

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

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

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2021-0091
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 11/28/21
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates (using Microsoft Teams):
("DCPS"),	)	11/17/21 & 11/18/21
Respondent.	)	
	)	

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**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 DCPS’s failure to meet its Child Find obligations, to comprehensively evaluate, to provide an appropriate IEP, and to provide access to all education records. DCPS responded that Student’s needs were appropriately addressed.

**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 7/1/21, the case was assigned to the undersigned on 7/1/21. Respondent filed a response on 7/13/21, and an amended response on 10/29/21, and did not challenge jurisdiction. A resolution meeting took place

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<sup>1</sup> Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student’s gender are omitted.

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on 7/28/21, but the parties did not settle the case or shorten the 30-day resolution period, which ended on 7/31/21. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by an 80-day continuance due to a change in Petitioner's counsel, which requires a Hearing Officer Determination ("HOD") by 12/3/21.

A prehearing conference was held on 10/29/21 and the Prehearing Order was issued the same day addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 11/17/21 and 11/18/21 and was open to the public. Petitioner was represented by *Petitioner's counsel*. DCPS was represented by *Respondent's counsel*. Petitioner participated in much of the hearing.

### Documents and Witnesses

Petitioner's Disclosure, submitted on 11/9/21, contained documents P1 through P62, which were all admitted into evidence without objection except for P54 which was not offered into evidence. Respondent's Disclosure, also submitted on 11/9/21, contained documents R1 through R30, of which R1, R2, R4 through R8, R10 through R20, R24, and R27 through R30 were offered and admitted into evidence without objection.<sup>2</sup>

Petitioner's counsel presented 5 witnesses in Petitioner's case-in-chief (*see* Appendix A):

1. *Private Speech-Language Pathologist* (qualified without objection as an expert in Speech-Language Pathology)
2. *Psychologist* (qualified without objection as an expert in Psychology, Neuropsychology, Special Education and Programming)
3. *Educational Consultant* (qualified without objection as an expert in Special Education, Programming and IEP Development)
4. *Legal Assistant*
5. Parent

Respondent's counsel presented 4 witnesses in Respondent's case (*see* Appendix A):

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<sup>2</sup> Citations herein to Petitioner's documents are indicated by a "P" followed by the exhibit number, followed immediately by a "p" (for page) and the Bates number with any leading zeros omitted, while Respondent's documents are indicated in the same manner beginning with an "R." Respondent's documents have a gap in the Bates numbers, with pages 143 through 163 omitted.

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1. *School Speech-Language Pathologist* (qualified without objection as an expert in Speech-Language Pathology)
2. *Assistant Principal*
3. *Special Education Teacher* (qualified over objection as an expert in Special Education)
4. *School Social Worker* (qualified without objection as an expert in School-Based Social Work)

Petitioner's counsel did not submit any rebuttal evidence.

### **Issues and Relief Requested**

The issues to be determined in this Hearing Officer Determination are:

**Issue 1:** Whether DCPS denied Student a FAPE by failing to timely evaluate and identify Student as eligible for special education and related services pursuant to Child Find obligations within the 2 years prior to the filing of the complaint based on Student's severe weaknesses in reading and math, among other things. (*Petitioner has the burden of persuasion on this issue.*)

**Issue 2:** Whether DCPS denied Student a FAPE by failing to comprehensively evaluate and/or timely conduct a vocational assessment and/or transition assessment before development of the initial IEP. (*Petitioner has the burden of persuasion on this issue.*)

**Issue 3:** Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP from 2020/21<sup>3</sup> to the present by failing to (a) develop an appropriate transition plan based on a vocational/transition assessment, (b) provide 240 minutes/month of speech-language services, (c) provide 240 minutes/month of Behavior Support Services ("BSS"), (d) develop appropriate goals for Student's functioning level, (e) create adaptive and functional, decoding or phonemic awareness, comprehension, executive functioning and organizational, and social, emotional and behavioral goals, (f) add assistive technology ("AT") training and AT data in Student's present levels of performance ("PLOPs"), and/or (g) provide extended school year ("ESY") for the summer of 2021. (*Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*)

**Issue 4:** Whether DCPS denied Student a FAPE by failing to provide Parent access to education records despite multiple written requests. (*Petitioner has the burden of persuasion on this issue.*)

The relief requested by Petitioner is:

1. A finding that Student has been denied a FAPE.

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<sup>3</sup> All dates in the format "2020/21" refer to school years.

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2. DCPS shall amend Student's IEP to provide: (a) adaptive goals; (b) AT training; (c) revised academic goals; (d) an increase in BSS to 240 minutes/month; (e) an increase in speech-language services to 240 minutes/month; (f) a revised transition plan; and (g) ESY.
3. DCPS shall issue an IEE or conduct a vocational assessment, and hold an IEP meeting to update the IEP within 30 days of the completion of the assessment.
4. DCPS shall provide Parent access to Student's education records from DCPS and allow new claims based on new information.
5. DCPS shall provide compensatory education for any denials of FAPE, without restrictions on time of day or completion deadlines.<sup>4</sup>
6. Any other just and reasonable relief.

### **Findings of Fact**

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>5</sup> are as follows:

1. **Background.** Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>6</sup> Student is *Age*, *Gender* and in *Grade* at *Public School*, where Student began in 2021/22, after attending Prior Public School A in 2020/21 and part of 2019/20, Prior Public School B for part of 2019/20 and 2018/19, and Prior Public School C for several earlier years.<sup>7</sup> Student is very respectful, very well-mannered, quiet, tries to complete all work, and is committed to doing Student's best.<sup>8</sup>

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<sup>4</sup> 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 was found.

<sup>5</sup> 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.

<sup>6</sup> Parent.

<sup>7</sup> Parent; R12.

<sup>8</sup> Special Education Teacher; P11p112,137.

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2. IEP. Student received an initial IEP on 6/17/21, after previously being evaluated and found not eligible for special education and related services in 2011.<sup>9</sup> Student was found eligible on 6/10/21 with the disability classification of Multiple Disabilities (“MD”), with both Intellectual Disability (“ID”) and Other Health Impairment (“OHI”) due to Attention Deficit Hyperactivity Disorder (“ADHD”).<sup>10</sup> Parent had tried to get Student help between 2011 and 2021, knowing Student needed help.<sup>11</sup> Student had “always” struggled academically; Parent asked various teachers at Prior Public School A and Prior Public School B for help with Student, and talked to the principal at Prior Public School B, but “nothing happened.”<sup>12</sup> Student’s 6/17/21 IEP – the only IEP at issue in this case – provided 20 hours/week of specialized instruction outside general education, 120 minutes/month of Speech-Language services outside general education, 120 minutes/month of BSS outside general education, and 120 minutes/month of Occupational Therapy (“OT”) outside general education.<sup>13</sup>

3. Cognitive Abilities. In the 5/24/21 comprehensive psychological evaluation, three cognitive tests were conducted, each of which showed Student’s significant cognitive limitations.<sup>14</sup> On the Reynolds Intellectual Assessment Scales, 2<sup>nd</sup> Edition (“RIAS-2”) Student had a Composite Intelligence Index (“CIX”) of 48, which was in the Extremely Low range, as were all of Student’s other indices on the RIAS-2, including the Verbal Intelligence Index (“VIX”) at 54, and the Nonverbal Intelligence Index (“NIX”) at 54.<sup>15</sup> The Woodcock-Johnson IV Tests of Cognitive Ability (“WJ-IV-COG”) Brief Intellectual Ability was at a national percentile rank of 0.4, commensurate with the RIAS-2 results.<sup>16</sup> The Comprehensive Test of Nonverbal Intelligence, 2<sup>nd</sup> Edition (“CTONI-2”) determined that Student’s Composite Index Score was 62, less than the 1<sup>st</sup> percentile.<sup>17</sup>

4. Academic Abilities. The present levels of performance in Student’s IEP clearly stated that Student was at the 2<sup>nd</sup> grade level in math based on a 5/27/21 iReady, and at the 1<sup>st</sup> grade level in reading based on comprehension level, vocabulary level, and reading rate.<sup>18</sup> Student’s 5/24/21 comprehensive psychological evaluation found Student in 2020/21 at the 1<sup>st</sup> grade level in math, while reading was on the kindergarten to 1<sup>st</sup> grade level.<sup>19</sup> These low levels were confirmed by summaries of years of Scholastic Reading Inventory (“SRI”) scores (4<sup>th</sup> to 8<sup>th</sup> grades), iReady scores (2<sup>nd</sup> to 7<sup>th</sup> grades), DIBELS scores

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<sup>9</sup> P57p405; P10p101; R5p43.

<sup>10</sup> P57p405; P5p56; P11p135.

<sup>11</sup> P56p397.

<sup>12</sup> R6p45; Parent.

<sup>13</sup> P57p415.

<sup>14</sup> Psychologist.

<sup>15</sup> P11p114-16.

<sup>16</sup> P11p116.

<sup>17</sup> P11p117-18.

<sup>18</sup> P57p407-08.

<sup>19</sup> P11p108.

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(kindergarten to 5<sup>th</sup> grade), and PARCC testing (3<sup>rd</sup> to 6<sup>th</sup> grades), along with underlying Aspen data.<sup>20</sup>

5. Text Reading and Comprehension (“TRC”) assessments showed Student’s goal in 4<sup>th</sup> grade was “R” or “S” and Student was at “N,” a 3<sup>rd</sup> grade level.<sup>21</sup> Student began 5<sup>th</sup> grade at level “O”; the TRC goal in 5<sup>th</sup> grade was U or V and Student reached “M” or “O,” still 3<sup>rd</sup> grade levels.<sup>22</sup> In 2018/19, Student was back to a 1<sup>st</sup> grade reading level based on SRI.<sup>23</sup> On 1/7/21, Student’s SRI results were at lexile 426, a 2<sup>nd</sup> grade level.<sup>24</sup> The WJ-IV achievement test in Spring 2021 showed a Broad Math standard score of 66, in the Very Low range, a Broad Reading standard score of 79 in the Low range, and a Broad Written Language standard score of 83 in the Below Average range.<sup>25</sup> Educational Consultant conducted informal testing in 2021 with a 2<sup>nd</sup> grade book that Student tried to read from right to left, skipping words Student could not read.<sup>26</sup>

6. Despite Student being motivated and putting forth effort to complete assignments, in July 2019 DCPS proposed retaining Student and requiring Student to repeat the grade in 2018/19; Student should have been evaluated at that time.<sup>27</sup>

7. Grades. In 2016/17, Student’s report card was Below Basic for all terms of reading and writing & language, and mostly Basic in math.<sup>28</sup> In 2017/18, Student’s report card was Below Basic for most terms of reading and writing & language, and for the last 2 terms of math.<sup>29</sup> Student’s 2018/19 report card contained a range of grades with many “Fs”; out of 6 final grades, half were “Fs.”<sup>30</sup> Student’s 2019/20 report card grades ranged from “As” to “Fs,” but contained only 4 final grades, all “Fs.”<sup>31</sup> Student’s grades improved over 3 terms in 2020/21, from mostly “Ds” and “Fs” to all “As” and “Bs.”<sup>32</sup> Even when passing classes, Student often displayed lack of preparedness, incomplete assignments, and poor retention of

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<sup>20</sup> P62p445-47; P16 (2020/21 Reading Inventory at 1<sup>st</sup> grade level per P17p183); P19 (2020/21 EOY math iReady at 2<sup>nd</sup> grade level); P14; P15; P18; P21; P22.

<sup>21</sup> P24p255.

<sup>22</sup> P25p257,260.

<sup>23</sup> P27p268.

<sup>24</sup> R16p137.

<sup>25</sup> 11p119-20,134.

<sup>26</sup> Educational Consultant.

<sup>27</sup> Psychologist; Educational Consultant; Parent (Student needed help with reading and math, was frustrated and “shut down”); P40p324 (waiver of retention form signed by principal on 7/30/19).

<sup>28</sup> P24p252.

<sup>29</sup> P25p257.

<sup>30</sup> P27p265-67.

<sup>31</sup> P28p270-72.

<sup>32</sup> P11p107.

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skills.<sup>33</sup> Student achieved passing grades by teachers using scaffolding learning techniques, graphic organizers, constant feedback, tutoring, and requiring simpler responses.<sup>34</sup>

8. Behavior. Student had a number of behavioral incidents at school, including 5 incidents on 9/13/18, resulting in a 1-day out-of-school suspension (play fighting turned serious), and incidents on 9/26/18 (slapped other student in the face), 11/1/18 (horseplaying during class), 3/21/19 (chasing peers through hall), and 4/2/19 (physical altercation with another student).<sup>35</sup>

9. Need for Earlier Evaluation/Support. At the end of 2017/18, Student's teacher commented on the report card that Student did not meet the reading benchmark so it was "imperative" to speak about Student's academic progress and future.<sup>36</sup> As of 5/24/21, Student was receiving 1:1 assistance during English class and receiving math intervention support every day to assist with reinforcing basic math skills.<sup>37</sup> Educational Consultant credibly testified that Student should have had an IEP 2 years earlier or more.<sup>38</sup>

10. Transition Plan. Given Student's age, the IEP needed a transition plan which Special Education Teacher discussed with the IEP team on 6/17/21.<sup>39</sup> The IEP contained a Post-Secondary Transition Plan completed by Special Education Teacher in person with Student on 6/18/21; the plan was based on the Career Wonders Interest survey that Special Education Teacher administered to Student that day, along with academic data the IEP team reviewed, and Special Education Teacher speaking with Student.<sup>40</sup> Special Education Teacher could not meet with Student sooner than 6/18/21 because of a problem with Student's technology.<sup>41</sup> The transition plan contained appropriate goals and transition services, and found that Student wants to open a business in a field yet to be determined and live independently, but close to family.<sup>42</sup> Student plans to attend a 4-year college or university.<sup>43</sup> Petitioner's counsel sought at least a level 2 vocational assessment; Assistant Principal indicated that Public School should be able to do the vocational assessment as soon as school opened in the Fall.<sup>44</sup>

11. Speech Language Services. School Speech-Language Pathologist had only one session with Student thus far at Public School, but School Speech-Language Pathologist credibly testified that 120 minutes/month of Speech-Language services was sufficient for

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<sup>33</sup> P11p134.

<sup>34</sup> P11p130.

<sup>35</sup> P35p305; P36p309; P37p312; P39p317-18; P39p319; P39p321; P39p322.

<sup>36</sup> P25p257.

<sup>37</sup> P10p100; P11p108.

<sup>38</sup> Educational Consultant.

<sup>39</sup> P58p429; Special Education Teacher.

<sup>40</sup> P57p419; P58p429-30; Special Education Teacher.

<sup>41</sup> Special Education Teacher; P58p429-30.

<sup>42</sup> P57p419.

<sup>43</sup> *Id.*

<sup>44</sup> P58p429-30.

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Student and that there was no educational impact requiring more direct Speech-Language services; Student's Speech-Language goals are being addressed every day in class as well as when School Speech-Language Pathologist pulls Student out for direct services.<sup>45</sup> Pulling Student from class for more direct related services would harm Student's education.<sup>46</sup> Speech-Language services on Student's IEP can be adjusted as needed in the future by increasing them from 120 minutes/month.<sup>47</sup>

12. BSS. Student's IEP lacked an area of concern for emotional-social-behavioral development and there were no goals listed for the 120 BSS minutes/month provided on the IEP as there should have been.<sup>48</sup> Student would benefit from adding a behavior-ADHD piece to keep Student organized and attentive.<sup>49</sup> Behavior goals could address concerns in the Conners and elevated scores on the BRIEF, and provide adaptive as well as functional goals.<sup>50</sup> Student's adaptive skills were assessed with the Vineland-3, in which a teacher found Student to be average, while Parent placed Student's adaptive skills well within the inadequate range with a standard score of 71.<sup>51</sup> The clinically significant areas needing immediate attention on the Conners-3 were Peer Relations, noted by Parent, and Inattention and Learning Problems, noted by a teacher.<sup>52</sup> Student's current level of 120 minutes/month of BSS is sufficient for now and provides a good balance, as Student has no challenging behaviors and shouldn't be pulled from academic instruction excessively.<sup>53</sup> In current grade, Student doesn't like to be pulled out of class and prefers to seek out School Social Worker to check in, although School Social Worker will pull Student as needed.<sup>54</sup> Student had some behavior incidents in 2018/19, but doesn't need more than 120 minutes/month of BSS at this time.<sup>55</sup>

13. Academic Goals. DCPS academic goals are based on Common Core standards for all students based on nominal grade level, not skill levels; the team used Student's data to scaffold to Student's functioning level, which can be "very difficult."<sup>56</sup> For math, Student's IEP stated that Student would benefit from intensive intervention focused on skills and concepts related to quantitative reasoning and representation.<sup>57</sup> Student's IEP math goals were based on a Pythagorean theorem word problem and a linear equation.<sup>58</sup> Student's IEP

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<sup>45</sup> School Speech-Language Pathologist.

<sup>46</sup> *Id.*

<sup>47</sup> Private Speech-Language Pathologist.

<sup>48</sup> P57; P58p427; P62p450; Psychologist; Special Education Teacher (error for DCPS to omit BSS goals).

<sup>49</sup> P58p427.

<sup>50</sup> P58p428; Educational Consultant (adaptive and functional goals especially needed).

<sup>51</sup> P11p133.

<sup>52</sup> P11p134.

<sup>53</sup> School Social Worker.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> P58p426; Special Education Teacher.

<sup>57</sup> P57p407.

<sup>58</sup> P57p407-08.



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reading goals are based on grade-level text many grades above Student's 1<sup>st</sup> grade baseline reading level; the goals focus on Student writing a citation to support an explicit or implicit claim in literary text and looking up unknown words in grade-level text.<sup>59</sup> Educational Consultant objected to the reading goals as being unattainable based on Student's reading level.<sup>60</sup> Educational Consultant also objected to the lack of goals to address comprehension, decoding and phonemic awareness, which were noted as deficits in the comprehensive psychological evaluation, and provided samples of goals.<sup>61</sup>

14. AT Training. Student's IEP provided for a laptop to access materials and organize work, as well as to provide text-to-speech, typing, dictating, predictive text, online timers, and graphic organizers.<sup>62</sup> The DCPS AT specialist explained that training is provided to the IEP team and Parent when Student is using the AT tools; any other support needed would be provided through the IEP team.<sup>63</sup> Student's math and science teachers reportedly stated that Student required basic instruction in computer usage skills such as typing, uploading assignments, downloading files, and using a whiteboard app; Special Education Teacher credibly testified that Student already had such skills and demonstrated them in Special Education Teacher's class.<sup>64</sup>

15. ESY. Student was not offered ESY for the summer of 2021; Parent stated several times that she did not want ESY for Student because it was virtual; DCPS did offer an in-person "Summer Soar" program intended for students to get extra help and polish skills; special education teachers worked with the Summer Soar program.<sup>65</sup> Student showed lack of progress or regression even without breaks in education, as Middle of Year ("MOY") (1/7/21) Reading Inventory ("RI") scores dropped from 426 to 337 at End of Year ("EOY") (5/24/21), which was not considered regression for ESY as the scores were all at the same grade level.<sup>66</sup> Other smaller SRI dips may be seen in certain years, with 2016/17 EOY at 250 dropping to 187 at Beginning of Year ("BOY") 2017/18, and 2018/19 EOY at 345 dropping to 328 BOY in 2020/21 (not 2019/20, showing lack of progress overall and lack of education records from DCPS); in math iReady scores, Student dipped slightly from 439 at EOY 2018/19 to 425 at BOY 2019/20.<sup>67</sup>

16. Education Records. Student's education records were requested by Parent's representatives on 3/3/21; Assistant Principal supervised the collection of documents and 25 items were provided by 3/8/21, but 4 categories of records were requested again.<sup>68</sup> On

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<sup>59</sup> P57p409.

<sup>60</sup> P51p363 (6/17/21 written objections to various elements of the draft IEP).

<sup>61</sup> P51p363; Educational Consultant (goals needed to build reading skills).

<sup>62</sup> P57p406.

<sup>63</sup> P58p425,426.

<sup>64</sup> Special Education Teacher; P10p100.

<sup>65</sup> P58p428-29; Special Education Teacher.

<sup>66</sup> Educational Consultant; R19p164; Special Education Teacher.

<sup>67</sup> P62p445-46.

<sup>68</sup> P45p340-41; Assistant Principal.

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6/30/21, Parent's representatives added specificity and sought 33 categories of documents.<sup>69</sup> On 11/5/21, Petitioner's counsel requested 3 categories of records, again seeking report cards, full reports for interim assessments and standardized testing, and attendance records.<sup>70</sup> As Assistant Principal testified, Prior Public School A provided all of Student's education records it had available, but Assistant Principal had not sought records from Student's prior schools, which should still be available as DCPS does not destroy student records.<sup>71</sup> Assistant Principal and her staff can and sometimes do ask other schools for student records.<sup>72</sup>

17. Compensatory Education. Educational Consultant developed a Compensatory Education Proposal based on detailed analysis of the facts in the case and concluded that Student would have made more progress and been on about a 3<sup>rd</sup> grade level but for the denials of FAPE.<sup>73</sup> Educational Consultant credibly testified that to the extent possible her proposal would restore Student to the position in which Student would have been, but for the denials of FAPE.<sup>74</sup> Educational Consultant determined that Student missed about 2,020 specialized instruction hours over the last 2 years based on 20 hours/week with a 52-week school year and a 49-week school year, and proposed that 900 hours of 1:1 academic tutoring be provided to Student.<sup>75</sup> Based on the same number of weeks per year and the desired level of 240 minutes/month (calculated as an hour/week) of related services, Educational Consultant calculated that Student missed 101 hours of each Speech-Language, OT and BSS, and is seeking 70 hours of 1:1 services of each.<sup>76</sup> Educational Consultant believes Student is motivated and recommended that Student be provided 5-7 hours/week of tutoring, and 1-2 hours/week of each Speech-Language services, OT, and BSS (counseling), with any awarded compensatory education to be used within 2 years.<sup>77</sup> Parent believed Student would "of course" be able to do an hour a day of tutoring, with more during summer break.<sup>78</sup>

### 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,

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<sup>69</sup> P52p367-68 (listing items "a" to "gg").

<sup>70</sup> P53p371; Educational Consultant.

<sup>71</sup> Assistant Principal.

<sup>72</sup> *Id.*

<sup>73</sup> P62p451.

<sup>74</sup> Educational Consultant.

<sup>75</sup> *Id.*

<sup>76</sup> P62p452-53; Educational Consultant.

<sup>77</sup> Educational Consultant.

<sup>78</sup> Parent.

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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 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.” *Andrew F.*, 137 S. Ct. at 1001.

In addition, the local education agency (“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; *Andrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at \*3 (D.D.C. 2018).

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

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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 1:** *Whether DCPS denied Student a FAPE by failing to timely evaluate and identify Student as eligible for special education and related services pursuant to Child Find obligations within the 2 years prior to the filing of the complaint based on Student's severe weaknesses in reading and math, among other things. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden of persuasion on whether DCPS should have evaluated and identified Student as eligible for special education 2 years prior to the filing of the complaint. The D.C. Circuit Court emphasized in *DL v. Dist. of Columbia*, 860 F.3d 713, 717 (D.C. Cir. 2017), that Child Find is among the most important IDEA requirements, in order to identify, locate and evaluate every child in need of special education. *See* 34 C.F.R. § 300.111. Student was one of those children.

The Child Find obligations of an LEA are triggered either by awareness of the child's circumstances or by parental request. *See Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 57 (D.D.C. 2011). Here, DCPS should have been aware of Student's need for a special education evaluation through Student's circumstances, as well as parental request. An evaluation was conducted once Parent retained legal counsel in Spring 2021. The question here is whether based on Student's circumstances and/or Parent's requests DCPS should have evaluated Student as early as July 2019. Based on the facts of this case set forth above, the undersigned has no doubt that DCPS's Child Find obligations were triggered at least by July 2019, limited only by the 2-year statute of limitations. 34 C.F.R. § 300.507(a)(2); 34 C.F.R. § 300.511(e).

To begin, the present levels of performance in Student's IEP stated that Student was at the 2<sup>nd</sup> grade level in math based on the iReady, and at the 1<sup>st</sup> grade level in reading based on comprehension level, vocabulary level, and reading rate, many years below where Student should have been. Student's 5/24/21 comprehensive psychological evaluation found Student at the 1<sup>st</sup> grade level in math, while reading was on the kindergarten to 1<sup>st</sup> grade level. In 2018/19, at the time DCPS should have evaluated, Student was at a 1<sup>st</sup> grade reading level based on SRI. Further, Student's 2018/19 report card contained a range of

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grades, but out of 6 final grades half were “Fs.” To cap the point, in July 2019 DCPS proposed retaining Student and requiring Student to repeat the grade just completed. The undersigned concludes that DCPS should have evaluated and found Student eligible at that time, 2 years prior to the filing of this case.

Nor was that the end of it, for Parent tried to get help multiple times after Student was first found ineligible in 2011, knowing Student needed help. Parent explained that Student had always struggled academically and that Parent asked various teachers at Prior Public School A and Prior Public School B for help with Student, even talking to the principal at Prior Public School B, but DCPS took no action.

In sum, this Hearing Officer concludes that Parent met her burden of persuasion, showing that DCPS did not meet its Child Find obligations to evaluate Student and determine eligibility for special education and related services based both on Student’s circumstances and Parent’s requests. DCPS did not take action until after Parent retained counsel in Spring 2021. That failure directly impacted Student’s education and denied Student the educational benefits to which Student was entitled, which constituted a denial of FAPE and is the basis for most of the award of compensatory education, below. *See* 34 C.F.R. § 300.513(a).

**Issue 2:** *Whether DCPS denied Student a FAPE by failing to comprehensively evaluate and/or timely conduct a vocational assessment and/or transition assessment before development of the initial IEP. (Petitioner has the burden of persuasion on this issue.)*

Petitioner failed to meet her burden of persuasion on the issue of assessments prior to development of Student’s IEP. The IDEA’s transition provisions require appropriate goals based on age-appropriate transition assessments. 34 C.F.R. § 300.320(b). As Special Education Teacher discussed with the IEP team on 6/17/21, she administered the Career Wonders Interest survey and used academic data the IEP team had reviewed, along with interviewing Student to develop the transition plan for Student’s IEP.

The transition assessment succeeded in obtaining information about Student for the transition plan relating to training, education, employment, and life skills as needed, so the undersigned concludes that there was no denial of a FAPE for lack of transition assessment. Moreover, Assistant Principal offered to provide a vocational evaluation as soon as school opened in the Fall, for Petitioner’s counsel sought a vocational assessment of Student. The undersigned finds no violation of the IDEA here.

**Issue 3:** *Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP from 2020/21 to the present by failing to (a) develop an appropriate transition plan based on a vocational/transition assessment, (b) provide 240 minutes/month of speech-language services, (c) provide 240 minutes/month of BSS, (d) develop appropriate goals for Student’s functioning level, (e) create adaptive and functional, decoding or phonemic awareness, comprehension, executive functioning and organizational, and social, emotional and behavioral goals, (f) add AT training and AT data in Student’s PLOPs, and/or (g) provide ESY for the summer of 2021. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

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

The applicable legal standard for analyzing the appropriateness of the IEP at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it was “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 U.S. 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 IEP are determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at \*12 (D.D.C. 5/18/21); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student’s IEP is analyzed by considering the specific concerns raised by Petitioner, which are considered in turn.<sup>79</sup> *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(a) Transition Plan. While the IDEA transition provisions require that the first IEP in effect after a child with a disability reaches age 16 must contain specified transition assessments and services,<sup>80</sup> D.C. regulations modify the age and apply to Student’s IEP. *See* 5-E D.C.M.R. § 3009.6; 34 C.F.R. § 300.322(b)(2). The IEP required a transition plan given Student’s age, and Student’s IEP did in fact contain a Post-Secondary Transition Plan. Special Education Teacher completed the plan with Student on 6/18/21, as Special Education Teacher had discussed with the IEP team on 6/17/21. The transition plan was based on the Career Wonders Interest survey that Special Education Teacher administered to Student, along with academic data the IEP team reviewed, and Special Education Teacher speaking with Student. The plan was a bit delayed for Student’s technology was not working, as Parent had explained, so Special Education Teacher met with Student in person. Moreover, an IEP is not required to offer Student the “best” transition plan – but only services reasonably calculated to provide the student with meaningful benefit. *See K.S. v.*

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<sup>79</sup> 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. Certain procedural violations were raised and are discussed herein.

<sup>80</sup> The IDEA’s transition provisions require that:

Beginning not later than the first IEP to be in effect when the student turns 16 . . . and updated annually thereafter, the IEP must include:

- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 C.F.R. § 300.320(b).

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*Dist. of Columbia*, 962 F. Supp. 2d 216, 220-222 (D.D.C. 2013). The initial transition plan included appropriate goals and suitable transition services, and revealed that Student's plans to open a business in a field not yet determined, to live independently, but close to family, and to attend a 4-year college or university. The undersigned find no violation here.

(b) Speech-Language Services. Student's IEP provided 120 minutes/month of Speech-Language services, but Petitioner sought 240 minutes/month. The issue here is whether as written with 120 minutes/month the IEP for Student was "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. *See also Z.B.*, 888 F.3d at 517; *Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016). "Related services" 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).

In a disagreement between experts, Private Speech-Language Pathologist urged that Student's Speech-Language services be increased from 120 to 240 minutes/month, while School Speech-Language Pathologist testified that 120 minutes/month was sufficient and that there was no educational impact that required more direct services. School Speech-Language Pathologist persuasively explained that Student's Speech-Language goals were being addressed every day in Student's classes, as well as when School Speech-Language Pathologist pulled Student out for direct services. Moreover, School Speech-Language Pathologist was clear that pulling Student from class for more direct related services would harm Student's education by preventing Student from obtaining needed academic skills, which persuaded the undersigned that additional Speech-Language services are not appropriate at this time.

(c) BSS. Petitioner next challenges the related service of BSS, again asserting the 120 minutes/month on the IEP should be increased to 240 minutes/month, which requires the same legal analysis as Speech-Language above, in which related services are to be provided if required for Student to benefit from special education. *See* 34 C.F.R. § 300.34(a). Here, however, DCPS acknowledged error in not including an area of concern on the IEP for emotional-social-behavioral development and not providing goals for the 120 BSS minutes/month, which are discussed in subpart (e) below. As for the desired increase, School Social Worker persuasively stated that notwithstanding some behavior incidents in 2018/19, Student has no challenging behaviors and doesn't need more than 120 minutes/month of BSS and shouldn't be excessively pulled from academic instruction. This Hearing Officer concurs in continuing with the 120 minutes/month of BSS, and orders the development of BSS goals below.

(d) Goals at Functioning Level. Student's 1<sup>st</sup> and 2<sup>nd</sup> grade academic functioning levels are dramatically lower than Student's grade level, but DCPS maintains a policy of basing academic goals on the Common Core standards for students' nominal grade rather than their actual functioning level. The team then uses student data to "scaffold" to the functioning level, which Special Education Teacher acknowledged can be very difficult. Thus, while Student's IEP states that Student would benefit from intensive intervention focused on math skills and concepts, the actual IEP math goals are based on a Pythagorean

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theorem word problem and a linear equation, with the burden on Student's teachers to scaffold to reach those goals. Similarly, Student's IEP reading goals are based on grade-level text, which is many grades above Student's 1st grade baseline reading level. Student's goals focus on Student writing a citation to support an explicit or implicit claim in literary text and looking up unknown words in regular grade-level text. While these may be difficult goals, it may be that scaffolding can provide educational benefit. Moreover, Hearing Officers do not have jurisdiction over policies generally and cannot address systemic violations of the IDEA. *See R. A-G ex rel. R.B. v. Buffalo City Sch. Dist. Bd. of Educ.*, 2013 WL 3354424, at \*7 (W.D.N.Y. July 3, 2013) *aff'd sub nom. R.A.G. ex rel. R.B. v. Buffalo City Sch. Dist. Bd. of Educ.*, 569 Fed. Appx. 41 (2d Cir. 2014) ("administrative hearing officers do not have the ability to alter already existing policies" *quoting S.W. by J.W. v. Warren*, 528 F. Supp. 2d 282, 294 (S.D.N.Y. 2007)). Thus, the undersigned finds no violation here.

(e) Appropriate Goals. IEPs are required to contain measurable annual goals pursuant to 34 C.F.R. § 300.320(a)(2). Here, Petitioner argues for inclusion of a range of goals, including adaptive and functional, organizational and executive functioning, and social, emotional and behavioral goals, the latter of which are needed to remedy DCPS's error in not providing BSS goals. Petitioner also sought goals to address comprehension, decoding and phonemic awareness goals to enhance Student's reading, which Educational Consultant emphasized were deficits noted in the comprehensive psychological evaluation. Certainly, with Student's reading baseline of 1<sup>st</sup> grade, Student absolutely needs help here. The undersigned concludes that DCPS failed to demonstrate that these goals were not needed in Student's IEP, thus DCPS is ordered below to convene an IEP meeting to develop additional appropriate goals.

(f) AT Training and Data. Petitioner does not assert that Student's IEP failed to include appropriate AT, but simply that it failed to provide training on the AT that was included, specifically Student's laptop computer. The laptop was for Student to access materials and organize work, in addition to providing text-to-speech, dictating, predictive text, online timers, and graphic organizers. DCPS explained that training is provided when Student is using the AT tools and any additional training would be provided through the IEP team. While Student's math and science teachers reportedly stated that Student required further instruction, Special Education Teacher credibly testified that Student already had developed skills in computer usage, such as typing, uploading assignments, downloading files, and using a whiteboard app, and had in fact demonstrated the skills in Special Education Teacher's class. The undersigned concludes that there was no failure to provide needed AT training, or present levels in the AT considerations in Student's IEP, and thus no violation of the IDEA.

(g) Extended School Year. ESY is necessary to provide FAPE under 34 C.F.R. § 300.106(a) when the benefits a disabled child gains during a regular school year will be "significantly jeopardized" if the child is not provided with an educational program during the summer months. *Johnson v. Dist. of Columbia*, 873 F. Supp. 2d 382, 386 (D.D.C. 2012), *quoting MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 537-38 (4th Cir. 2002); *see also S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 68-69 (D.D.C. 2008) (adopting standard from *MM*). The point of ESY is not to provide additional



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resources or to maximize programming, but to provide FAPE. Here, Student appeared to show regression even without breaks in education, as the MOY SRI scores dropped from 426 to 337 at EOY on 5/24/21, but this was not considered regression for ESY purposes as the scores were all in the same grade level. Student had other dips that were not significant. Moreover, the “mere fact of likely regression” is not a sufficient basis for finding ESY eligibility, for all students may regress to some extent during lengthy breaks; ESY is required only when regression will substantially thwart the goal of “meaningful progress.” *Johnson*, 873 F. Supp. 2d at 386, quoting *MM*, 303 F.3d at 538. Here, there was no meaningful progress that was thwarted. Moreover, while Student was not offered ESY for the summer of 2021, Parent had stated several times that she did not want ESY for Student because it was virtual. DCPS did offer an in-person “Summer Soar” program intended for students to get extra help and polish their skills, with special education teachers available as needed. In these circumstances, the undersigned is persuaded by DCPS and finds no violation.

In sum, when considering Petitioner’s concerns about the IEP, the undersigned is cognizant of the fact that the analysis is not about achieving perfection, but merely an IEP reasonably calculated to enable Student to make appropriate progress in the circumstances. *Andrew 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 *Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015), *S.M. v. Dist. of Columbia*, CV 19-2096 (RC), 2020 WL 7230266, at \*5 (D.D.C. 12/8/20). On balance, this Hearing Officer concludes that DCPS met its burden of persuasion by a preponderance of the evidence on all subparts except (e), where additional goals are needed. Thus, the Order below requires DCPS to convene an IEP team meeting to work with Parent on the additional goals needed in the specific areas specified, which contributes modestly to the compensatory education awarded below.

**Issue 4:** *Whether DCPS denied Student a FAPE by failing to provide Parent access to education records despite multiple written requests. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden of proving a violation here due to Prior Public School A’s failure to seek any of Student’s education records from prior schools, which in the circumstances amounted to a substantive violation and denial of FAPE.

As a general matter, parents of a child with a disability have the right to examine all education records that pertain to the identification, evaluation, and educational placement of the child, and provision of a FAPE. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a); 34 C.F.R. § 300.613(a) (parents must be permitted to inspect and review any education records relating to their child that are collected, maintained, or used by an agency). See also *Jalloh ex rel. R.H. v. Dist. of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) (“parents have the right to examine records and DCPS must give parents the opportunity to inspect, review, and copy records”). An “education record” under IDEA is defined by the regulations implementing the Family Educational Rights and Privacy Act (“FERPA”). 34 C.F.R. § 300.611(b). Under FERPA, an education record includes records, files, documents, and other materials which “(i) contain information directly related to a student; and (ii) are

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maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. Part 99.

Records were requested by Parent’s representatives at various times from 3/3/21 through 11/5/21 when Petitioner’s counsel continued to seek report cards, full reports for interim assessments and standardized testing, and attendance records. Assistant Principal testified that Prior Public School A provided all the records it had available, but made no attempt here to obtain records from the prior schools Student attended.

This Hearing Officer holds that DCPS should have done more to make Student’s records available. Failure to give Parent access to all education records amounts to a denial of FAPE pursuant to 34 C.F.R. § 300.513(a) with a substantive impact from significantly impeding Parent’s opportunity to participate in decision-making regarding the provision of FAPE. This Hearing Officer orders DCPS to provide copies of all of Student’s education records from Prior Public School B and concludes that this violation of FAPE contributes slightly to the award of compensatory education below.

### Remedies

Having found denials of FAPE above, what remains is to determine appropriate remedies. As an initial matter, DCPS is ordered below to convene an IEP meeting to consider and add appropriate goals to Student’s IEP as sought by Petitioner, including (a) social, emotional and behavioral goals, (b) adaptive and functional goals, (c) comprehension, decoding and phonemic awareness goals, and (d) executive functioning and organizational goals. In addition, DCPS is ordered below to provide copies of all of Student’s education records from Prior Public School B that have not been provided to Petitioner during the current calendar year.

Beyond that, the final question is what types and amounts of compensatory education are needed to put Student in the position in which Student would have been but 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 undersigned considers it undeniable that Student has a substantial deficit caused by DCPS’s nearly 2-year delay in Child Find and provision of special education and related services. Based on her knowledge and expertise, Educational Consultant seeks 900 hours of 1:1 academic tutoring in her Compensatory Education Proposal to make up for Student’s losses without an IEP during 2019/20 and 2020/21 until Student’s current IEP was developed on 6/17/21. This was not an hour-for-hour calculation, as Educational Consultant calculated that Student had missed 2,020 hours of specialized instruction. Educational

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Consultant testified that the hours she proposed would be sufficient for Student to make meaningful progress and put Student where Student would have been but for the denials of FAPE, which Educational Consultant considered to be a 3<sup>rd</sup> grade level. Parent agreed that Student needs and could handle an hour/day of academic tutoring.

Based on experience dealing with comparable issues, the undersigned concurs that extensive tutoring is necessary to provide the compensatory education to which Student is entitled, in an effort to move Student's education forward. One-on-one tutoring can help a student progress more quickly by focusing on specific areas in need of remediation and providing more intensity than a classroom. However, the undersigned did not find a denial of FAPE on various claims in this case and was not persuaded by the general computation of 101 weeks for the last two academic years. Moreover, as a practical matter, the tutoring hours proposed by Educational Consultant likely exceed the number of hours that can actually be used by Student. Accordingly, the undersigned authorizes below a total of 600 hours of independent academic tutoring.

In addition, Educational Consultant seeks 70 hours of speech-language services, 70 hours of OT, and 70 hours of counseling in her Compensatory Education Proposal to make up for the lack of related services provided to Student over the period in question. These hours are based on an initial calculation that Student missed 101 hours in each related service at Petitioner's desired level of services of 240 minutes/month (even though the 120 minutes/month of OT was not challenged). However, the undersigned concluded above that the 120 minutes/month in the IEP for each service is appropriate, which reduces the missed hours by half. Further, Educational Consultant based her computations on 101 academic weeks, which is excessive for 2 school years and fails to account for the IEP taking effect on 6/17/21. Of course, the goal of compensatory education is to restore Student to the extent possible to the position in which Student should have been, not to make up services on an hour-for-hour basis, although missed hours may give some guidance. The undersigned concludes that restoring Student can be best achieved by providing 30 hours each of speech-language therapy, counseling, and occupational therapy, as ordered below.

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 2 years to avoid excessive administrative burden on DCPS, although the undersigned encourages Parent to get Student engaged as quickly as possible to ensure that the remedial services that Student needs are obtained without undue delay.

### **ORDER**

Petitioner has prevailed in much of the case, as set forth above. Accordingly, **it is hereby ordered that:**

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- (1) Within 30 days, DCPS shall convene an IEP team meeting to revise Student’s IEP by providing (a) social, emotional and behavioral goals, (b) adaptive and functional goals, (c) comprehension, decoding and phonemic awareness goals, and (d) executive functioning and organizational goals.
- (2) Within 30 days, DCPS shall provide copies of all of Student’s education records from Prior Public School B that have not already been provided to Petitioner in calendar year 2021.
- (3) As compensatory education for the denials of FAPE found herein, within 10 business days after request by Petitioner, DCPS shall provide a letter(s) of authorization for (a) 600 hours of academic tutoring, (b) 30 hours of speech-language therapy, (c) 30 hours of counseling, and (d) 30 hours of occupational therapy, all from independent providers chosen by Petitioner; all hours are to be used within 24 months and 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:

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