

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

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period as extended by a 15-day continuance granted on 10/12/19, which requires a Hearing Officer Determination (“HOD”) by 11/28/19.

Following the prehearing conference on 10/31/19 and issuance of the Prehearing Order that same day, the due process hearing took place on 11/14/19, 11/15/19 and 11/18/19 (closing arguments by teleconference) and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner was present in person for much of the first day, and participated by telephone for the remainder of the hearing due to parental responsibilities.

Petitioner’s Disclosures, submitted on 11/5/19, contained a short cover pleading and documents P1 through P40, which were all admitted into evidence without objection. Respondent’s Disclosures, submitted on 11/6/19, contained a short cover pleading and documents R1 through R54, which were all admitted into evidence without objection.²

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Clinical Psychologist* (qualified without objection as an expert in Clinical Psychology)
2. Parent
3. *Special Education Advocate* (qualified without objection as an expert in Special Education and IEP Development)
4. *Principal of Nonpublic School*

Respondent’s counsel presented 7 witnesses in Respondent’s case (*see* Appendix A):

1. *Public School Social Worker* (qualified without objection as an expert in School Social Work)
2. *Special Education Teacher 2019/20* (qualified without objection as an expert in Special Education Planning and IEP Development)
3. *Special Education Teacher 2017/18* (qualified without objection as an expert in Special Education Planning and IEP Development)

² References herein to Petitioner’s documents are indicated by a “P” followed by the exhibit number, a hyphen, and the exhibit page number (or numbers, separated by commas) Respondent’s documents are consecutively page numbered throughout, so are referenced by an “R” followed by the exhibit number, followed immediately by a “p” (for page) and the page number(s).

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4. *Special Education Teacher 2018/19* (qualified without objection as an expert in Educational Planning and IEP Development)
5. *Prior Public School Social Worker* (qualified without objection as an expert in School Social Work and Behavioral Services)
6. *School Psychologist* (qualified without objection as an expert in School Psychology)
7. *Assistant Principal at Prior Public School* (qualified without objection as an expert in Special Education Programming)

Petitioner's counsel presented Parent as the sole rebuttal witness.

The issue to be determined in this Hearing Officer Determination is:

Issue: Whether DCPS denied Student a FAPE by failing to develop or provide an appropriate IEP or placement and/or location of services for 2017/18³ to the present, due to the 2017 and 2018 IEPs (a) having insufficient present levels of performance ("PLOPs"), baselines, and explanations for how the disability impacts Student's ability to access general education, (b) lacking goals for written expression, (c) having insufficient Behavioral Support Services ("BSS") with 120 minutes/month instead of 240, (d) having identical academic goals in the IEPs for the two years, and (e) having inadequate hours of specialized instruction as Student requires a fulltime IEP at a therapeutic day school. *Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.*

The relief requested by Petitioner is:

1. A finding that Student was denied a FAPE.
2. DCPS shall develop an appropriate IEP for Student, including placing Student in a nonpublic therapeutic day school.
3. DCPS shall provide or fund compensatory education for any denial of FAPE.⁴
4. Any other just and reasonable relief.

³ All dates in the format "2017/18" refer to school years.

⁴ Petitioner's counsel was put on notice at the prehearing conference that at the due process hearing Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was encouraged to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

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Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact⁵ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁶ Student is *Age*, *Gender* and in *Grade* at Public School.⁷ Student previously attended Prior Public School, but had conflict with peers in 2017/18 and 2018/19 and obtained a change in location of services to Public School for 2019/20.⁸ Student is a "very energetic and respectful student with a charming personality."⁹

2. IEPs. Student's disability classification on all IEPs discussed herein is Multiple Disabilities ("MD"), with both Specific Learning Disability ("SLD") and Other Health Impairment ("OHI").¹⁰ Student's OHI is due to Attention Deficit Hyperactivity Disorder ("ADHD").¹¹

3. Student's 11/14/17 IEP (the "2017 IEP") and 10/23/18 IEP (the "2018 IEP"), the 2 IEPs at issue in this case, provided the same service hours: 21 hours/week of specialized instruction outside general education, 60 minutes/month of BSS outside general education and 60 minutes/month of BSS inside general education, along with 30 minutes/month of occupational therapy consultation services.¹² Student's current IEP dated 10/8/19 (the "2019 IEP"), provides 21 hours/week of specialized instruction outside general education, 240 minutes/month of BSS outside general education, and 60 minutes/month of speech-language pathology outside general education, along with 30 minutes/month of occupational therapy consultation services.¹³ In the context of a full-time Behavior & Education Support ("BES") program, "inside general education" means that BSS was provided inside the self-contained BES classroom, while "outside general education" means services are provided outside the BES classroom.¹⁴

⁵ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁶ Parent.

⁷ *Id.*

⁸ Parent; R20p217.

⁹ P5-6.

¹⁰ P4-1; P5-1; P8-1.

¹¹ Clinical Psychologist; Parent; P20-25.

¹² P4-11; P5-9.

¹³ P8-12.

¹⁴ Prior Public School Social Worker.

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4. PLOPs. The academic PLOPs in the 2017 IEP noted Student's low iReady results in some detail, which were impacted by Student rushing through the test and completing both math and reading in 10 minutes; the PLOPs provided Woodcock-Johnson scores and concluded that Student was about 4 grades behind in both math and reading; the reading PLOPs provided Student's SRI lexile score, again noting that Student rushed through the assessment.¹⁵

5. The academic PLOPs for the 2018 IEP noted new iReady results in some detail, and concluded that in both math and reading Student was about 5 grades behind (even though Student was repeating Prior Grade); Student rushed through a written assessment; in reading additional detail was provided, including an unclear statement about being able to achieve at the "80% percentile."¹⁶

6. The PLOPs for the Emotional, Social, and Behavioral Development area of concern noted in some detail the Strengths and Difficulties Questionnaire ("SDQ") results and Student's very high result for stress; the 2017 IEP noted a 2-week absence in the 1st quarter of 2017/18; the 2018 IEP noted that Student's impulsive and off task behavior had improved over the past 2 years but Student still needed prompts.¹⁷

7. The IEP descriptions of how Student's disability affected access to the general education curriculum for math and reading noted in both the 2017 IEP and 2018 IEP the ADHD impact, but did not mention SLD or its impact.¹⁸

8. The baselines for academic goals in the 2017 IEP repeatedly stated little more than Student was at certain grade levels.¹⁹ The baselines for academic goals in the 2018 IEP repeatedly stated little more than Student was below grade level without specifying a grade level.²⁰

9. The math and reading goals in the 2017 IEP and 2018 IEP are identical, except for a lengthy example provided in reading goal 2 in the earlier IEP that is not in the latter.²¹

10. Standardized Testing. Student does not like taking tests and would "click through" standardized testing on the computer, completing an hour-long test in 10 minutes or less.²² On the 2/24/16 education assessment, Student at times appeared impulsive and careless in testing and gave up easily on difficult tasks.²³ In the 10/25/16 comprehensive psychological reevaluation, Student repeatedly stated a lack of interest in testing; Student did not put forth

¹⁵ P4-3,4,5.

¹⁶ P5-3,4,5.

¹⁷ P4-8; P5-6; P8-10.

¹⁸ P4-3,5; P5-3,5.

¹⁹ P4-3,4,5,6.

²⁰ P5-3,4,5.

²¹ P4-3,4,5; P5-3,4,5.

²² Special Education Teacher 2017/18.

²³ P19-1.

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best efforts, so the evaluation must be viewed with caution and may not be a valid representation of Student's cognitive and academic functioning.²⁴ In 2017/18, Student's IEP Progress Report for Reporting Period 1 stated that Student "rushed through" the reading assessment, so it was not an accurate measure of Student's abilities.²⁵

11. Special Education Teacher 2017/18 explained that Student always rushed through tests in 2017/18 and that Student's math in class was stronger than testing; Student would participate in the small class and was the best in reading and one of the best in writing.²⁶ Prior Public School Social Worker also noted Student rushing through assignments during BES classroom observations in 2017/18.²⁷ In 2018/19, Special Education Teacher 2018/19 noted Student rushing through tests in 10 minutes, so one could not tell Student's true ability.²⁸ In 2018/19, Student's work was "scaffolded" down by 2-3 grades to meet Student where needed in math and reading.²⁹ In 2019/20, Student was unhappy at being transferred to Public School, so initial assessments were not true depictions of Student's functioning, which was actually much better.³⁰ Special Education Teacher 2019/20 estimated that Student is about 3 grades behind in each math, writing and written expression.³¹

12. Math. Student's beginning of year ("BOY") 2015/16 iReady score was 383, while middle of year ("MOY") was 319, 5 grades behind.³² Student's BOY 2016/17 iReady score was 343, while MOY was 317, 6 grades behind; end of year ("EOY") was 467, 2 grades behind.³³ Student's BOY 2017/18 iReady score was 443, which was 4 grades behind; MOY was 418, 5 grades behind.³⁴ Student's BOY 2018/19 iReady score was 418, 5 grades behind; MOY was 440, 4 grades behind; EOY was 407, 6 grades behind; Student "rushed."³⁵ Student's BOY 2019/20 iReady score was 407, which is 7 grades behind.³⁶

13. Reading. Student's BOY 2015/16 SRI lexile score was 78, which was Below Basic.³⁷ Student's MOY 2016/17 SRI lexile score was 240, while EOY was 288.³⁸ Student's BOY 2017/18 SRI lexile score was 206; while MOY was 344, which was 6 grades

²⁴ P20-1,9; P20-11 (to the extent accurate, Student's Full Scale IQ ("FSIQ") was listed as 77, which is Very Low).

²⁵ R12p139.

²⁶ Special Education Teacher 2017/18.

²⁷ Prior Public School Social Worker.

²⁸ Special Education Teacher 2018/19.

²⁹ *Id.*

³⁰ Special Education Teacher 2019/20; Public School Social Worker.

³¹ Special Education Teacher 2019/20.

³² P28-2.

³³ P28-5.

³⁴ P28-8; R25p238; Special Education Teacher 2017/18.

³⁵ P28-14; R34p263; R39p301; P28-11,12,13; R28p245.

³⁶ P9-2; P37-1.

³⁷ P20-3; P28-1.

³⁸ P28-7.

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behind.³⁹ Student's BOY 2018/19 RI lexile score was 501, 5 grades behind; MOY was 535, while EOY was 545.⁴⁰ Student's BOY 2019/20 RI lexile score was 559, which was 5 to 6 grades behind; Student was placed on Read 180.⁴¹ Student enjoys reading aloud in class.⁴²

14. Written Expression. Student's teachers were clear that no written expression goals were needed; Student was doing well and written expression could be addressed in reading (where Student had 2 goals requiring writing) and in other subjects.⁴³ Both reading goals in the 2017 IEP and in the 2018 IEP incorporated written expression, as reading goal 1 required writing a summary explaining how 2 central ideas develop over the course of a text, and reading goal 2 required writing to support a claim from nonfiction texts.⁴⁴ Student's extended school year ("ESY") goals for the summer of 2019 incorporated writing sentences as part of the reading goal.⁴⁵

15. Student wrote in math class, with a final writing assignment about purchasing, financing and insuring a car, which Student completed, revised and earned an "A."⁴⁶ Special Education Teacher 2019/20 emphasized that Student was able to select topics, gather thoughts, and the writing made sense.⁴⁷ Student was often not motivated, but liked to write rap songs.⁴⁸ Student could write sentences and paragraphs and was progressing in creative writing and developing stories.⁴⁹ The lack of goals for written expression was not included in Special Education Advocate's 6/17/19 letter of dissent to Prior Public School.⁵⁰

16. In Reporting Period 1 in 2017/18, Student's IEP Progress Report on reading indicated that Student "usually refuses to write" in class.⁵¹ In Reporting Period 3 in 2017/18, Student's IEP Progress Report indicated that Student was able to write a summary of the central idea of the story as required by the reading goal.⁵² In Reporting Period 1 in 2018/19, Student's IEP Progress Report indicated that Student was making good progress in writing summaries for the reading goal.⁵³ In Reporting Period 3 in 2018/19, Student's IEP Progress Report indicated that Student "stagnated" or made minimal progress in writing due

³⁹ P28-9; P17-3; P28-9.

⁴⁰ P18-3; P28-16; R33p260.

⁴¹ P9-2; P37-1; R22p227; R23;232.

⁴² P9-2; Special Education Teacher 2019/20 (2019/20).

⁴³ Special Education Teacher 2017/18; Special Education Teacher 2018/19; Special Education Teacher 2019/20; School Psychologist.

⁴⁴ P4-5; P5-5.

⁴⁵ R18p186,187.

⁴⁶ Special Education Teacher 2017/18.

⁴⁷ P37-1; R46p348,349 (initial drafts of writing samples); Special Education Teacher 2019/20.

⁴⁸ Special Education Teacher 2017/18.

⁴⁹ Special Education Teacher 2018/19.

⁵⁰ P32.

⁵¹ R12p138.

⁵² R13p147.

⁵³ R14p155,156.

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to poor attendance; observations of Student during the quarter noted that Student completed written statements 100% of the time observed.⁵⁴ In Reporting Period 4 in 2018/19, Student's IEP Progress Report indicated that Student continued to require support in writing summaries, supporting details, and supportive claims for the reading goals.⁵⁵

17. As part of the 2016 comprehensive psychological reevaluation, the Learning Disabilities Diagnostic Inventory ("LDDI") was completed by 3 of Student's teachers who found scores low enough to indicate a "likely" presence of an intrinsic processing disorder in writing as well as math, but not in reading.⁵⁶ School Psychologist, who administered the reevaluation, testified that 1 tool is not sufficient to reach a conclusion.⁵⁷ Teachers reported to School Psychologist in 2016 that Student wrote slowly, with limited output and "awkwardly."⁵⁸ Special Education Advocate recently administered informal writing assessments and believed Student to be 5 or 6 grades behind in written expression, although after 30 minutes, Student's hand hurt so Student did not complete another planned assessment.⁵⁹

18. Grades. Student earned mostly passing grades in 2017/18 and generally improved over the course of the year.⁶⁰ Student repeated the same grade in 2018/19, beginning with grades that were reasonably high and declining over the course of the year.⁶¹ In 2019/20, Student is receiving "Bs" and "Cs" on assignments.⁶² Parent felt that Student's good grades were "fabricated" because Student could not do work at home.⁶³

19. Attendance. Student was absent for 26 days in 2017/18 and 38 days in 2018/19.⁶⁴ Parent testified that she kept Student home from school for long stretches in order to protect Student from bullying and being chased; Parent was very frustrated with Assistant Principal not taking action to protect Student and testified that it "got physical" between her and Assistant Principal.⁶⁵ While Student was absent, Prior Public School's attendance counselor called daily, sent emails and made a home visit; Parent said Student's return depended on investigation of an incident being completed.⁶⁶ Parent kept Student home even though Child Protective Services threatened to take her children away.⁶⁷ Parent's concern was

⁵⁴ R16p173,174,175; Special Education Teacher 2018/19.

⁵⁵ P17p181,182; Special Education Teacher 2018/19.

⁵⁶ P20-9,10,26.

⁵⁷ School Psychologist.

⁵⁸ P20-10.

⁵⁹ Special Education Advocate.

⁶⁰ P17-1,2.

⁶¹ P18-1,2.

⁶² Special Education Teacher 2019/20.

⁶³ P35-2; Parent (Parent also testified that Student only received homework once from Prior Public School or Public School).

⁶⁴ P17-1; P18-1; P29-1,2.

⁶⁵ Parent.

⁶⁶ Assistant Principal.

⁶⁷ Parent.

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Student's lack of academic progress, but she stated that missing 21 days had "nothing to do with progress."⁶⁸

20. Progress. In a 11/14/17 IEP meeting, Parent insisted that Student be retained after 2017/18 and repeat Prior Grade in 2018/19; IEP team disagreed but gave in to Parent at the 2017 IEP meeting.⁶⁹ Based on Student's standardized tests, Parent believed Student was making no educational progress.⁷⁰ Parent had unsuccessfully sought to have Student retained 2 years earlier and was adamant about doing so in November 2017, so the team agreed.⁷¹

21. In 2017/18, the BES program was most appropriate for Student and no more restrictive setting was required for Student.⁷² Student made academic progress that was expected given the circumstances, building up stamina and completing work; Student made behavioral progress as well.⁷³

22. At the 10/23/18 IEP meeting, Parent reportedly had no concerns about Student and felt Student was doing well; Special Education Teacher 2018/19 was also pleased with Student's progress.⁷⁴ After reviewing the 2018 IEP, Parent was pleased with the goals and progress of Student.⁷⁵ In Reporting Period 2 in 2018/19, Student's IEP Progress Report indicated that Student showed progress but performance was not measurable due to recent absences.⁷⁶ In Reporting Period 3 in 2018/19, Student's IEP Progress Report indicated that Student made minimal to some progress due to missing 26 days in the marking period.⁷⁷ In Reporting Period 4 in 2018/19, Student's IEP Progress Report indicated that Student made good progress.⁷⁸ The BES classroom was appropriate and a good place that Student enjoyed in 2018/19; Student made expected progress given the circumstances and made progress toward Student's goals.⁷⁹

23. Student's BES classroom in 2019/20 has 6 students and 3-4 adults.⁸⁰ Academically in 2019/20, Student works 1:1 with a teacher or paraprofessional, or is paired with another

⁶⁸ P35-2; Parent.

⁶⁹ R2p022; Special Education Teacher 2017/18; Parent.

⁷⁰ Parent.

⁷¹ Parent; Special Education Teacher 2017/18; Assistant Principal.

⁷² Prior Public School Social Worker; Assistant Principal; Special Education Teacher 2017/18.

⁷³ Special Education Teacher 2017/18.

⁷⁴ R5p068.

⁷⁵ R5p029.

⁷⁶ R15p162,163,164,165; Special Education Teacher 2018/19.

⁷⁷ R16p171,172; Special Education Teacher 2018/19.

⁷⁸ R17p179,180; Special Education Teacher 2018/19.

⁷⁹ Special Education Teacher 2018/19.

⁸⁰ Public School Social Worker.

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student.⁸¹ In 2019/20, Public School is appropriate for Student and Student is doing well in the BES program.⁸² Student does not need a more restrictive setting in 2019/20.⁸³

24. Least Restrictive Environment. Student benefits from being at Public School which has general education students who Student interacts with throughout the day at class for Read 180 (with Student's behavior tech), lunch and recess, as well as social events.⁸⁴

25. Aggression/Behavior. Counseling reports in 2016 and 2018 noted that Student is aggressive toward peers in school and had a history of fighting peers.⁸⁵ Student was hit in the head with a brick by a boy in their high-crime neighborhood; Parent moved the family 2 weeks later (in June 2015).⁸⁶ Student reported sometimes being scared in Student's neighborhood due to violence.⁸⁷

26. An FBA was completed on 2/14/17 in which Student reported bullying at Prior Public School, including several students "jumping" Student in an alley.⁸⁸ A BIP was completed on 2/14/17.⁸⁹ Student was involved in a number of incidents at Prior Public School and was sometimes the initiator.⁹⁰ A Prior Public School list of disciplinary infractions by Student during an 18-month period, from 8/14/17 to 2/11/19, contained 9 entries plus a half-dozen dress code violations.⁹¹ Prior Public School's disciplinary data management system for Student for most of 2018/19 listed 12 infractions (largely overlapping with the prior list), but 10 resulted only in a "private talk"; 1 resulted in a 3-day suspension.⁹² Student told Special Education Advocate of involvement in about 10 fights at Prior Public School.⁹³

27. In late December 2018 or early 2019, Parent believed Student had been bloodied and chased by several boys onto a dangerous road and that it was not safe for Student to attend Prior Public School; Parent kept Student home for 25 school days, from 1/2/19 to 2/14/19.⁹⁴ Prior Public School considered the incident to have been caused by Student refusing to ride the bus.⁹⁵ Parent brought Student back to school immediately after the incident and Assistant Principal understood from Student that there had been only 1 boy involved;

⁸¹ Special Education Teacher 2019/20.

⁸² Public School Social Worker.

⁸³ Public School Social Worker; Special Education Teacher 2019/20.

⁸⁴ *Id.*

⁸⁵ P25-1,2; P26-2.

⁸⁶ P25-2; Parent.

⁸⁷ R19p204 (9/6/18).

⁸⁸ P21-3.

⁸⁹ P21-8.

⁹⁰ Special Education Teacher 2017/18.

⁹¹ P30-1,2.

⁹² P22-5,6,7.

⁹³ Special Education Advocate.

⁹⁴ Parent; P29-1.

⁹⁵ Assistant Principal.

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Assistant Principal did not see any blood on Student.⁹⁶ Parent sought a safety transfer to another school based on her belief that Student did not have conflicts in the neighborhood; Student's transferred to Public School in the summer.⁹⁷

28. An Individual Student Safety Plan was developed for Student on 2/28/19, based on having at least 3 physical altercations inside school with peers and concern for Student's safety outside the school building with peers in the community.⁹⁸ Parent sought the Safety Plan before sending Student back to school after the December/January incident.⁹⁹

29. An FBA II was completed on 5/1/19, in which the "Intensity" of the problem had decreased from "High" to "Low to Medium" compared to the 2/14/17 FBA; the "Duration" had decreased from "One class period or the whole day" in 2017 to "30-60 minutes."¹⁰⁰ A BIP II was completed on 5/1/19.¹⁰¹ The SDQs completed by Student and Special Education Teacher 2018/19 for the 5/1/19 FBA both rated Student as High in Difficulties Getting Along with Other Children.¹⁰² During observations, Student would sometimes sneak time playing computer games; other times Student was compliant and followed directives without hesitation, even when peers were off task and ignoring the teachers.¹⁰³ Student was 100% appropriate in 2 observations and disengaged 50% of the time in a third, but was never noncompliant.¹⁰⁴

30. Student's first 2 weeks in 2019/20 at a new school were challenging; Public School staff made a few calls to Parent, including a safety concern about Student refusing to get on the bus and wanting to ride a bike home.¹⁰⁵ Student has been doing well since adjusting to the new school; in late September and early October (through the 10/8/19 RSM/IEP meeting) there were no behavior issues.¹⁰⁶ Student is making progress socially, emotionally and academically; poor attendance impacted Student in the past.¹⁰⁷

31. BSS. Clinical Psychologist testified that Student did not receive enough BSS at Prior Public School with 120 minutes/month; Clinical Psychologist lost credibility with the undersigned by asserting that 120 minutes/month was "grossly" insufficient, as Clinical

⁹⁶ *Id.*

⁹⁷ Parent.

⁹⁸ P24-1,2.

⁹⁹ R42p322.

¹⁰⁰ P21-1; P22-1.

¹⁰¹ P23-1.

¹⁰² P22-3.

¹⁰³ P22-4.

¹⁰⁴ *Id.*

¹⁰⁵ P36-1,2; R22p226; Special Education Teacher 2019/20.

¹⁰⁶ P36-1,2; R22p226.

¹⁰⁷ P37-3 (10/30/19).

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Psychologist acknowledged that he was comparing Student with Clinical Psychologist's own patients, who are hospitalized as "high needs individuals."¹⁰⁸

32. In 2017/18, the 120 minutes/month of BSS on Student's IEP was appropriate, given the level of need; Student was not as intense in 2017/18 as the prior year, with less elopement.¹⁰⁹ On 11/8/17, consideration was given to whether additional BSS ("further interventions") related to Student's Emotional, Social, and Behavioral Development goals were needed.¹¹⁰ On 5/3/18, Prior Public School Social Worker's comment was that Student should continue BSS to increase coping skills and decrease physical aggression.¹¹¹ On 11/9/18, Prior Public School Social Worker's comment in Student's IEP Progress Report was that consideration should be given to reducing BSS hours as Student had made "considerable progress" in regulating mood.¹¹²

33. An increase of BSS for Student from 120 to 240 minutes/month was agreed to by Student's IEP team on 3/21/19 (and formally on 8/22/19) because Parent's counsel pressed for 240 minutes/month, even though Student benefited from 120.¹¹³ Student's IEP was amended on 9/12/19 to provide for 120 minutes/month of BSS inside general education and 120 minutes/month of BSS outside general education.¹¹⁴ Assistant Principal testified that the BSS increase was to occur after the BIP II was completed, which occurred on 5/1/19.¹¹⁵

34. By 2019/20, Public School Social Worker considered Student's classroom behavior to be typical and age appropriate for children in general education.¹¹⁶ After getting settled into Public School in 2019/20 and getting past a couple of initial incidents, Student has been very compliant and not involved in any aggression.¹¹⁷ Any behavior concerns can be addressed at Public School.¹¹⁸ When necessary, Student is easily redirected, often just by calling Student's name.¹¹⁹

35. Prior Public School relied on a point system to provide personal incentives through rewards, as well as classroom incentives by which the class may go to the gym or have a classroom party; Student earned points for extra computer time and a class field trip among other things about which Student was excited.¹²⁰ Public School uses a point system by

¹⁰⁸ Clinical Psychologist; Administrative Notice.

¹⁰⁹ Prior Public School Social Worker.

¹¹⁰ R12-140,141.

¹¹¹ R13p149,150.

¹¹² R14p157,158.

¹¹³ Prior Public School Social Worker; R38p298; Assistant Principal.

¹¹⁴ R7p092; R8p094,105.

¹¹⁵ Assistant Principal; P23-1.

¹¹⁶ Public School Social Worker.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Special Education Teacher 2019/20.

¹²⁰ Special Education Teacher 2017/18; Prior Public School Social Worker.

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which children can gain or lose points for snacks, events, and the like; Student earned sufficient points to attend various events.¹²¹

36. Compensatory Education. Special Education Advocate proposed well over 1,000 hours in total of tutoring, counseling and mentoring for compensatory education, along with placement in a nonpublic therapeutic day school.¹²² Parent testified that Student didn't want to do the work required by over 600 hours of tutoring, but that it would help Student so Parent was not concerned about Student's feelings.¹²³

Conclusions of Law

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

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Andrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. at 1001. The Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Smith v. Dist. of*

¹²¹ Public School Social Worker; Special Education Teacher 2019/20.

¹²² Special Education Advocate; P40-4.

¹²³ Parent.

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Columbia, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that "[w]hen all is said and done, a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all." *Endrew F.*, 137 S. Ct. at 1001.

In addition, the LEA must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori ex rel. A.M. v. Dist. of Columbia*, No. 17-cv-2455, 2018 WL 4623572, at *3 (D.D.C. 9/26/18).

A Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). "Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5-E D.C.M.R. § 3030.3.

Issue: *Whether DCPS denied Student a FAPE by failing to develop or provide an appropriate IEP or placement and/or location of services for 2017/18 to the present, due to the 2017 and 2018 IEPs (a) having insufficient PLOPs, baselines, and explanations for how the disability impacts Student's ability to access general education, (b) lacking goals for written expression, (c) having insufficient BSS with 120 minutes/month instead of 240, (d) having identical academic goals in the IEPs for the two years, and (e) having inadequate hours of specialized instruction as Student requires a fulltime IEP at a therapeutic day school. (Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.)*

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Petitioner established a prima facie case on all aspects of this issue based on testimony and documents, shifting the burden to Respondent, which largely met its burden of persuasion, except on subpart (a), as discussed below.

IEPs. The applicable legal standard for analyzing the appropriateness of the IEPs at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether they were “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. As the Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* “raised the bar on what counts as an adequate education under the IDEA,” requiring more than “merely some” educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be “reasonably calculated to produce meaningful educational benefit”). The measure and adequacy of the IEPs is determined as of the time they were offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student’s IEPs is analyzed by considering the specific concerns raised by Petitioner, which are considered below in turn.¹²⁴ *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(a) PLOPs, Baselines and Disability Impact. As an initial matter, the IDEA does require statements of present levels of academic achievement and functional performance (a/k/a PLOPs) in IEPs in 34 C.F.R. § 300.320(a)(1). PLOPs for math and reading were provided in Student’s IEPs in some detail, but were largely based on standardized assessments that Student did not take seriously and that do not reveal Student’s academic achievement. Even the 10/25/16 comprehensive psychological reevaluation explained that Student repeatedly stated a lack of interest in testing and did not put forth best efforts, so the evaluation must be viewed with caution and may not be a valid representation of Student’s cognitive and academic functioning.

Student’s teachers and social workers were clear that Student does not like taking tests and would quickly “click through” standardized tests on the computer, completing hour-long tests in 10 minutes or less. Not surprisingly, the results of such efforts were not adequate to reveal the level of Student’s abilities. The results of such testing were nonetheless incorporated in Student’s IEP PLOPs, with warnings but without other measures and information about Student’s achievements based on classroom performance and other professional judgments about Student’s academic levels.

This flaw in the PLOPs in many circumstances might be viewed as a mere procedural matter that does not result in any educational impact or harm. Here, however, in the absence of better data or more meaningful information about Student’s abilities, Parent did rely on the low test results that were included in the PLOPs to conclude that Student was

¹²⁴ A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), *quoting Rowley*, 458 U.S. at 206-07. The claims in this matter did include procedural violations, some of which rose to substantive denials of FAPE, as discussed in the text.

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not progressing – and possibly even regressing – from academic levels many years below Student’s grade. As a result, Parent insisted that Student be retained after 2017/18 and repeat Prior Grade in 2018/19, with which Student’s IEP team disagreed but gave in to Parent at the 11/14/17 IEP meeting.

The lack of appropriate PLOPs not only had a direct harmful impact to Student, but may also have made it more difficult for new teachers to understand Student’s academic needs and how best to proceed. Thus, the undersigned finds the inadequate PLOPs are more than a procedural matter, and rise to the level of a substantive violation based on 34 C.F.R. § 300.513(a), as these PLOPs significantly impeded Parent’s decision-making regarding the provision of a FAPE to Student, and caused a deprivation of educational benefit to Student. This violation contributes significantly to the compensatory education awarded below.

In contrast with PLOPs, the IDEA does not expressly require “baselines” in IEPs, but does require a description of how progress toward meeting a student’s IEP goals will be measured, in 34 C.F.R. § 300.320(a)(3). That measurement is typically in the form of baselines stating the level at which a student begins so one can determine whether the special education services provided were sufficient to bring about the desired improvement. Here, there were baselines, but they did not provide specificity or relate to the progress towards goals that needed to be measured. Specifically, the baselines in the 2017 IEP repeatedly stated that Student was at certain grade levels, but that shed little, if any, light on the goal at issue. Worse, the baselines for the 2018 IEP repeatedly stated that Student was below grade level, without even the specificity of the grade. The impact of these baselines can be readily seen here on issues in the IEPs that did not change from the 2017 IEP to the 2018 IEP, but it is impossible to tell from the IEP baselines whether Student is moving toward or away from the goals after a year of effort. Accordingly, the undersigned finds this to rise to the level of a substantive violation and to contribute somewhat to the compensatory education award below. *See* 34 C.F.R. § 300.513(a).

The IDEA regulations do require a statement of how the child’s disability affects the child’s involvement and progress in the general education curriculum, in 34 C.F.R. § 300.320(a)(1)(i). Here, the descriptions of how Student’s disability affected access to the general education curriculum for math and reading noted the ADHD impact in both the 2017 IEP and 2018 IEP, but inexplicably made no mention of SLD or its impacts, even though Student is clearly categorized as having Multiple Disabilities. Parent and her advocates have been concerned that DCPS was more focused on ADHD behaviors than SLD with its emphasis on the BES program. On balance, the undersigned finds this claim to rise to the level of a substantive violation and to contribute slightly to the compensatory education award below.

(b) No Written Expression Goals. IEPs are required to contain measurable annual goals pursuant to 34 C.F.R. § 300.320(a)(2), but Petitioner’s larger concern was that written expression was not an area of concern at all on the IEPs. Nor was this by accident, for Student’s teachers did not believe written expression goals were needed. Student was doing well with written expression, which could be addressed in reading as well as other subjects. Indeed, Student had 2 reading goals in the 2017 and 2018 IEPs that both incorporated written expression. Reading goal 1 required writing a summary explaining how 2 central

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ideas develop over the course of a text, while reading goal 2 required writing to support a claim from nonfiction texts. Even Student's ESY reading goal for 2019 incorporated writing sentences.

Moreover, Student's IEP Progress Reports provided updates on Student's writing just as though written expression was the area of concern. Early in 2017/18 there was concern that Student usually refused to write, but Student progressed to being able to write a summary of the central idea of the story as required by the reading goal. Then early in 2018/19 Student was making good progress in writing summaries for the reading goal, before Student "stagnated" in writing due to being kept out of school by Parent. Reports at the end of 2018/19 made clear that Student was receiving support for written expression, for the IEP Progress Report stated that Student "continued" to require support in writing summaries, supporting details, and supportive claims for the reading goals. Importantly, teachers found that Student was able to select topics, gather thoughts, and the writing made sense. Further, Student could write sentences and paragraphs and was progressing in creative writing and developing stories (when not writing rap songs).

Petitioner placed great emphasis on the Learning Disabilities Diagnostic Inventory in the 2016 comprehensive psychological reevaluation as completed by 3 of Student's teachers which had low enough scores to indicate an intrinsic processing disorder in writing as well as math (but curiously not in reading). However, School Psychologist – who administered the evaluation – credibly testified that 1 tool was not sufficient to reach a conclusion about the need for written expression goals. In light of all the evidence, the undersigned does not find a violation of the IDEA for failure to include a separate area of concern with goals for written expression on Student's IEPs.

(c) Behavior Support Services. BSS is a "related service" that must be provided if required to assist a student with a disability to benefit from special education. *See* 34 C.F.R. § 300.34(a); *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883, 890, 104 S. Ct. 3371, 82 L. Ed. 2d 664 (1984). The issue is whether, in the absence of the full quantity of related services sought, Student's IEPs were still reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances, and to access the curriculum to advance toward meeting Student's annual goals pursuant to 34 C.F.R. § 300.320(a)(4). *See Damarcus S.*, 190 F. Supp. 3d 35; *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013). Related services, as with any other service in an IEP, are determined on an individual basis by the student's IEP team. *See Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. at 46663.

Here, Petitioner was concerned that Student's 2017 and 2018 IEPs provided only 120 minutes/month of BSS, which Petitioner believed should have been 240 minutes/month, the level to which it was increased in the 2019 IEP. However, the evidence in this case revealed that Student was making good progress behaviorally and, in the view of the undersigned, did not require increased BSS. Specifically, Prior Public School Social Worker noted that Student was not as intense in 2017/18 as the prior year, with less elopement from the classroom, so the 120 minutes/month was appropriate. In Student's 5/3/18 IEP Progress Report, Prior Public School Social Worker recommended continuing BSS to increase coping skills and decrease physical aggression. Yet, by 11/9/18, Prior

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Public School Social Worker recommended giving consideration to reducing BSS hours, as Student had made considerable progress in mood regulation. However, later in the school year in response to Petitioner's counsel, Student's IEP team did agree to increase BSS for Student from 120 to 240 minutes/month, notwithstanding evidence that Student needed less. Either way, the undersigned is clear that there was no violation here for BSS being insufficient to permit Student to make appropriate progress under the circumstances.

(d) Identical Goals in IEPs. The math and reading goals in the 2017 IEP and 2018 IEP are identical, as alleged, except for a lengthy example provided in reading goal 2 in the earlier IEP that is not in the latter. Repetition of goals does indicate a lack of progress. *See Endrew F.*, 137 S. Ct. at 996 (largely carrying over the same goals from one year to the next indicated failure to "make meaningful progress"). But not every student progresses as anticipated. However, if the goals must be repeated, the IEP team is to address the lack of progress in the revised IEP. *See* 34 C.F.R. § 300.324(b). The twist here is that along with the goals being repeated from the 2017 IEP to the 2018 IEP, Student's grade was also being repeated from 2017/18 to 2018/19 based on those challenged IEPs, at Parent's insistence. Thus, although it would be preferable to have revised goals taking Student's circumstances into account, the undersigned concludes that is at most a procedural violation and that no substantive violation occurred here with the repetition of academic goals.

(e) Specialized Instruction. Petitioner next challenges the fact that Student's IEPs provided only 21 hours/week of specialized instruction outside general education, along with related services. However, Student was in a full-time self-contained BES classroom which the undersigned concurs with DCPS was appropriate for Student. The academic hours in general education were limited to Student's involvement in the specialized Read 180 program in a separate classroom with general education students, accompanied by a behavior tech from the BES classroom.

The law is clear that DCPS must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori*, 2018 WL 4623572, at *3. The undersigned is clear that Student needed the reading program and had behavior support present as well, so there is no violation here based on Student's least restrictive environment.

Placement/Locations of Service. The applicable legal standard for educational placement under the IDEA requires "school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student's IEP." *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 143 (D.D.C. 2018) *citing O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008). *See also Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013) (DCPS "must place the student in a setting that is capable of fulfilling the student's IEP").

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Here, this Hearing Officer concludes that Student's IEPs could be and were appropriately implemented in the BES programs at both Prior Public School and Public School. Student's placement in BES programs (including small classes and high adult-to-student ratios) afforded Student a meaningful opportunity to make appropriate progress in Student's circumstances. *N.W. v. Dist. of Columbia*, 253 F. Supp. 3d 5, 17 (D.D.C. 2017), quoting *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016). Petitioner asserted that Student required a full-time IEP in a therapeutic day school, but since Public School and Prior Public School were appropriate placements and locations of service for Student, there is no need to consider Nonpublic School further. See *Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991) (if a public school program is available to enable student to receive educational benefits, DCPS need not consider nonpublic placement).

FAPE. In considering the concerns above, the undersigned is cognizant of the fact that the analysis is not about achieving perfection, but merely an IEP and placement reasonably calculated to enable Student to make appropriate progress in the circumstances. *Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA "stops short of requiring public schools to provide the best possible education"). See also *Hill v. Dist. of Columbia*, No. 14-cv-1893, 2016 WL 4506972, at *21 (D.D.C. 2016), quoting *Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015). On balance, this Hearing Officer concludes that DCPS met its burden of persuasion by a preponderance of the evidence except on subpart (a), for on the remaining issues Student's IEPs were reasonably calculated to enable Student to make appropriate progress in Student's circumstances.

Remedies

DCPS is ordered below to convene an IEP meeting within 60 days to update Student's IEP by modifying the elements found to deny Student a FAPE herein, which were PLOPs, baselines, and explanation of how Student's multiple disabilities impact access to general education.

In determining compensatory education for the denials of FAPE, there is often "difficulty inherent in figuring out both what position a student would be in absent a FAPE denial and how to get the student to that position," *B.D. v. Dist. of Columbia*, 817 F.3d 792, 799 (D.C. Cir. 2016), but that does not permit the effort to be avoided. See *Henry v. Dist. of Columbia*, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse). Moreover, a student is not required "to have a perfect case to be entitled to compensatory education." *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (citations omitted).

Here, the Compensatory Education Proposal prepared for this case assumed that Petitioner would prevail on all issues, while it is only a portion of the issue (subpart (a)) that results in compensatory education. Based on the evidence and the various factors discussed in this case, and carefully considering the totality of the circumstances, the undersigned believes that 100 hours of academic tutoring is appropriate to restore Student to the place Student would have been but for the denial of FAPE found above.

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These determinations by the undersigned are specifically tailored to address Student's unique needs as a matter of equity, as "hearing officers are reminded that '[t]he essence of equity jurisdiction' is 'to do equity and to mould each decree to the necessities of the particular case.'" *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), *quoting Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005). All compensatory education hours are to be used within 18 months in order to ensure that the remedial services that Student needs are obtained without undue delay, along with minimizing any administrative burdens on Respondent which may result from compensatory education awards stretching over excessively long timeframes.

ORDER

Petitioner has prevailed in part in this case, as set forth above. Accordingly, **it is hereby ordered that:**

- (1) Within 60 days, DCPS shall convene Student's IEP team to modify Student's IEP to incorporate appropriate PLOPs, baselines, and explanations of how Student's disabilities impact access to general education.
- (2) As compensatory education for the denials of FAPE found herein, DCPS shall provide a letter of authorization within 10 business days after Petitioner's request for a total of 100 hours of academic tutoring from an independent provider chosen by Petitioner. All hours are to be provided and used within 18 months; any unused hours shall be forfeited.

Any and all other claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ *Keith Seat*

Keith L. Seat, Esq.
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).

Copies to:

Counsel of Record (Appendix A, by email)
OSSE-SPED (due.process@dc.gov)

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