

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

OSSE
Office of Dispute Resolution
October 23, 2019

PETITIONER,
on behalf of STUDENT,¹

Date Issued: October 23, 2019

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2019-0202

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Hearing Date: October 18, 2019

Respondent.

Office of Dispute Resolution, Room 423
Washington, D.C.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (GUARDIAN or PARENT), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In her due process complaint, Petitioner alleges that Respondent District of Columbia Public Schools (DCPS) denied Student a free appropriate public education (FAPE) by failing to conduct a timely and comprehensive initial special education eligibility evaluation when Student enrolled in a DCPS school for the 2017-2018 school year.

Petitioner’s Due Process Complaint, filed on August 13, 2019, named DCPS as Respondent. The undersigned hearing officer was appointed on August 14, 2019. On

¹ Personal identification information is provided in Appendix A.

August 28, 2019, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. On September 6, 2019, the parties met for a resolution session and were unable to resolve the issues in dispute.

The due process hearing was convened before the undersigned impartial hearing officer on October 18, 2019 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. Guardian appeared in person for the hearing and was represented by PETITIONER'S COUNSEL and PETITIONER'S CO-COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Counsel for the parties made opening statements. Guardian testified at the hearing and called EDUCATIONAL ADVOCATE 1 and EDUCATIONAL ADVOCATE 2 from LAW FIRM as additional witnesses. DCPS called LEA REPRESENTATIVE as its only witness. Petitioner's Exhibits P-1 through P-57 were admitted into evidence without objection. DCPS' Exhibit R-1 through R-47 were admitted into evidence, except for Exhibit R-17 which was withdrawn. At the conclusion of the presentation of evidence, counsel for the respective parties made oral closing arguments.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issues for determination in this case, as certified in the August 28, 2019

Prehearing Order, are:

A. Whether beginning October 2017 DCPS failed to timely evaluate and/or identify Student as eligible for special education pursuant to DCPS' "Child Find" obligation and/or timely provide Student with an appropriate Individualized Education Program (IEP) and/or Behavior Intervention Plan (BIP);

B. Whether in the 2018-2019 school year, District of Columbia Public Schools failed to conduct a sufficiently comprehensive initial evaluation of Student which included a neuropsychological, occupational therapy, and updated speech and language evaluations, as well as a functional behavior assessment and

C. Whether DCPS has failed to afford the parent's representatives access to Student's education records.

For relief, Petitioner requested that DCPS be ordered to conduct or fund evaluations of the Student in the form of a neuropsychological evaluation, functional behavior assessment, occupational therapy evaluation, and reevaluation for speech and language; to include assessments of the student's executive functioning, motor functioning, sensory processing skills, distractibility, and focus issues; be ordered to provide Guardian with access to all of the Student's educational records and to timely convene an IEP meeting and have an IEP in place prior to the 2019-2020 School Year; order that there will be a reservation of the Parent's right to file a complaint for denials of FAPE, which are presently unknown to the Parent due to the inability to gain access to records, and/or based upon the outcome of the evaluations of the Student, to be preserved for two years prior to the date of the current action; and an award of

compensatory education for the denials of FAPE alleged in the complaint;

FINDINGS OF FACT

After considering all of the evidence received at the October 18, 2019 due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE child, is a resident of the District of Columbia.

Testimony of Guardian.

2. Student is eligible for special education under the IDEA disability classification Emotional Disturbance (ED). Exhibit R-41.

3. Student's birth mother (BIRTH MOTHER) has a history of drug use and addiction issues. Guardian is Student's great aunt and Student resides with her. Guardian's testimony about the dates of her involvement with Student's education was confused. Although the Birth Mother has been involved, off and on, in Student's education in the past, Guardian became Student's legal guardian, by court order, on January 23, 2018. Testimony of Guardian.

4. Student had a tumultuous infancy and early childhood. Student was removed from Birth Mother's care in late 2015 due to neglect and child endangerment. Before placement with Guardian, Student had two prior foster home placements. Student was reportedly removed from both of the prior placements due to Student's violence. Prior to the 2016-2017 school year, Student was enrolled in three day care/preschools. Enrollment was terminated at the first school after Birth Mother failed

to pick up Student on several occasions. Student's enrollment in the next two centers was terminated due to Student's severe temper tantrums. Guardian enrolled Student in PUBLIC CHARTER SCHOOL (PCS) for the 2016-2017 school year. Exhibit P-6.

5. Student was referred to a HEALTH CENTER social worker affiliated with Public Charter School in February 2017. At the time, Student's clinical diagnosis was Adjustment Disorder with disturbance of conduct. Student was provided weekly individual therapy through Health Center. Exhibit P-7.

6. In December 2016, Guardian referred Student to DCPS Early Stages for assessment due to concerns with Student's behaviors (temper tantrums) and possible anxiety disorder and academic delays. SCHOOL PSYCHOLOGIST 1 conducted a psychological evaluation. In her March 20, 2017 report, School Psychologist 1 reported that Student presented with severe temper tantrums where Student presented an unsafe environment for teaching staff and classmates; that although Student appeared to present with developmentally appropriate academic skills and abilities, it was noted by teaching staff that academic progress could not be accurately monitored due to Student's behavior; that on the Wechsler Preschool and Primary Scale of Intelligence (WPPSI-IV), Student's verbal comprehension (VCI=77), fluid reasoning (FRI=77), working memory (WMI=72) and overall cognitive (FSIQ=70) abilities were within the Borderline range. Student's visual spatial (VSI=80) abilities were within the Low Average range and processing speed (PSI=66) abilities were within the Extremely Low range. School Psychologist 1 cautioned that Student's performance on the WPPSI-IV

did not appear to be an accurate assessment of Student's cognitive abilities because inattentiveness and impulsive and hyperactive behavior adversely affected performance. On the Behavior Assessment System for Children, Third Edition (BASC-3), Guardian's and a teacher's rating scale responses indicated concern with Student's inattentiveness and hyperactivity as well as aggressive behavior, difficulty with transitions and anxiety. School Psychologist 1 concluded that Developmental Delay (DD) may best describe Student's educational disability. School Psychologist 1 also reported that Student presented with many behavioral characteristics associated with an Other Health Impairment - Attention Deficit Hyperactivity Disorder (OHI-ADHD). Exhibit P-6.

7. In early March 2017, an Early Stages Speech-Language Pathologist conducted an Initial Speech and Language Evaluation of Student. She reported that Student's receptive and expressive language, articulation, connected speech, social/interpersonal, voice and fluency skills all appeared age appropriate and/or typical. Student also passed the vision and hearing screening. Exhibit P-5.

8. In March 2017, Early Stages conducted an educational evaluation of Student. The assessor reported that on subtests of the Woodcock-Johnson Tests of Achievement, 4th Edition, Student's Brief Achievement score was in the Below Average range. Exhibit R-4.

9. On March 28, 2017, the Public Charter School eligibility team determined that Student was eligible for special education services under the OHI-ADHD classification. Exhibit R-8. Public Charter School developed an initial Individualized

Education Program for Student. In May 2017, Birth Mother reviewed the proposed IEP. At the time, Birth Mother was accompanied by ESCORT. Birth Mother would not sign consent to implement the IEP without an education attorney. Public Charter School's subsequent attempts to follow up with Birth Mother and Escort were unavailing.

Exhibit R-43.

10. Guardian enrolled Student at City School in fall 2017. Over the 2017-2018 school year, Student's behavior was not as bad as before. Guardian started to see a little more self control. Testimony of Guardian.

11. In fall 2017, Guardian communicated with FAMILY SERVICES COORDINATOR of DCPS' Early Childhood Education Family Services Team regarding obtaining counseling services for Student. On October 18, 2017, Guardian emailed Family Services Coordinator Student's March 2017 Early Stages evaluation and Health Center Treatment Plan. In December 2017, Family Services Coordinator made a referral for Student to the DCPS Parent Infant Childhood Enhancement Program (PIECE) and Child Psychiatric Group, for Student to receive therapy to assist with early trauma and social development. Testimony of Guardian, Exhibits P-33, P-34.

12. Guardian re-enrolled Student at City School for the 2018-2019 school year. Student's behaviors got worse. In the fall semester, TEACHER 1 made a referral to LEA Representative for Student to be evaluated for special education eligibility. At the time of that referral, Guardian responded that she did not want the evaluation and tore up the referral form. This was around the time when Teacher 1 left and TEACHER 2

became Student's classroom teacher. Testimony of LEA Representative. From Student's report cards, it appears that the change in teachers occurred around the end of DCPS' winter break. See Exhibit P-47, January 29, 2019 Report Card (Teacher 2 writes about getting to know Student "over the past few weeks.")

13. On or about February 6, 2019, Guardian got back to LEA Representative and told her she did want Student to be evaluated. Testimony of LEA Representative, Exhibit R-19. The school set up several evaluation planning meetings with Guardian, but Guardian did not attend. LEA Representative was also unsuccessful in attempts to reach Guardian by email and by telephone. On March 8, 2018, City School sent a Prior Written Notice (PWN) that Student's multidisciplinary team (MDT) would not proceed with the evaluation process because Guardian was not available. Exhibit R-16, Testimony of LEA Representative.

14. On May 3, 2019, City School reopened the evaluation process and was able to secure Guardian's consent for Student to be evaluated. Testimony of LEA Representative, Exhibits R-22, P-17.

15. On June 5, 2019, SCHOOL PSYCHOLOGIST 2 conducted a Comprehensive Psychological Evaluation of Student. She administered the Reynolds Intellectual Assessment Scales, Second Edition (RIAS-2), the Young Children's Achievement Test, 2nd Edition (YCAT-2) and Conners' Rating Scales. In her June 12, 2019 report, School Psychologist 2 reported that Student's cognitive functioning results indicated Below Average functioning. Student's Memory skills were in the Average

range of functioning. Results of academic functioning testing indicated abilities ranging 1 or more years below current grade level. Results from emotional assessments indicated problems with aggression, poor peer relations, difficulties modulating emotions, focus and attention, and overall disruptive behaviors. Based on these results, School Psychologist concluded that Student did not meet the criteria for a student with a Learning Disability. In light of Student's struggles with impulse control, following directions, reading fluency, mathematics, communication, social interaction, aggression and task completion, she concluded that Student met criteria for student with an Emotional Disturbance. Exhibit P-8.

16. On June 17, 2019, the City School Eligibility Committee determined that Student was eligible for special education as a student with an Emotional Disturbance. Exhibit P-22. Because of summer commitments of school staff, the initial IEP meeting was set for August 8, 2019. Exhibit P-36.

17. By letter of July 16, 2019, Law Firm requested copies of Student's entire academic file for the 2017-2018 and 2018-2019 school years. Exhibit P-31. Records for the 2017-2018 school year were not provided. Testimony of Educational Advocate 1, Exhibit R-26.

18. On August 2, 2019, Law Firm requested "comprehensive evaluations" of Student to include an Occupational Therapy (OT), Speech and Language, Functional Behavior Assessment (FBA) and a Neuropsychological Evaluation. Exhibit P-38. In the September 6, 2019 Resolution Session Meeting (RSM) for this case, DCPS agreed to

conduct OT, Speech and Language and FBA assessments. DCPS has not agreed to conduct a neuropsychological evaluation. Exhibit P-27.

19. Student's initial DCPS IEP was completed on October 1, 2019. The IEP identified Mathematics, Reading, Adaptive/Daily Living Skills and Emotional, Social and Behavioral Development as Areas of Concern. The initial IEP provides for Student to receive 10 hours per week of Specialized Instruction Services outside general education and 240 minutes per month of Behavioral Support Services. Guardian states that Student has shown a lot of improvement under the IEP. Exhibit R-31, Testimony of Guardian. (The appropriateness of the initial IEP is not at issue in this proceeding.)

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this hearing officer's own legal research, my Conclusions of Law are as follows:

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by the local education agency, not applicable to this case, the agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the agency. The

burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

Analysis

- A. Beginning October 2017, did DCPS fail to timely evaluate and/or identify Student as eligible for special education pursuant to DCPS' "Child Find" obligation and/or timely provide Student with an appropriate Individualized Education Program (IEP) and/or Behavior Intervention Plan (BIP)?

At the beginning of the 2017-2018 school year, Student transferred from Public Charter School, an independent local education agency (LEA), to City School, at which time DCPS became Student's LEA. Although Student had a history of behavior problems affecting educational progress, and had been determined eligible for special education at Public Charter School in March 2017, DCPS did not evaluate Student for special education until the spring of 2019. Petitioner contends that from October 2017 onward, DCPS had cause to suspect that Student needed special education and should have initiated the evaluation process. DCPS responds that it evaluated Student in 2019, as soon as a teacher referral was made and Guardian gave her consent to evaluate the child.

Under the IDEA's child-find requirement, the District of Columbia must "ensure that '[a]ll children with disabilities residing in the [District] . . . who are in need of special education and related services are identified, located, and evaluated.'" *Scott v. District of Columbia*, 2006 WL 1102839, at 8 (D.D.C. Mar. 31, 2006) (quoting *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005); 20 U.S.C. §

1412(a)(3). “As soon as a child is identified as a potential candidate for services, DCPS has the duty to locate that child and complete the evaluation process.” *Long v. District of Columbia*, 780 F.Supp.2d 49, 56 (D.D.C.2011). “The ‘child find’ duty extends even to ‘[c]hildren who are suspected of being a child with a disability . . . even though they are advancing from grade to grade.’ 34 C.F.R. § 300.111(c)(1).” *Sch. Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928, 941 (E.D.Va. 2010); *Horne v. Potomac Preparatory P.C.S.*, 209 F. Supp. 3d 146, 157–58 (D.D.C. 2016).

The history in this case is unusual. In March 2017, when Student was enrolled in Public Charter School, Guardian, who at the time did not have parental rights, referred Student to Early Stages for comprehensive special education evaluations. After the Early Stages evaluation, Public Charter School determined on March 28, 2017 that Student was eligible as a child with an OHI-ADHD disability. But following that determination, Birth Mother refused consent to implement the Public Charter School IEP. At the beginning of the 2017-2018 school year, Guardian, who still did not have parental rights, enrolled the child in DCPS’ City School. In October 2017, Guardian provided the Early Stages evaluation of Student to a DCPS family services social worker, so that Student could receive behavioral therapy. But apparently Guardian did not provide the evaluation or Public Charter School’s eligibility determination to City School and City School staff was not aware that Student had already been determined to be eligible for special education by the prior LEA.

Assuming that Guardian did not provide the Early Stages evaluation to City

School, it was DCPS' responsibility – not the family's – to obtain Student's school records from Public Charter School. The applicable District of Columbia regulation provides, "[u]pon a student's transfer from a charter school to a D.C. Public School, . . . a copy of the student's records shall be transferred immediately to the receiving school." 5E DCMR § 918.2. If City School did not obtain Student's records from PCS, or did not review the records received, then City School is at fault for that omission. If City School staff had reviewed Student's PCS education records when Student transferred from Public Charter School, City School would have known about the March 28, 2017 eligibility determination. *See, e.g.*, Exhibit R-43 (Discussion of Birth Mother's review of PCS IEP in Special Education Data System (SEDS) records). I conclude that DCPS must be deemed to have had notice of Public Charter School's March 28, 2017 eligibility determination upon Student's transfer to City School. Therefore, under the IDEA's child-find mandate, DCPS should have then identified Student as a potential candidate for services and DCPS had the duty to timely complete the evaluation process. *See Long, supra.*

An LEA's failure to appropriately assess a student for suspected disabilities is a procedural violation of the IDEA. *See, e.g., I.T. ex rel. Renee T. v. Department of Educ.*, 2012 WL 3985686, 16 (D.Haw., Sept. 11, 2012). *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012). Procedural violations may only be deemed a denial of FAPE if the procedural inadequacies—

- (i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child;
or

(iii) Caused a deprivation of educational benefit.

34 CFR § 300.513(a)(2). In this case, Student was determined eligible when evaluated by PCS in March 2017 and again when evaluated by DCPS in June 2019. DCPS does not contend that Student did not have a qualifying disability throughout this period. I conclude, therefore, that DCPS' failure to timely evaluate Student, when Student transferred from Public Charter School in fall 2017, caused a deprivation of educational benefit.

DCPS asserts two justifications for not evaluating Student in fall 2017, namely that Guardian did not have parental rights as a legal guardian until January 2018 and that Guardian, herself, denied consent to evaluate Student for a short period around January 2019. However, the IDEA's child-find mandate required DCPS to undertake to evaluate Student as soon as it had notice of the suspected disability, regardless of who held parental rights at the time. Moreover, Guardian's withholding consent to evaluate in the winter and spring of 2019 has no bearing on DCPS' duty to evaluate in fall 2017. I conclude that DCPS' failure to ensure that Student was timely evaluated when Student transferred to City School from Public Charter School in fall 2017 was a denial of FAPE.

B. In the 2018-2019 school year, did DCPS fail to conduct a sufficiently comprehensive initial evaluation of Student which included a neuropsychological, occupational therapy, and updated speech and language evaluations, as well as a functional behavioral assessment?

DCPS conducted an initial special education eligibility evaluation of Student in June 2019. Petitioner contends that this evaluation was not comprehensive because it did not include a neuropsychological assessment, an OT assessment, a Speech and Language assessment or an FBA. At the September 6, 2019 Resolution Session Meeting for this case, DCPS agreed to conduct the requested OT, FBA and Speech and Language assessments. DCPS maintains that Student does not require a neuropsychological assessment.

U.S. Department of Education regulations require that, as part of an initial special education evaluation and as part of any reevaluation, a local education agency (LEA) must administer such assessments as may be needed to produce the data needed to determine (i) whether a child is a child with a disability and (ii) what are the educational needs of the child. *See* 34 CFR § 300.305(a), (c). The LEA must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, communicative status and motor abilities. 34 CFR § 300.304(c)(4). Decisions regarding the areas to be assessed are determined by the suspected needs of the child. *See* Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46643 (August 14, 2006). IDEA evaluations depend upon the exercise of professional judgment by the child's educators, which is entitled to a reasonable degree of deference. *Perrin on behalf of J.P. v. Warrior Run Sch. Dist.*, No. 4:13-CV-2946, 2015 WL 6746306 (M.D.Pa. Sept. 16, 2015), *report and recommendation*

adopted sub nom. Perrin v. The Warrior Run Sch. Dist., No. 13-CV-02946, 2015 WL 6746227 (M.D. Pa. Nov. 4, 2015), citing *County Sch. Bd. of Henrico County v. Z.P.*, 399 F.3d 298, 307 (4th Cir.2005).

At the due process hearing, Petitioner's expert, Educational Advocate 1, a neuropsychologist associated with Law Firm, opined that due to Student's pre- and post-natal complications, early childhood experiences and inadequate nutrition as well as Student's school performance, a neuropsychological assessment was needed. This history include drug use by Birth Mother during pregnancy, Student's drug withdrawal after birth, parental neglect, exposure to domestic violence, and placement in several foster homes. According to Educational Advocate 1, these experiences can affect a child's nerve cell development and, in this case, warranted a neuropsychological assessment as part of Student's DCPS eligibility evaluation. DCPS' expert, LEA Representative, opined that DCPS' June 2019 comprehensive psychological evaluation of Student was sufficient to determine Student's educational needs, without a neuropsychological assessment. Here, I found the opinion of Educational Advocate, who qualified as an expert in neuropsychology, to be more credible and I find that Guardian has established that Student needs a neuropsychological assessment to complete Student's evaluation data.

As noted above in this decision, an LEA's failure to appropriately assess a student is a procedural violation of the IDEA. Procedural violations may only be deemed a denial of FAPE if the procedural inadequacies—

- (i) Impeded the child's right to a FAPE;
- (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child;
or
- (iii) Caused a deprivation of educational benefit.

34 CFR § 300.513(a)(2). In this case, Petitioner's representatives only requested the additional assessments in early August 2019. In *Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254 (D.D.C.2005), the Court explained that because the IDEA and its implementing regulations are silent about the time frame within which an agency must conduct a reevaluation, reevaluations should be conducted in a "reasonable period of time," or "without undue delay," as determined in each individual case. *Id.* at 259, citing *Office of Special Education Programs Policy Letter in Response to Inquiry from Jerry Saperstone*, 21 IDELR 1127, 1129 (1995). Under the circumstances in this case, I conclude that Petitioner has not shown that the short delay in completing these additional assessments has deprived Student of educational benefit, significantly impeded Guardian's participation in decision making or impeded Student's right to a FAPE. For that reason, I do not find that Student has been denied a FAPE by DCPS' failure to conduct these additional assessments when first requested by Law Firm in August 2019.

- C. Has DCPS failed to afford Guardian's representatives access to Student's education records?

DCPS must permit parents to inspect and review any education records relating

to their children that are collected, maintained, or used by the agency. *See* 34 CFR § 300.613(a). By letter of July 16, 2019, Law Firm requested copies of Student's entire academic file for the 2017-2018 and 2018-2019 school years. Student's records for the 2017-2018 school year were not provided. It appears that DCPS has inexplicably not maintained Student's education records prior to the 2018-2019 school year. *See, e.g.,* School Psychologist 2's June 12, 2018 Comprehensive Psychological Evaluation, Exhibit R-26, where she reported that Student's previous report cards were unavailable in Student's cumulative file. If the 2017-2018 records are, in fact, lost, Guardian cannot show that DCPS has denied her the right to examine the file. However, I will order DCPS to make a diligent search to locate the missing records and to provide Guardian's representatives any additional education records which are located.

Compensatory Education Remedy

In this decision, I have determined that DCPS denied Student a FAPE by not timely conducting a special education eligibility evaluation when Student transferred from Public Charter School to City School in fall 2017. Prior to July 1, 2018, District of Columbia special education regulations required that the District must evaluate a student for special education eligibility within 120 days of referral. *See* 5E DCMR § 3005.2. The initial IEP meeting must be held within 30 days after the eligibility determination. 34 CFR § 300.323(c)(1); *G.G. ex rel. Gersten v. District of Columbia*, 924 F.Supp.2d 273, 279 (D.D.C.2013). Allowing a reasonable period for DCPS to have obtained Student's education records from the charter school and to supplement the

March 2017 Early Stages assessment as needed, I conclude that DCPS should have completed its evaluation of Student, determined eligibility and developed the initial IEP at least by the end of the second term of the 2017-2018 school year – on or about January 19, 2018.

“An award of compensatory education aims to put a student . . . in the position he would be in absent the FAPE denial, and it accordingly must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Collette v. District of Columbia*, No. CV 18-1104 (RC), 2019 WL 3502927 (D.D.C. Aug. 1, 2019) (internal quotations and citations omitted.)

Law Firm employee, Educational Advocate 2, offered a compensatory education proposal for Student, which recommended, *inter alia*, 300 hours of academic tutoring and 60 hours of behavioral support services. Educational Advocate 2 based her award recommendation on the assumption that Student should have been provided specialized instruction and behavioral support, beginning with the third term of the 2017-2018 school year, at the level of services provided in the October 1, 2019 IEP. *See* Exhibit P-53. I find Educational Advocate 2's recommendation for compensatory specialized instruction services to be reasonably calculated to provide the educational benefits that Student should have received, had DCPS timely evaluated Student and developed an appropriate IEP by the end of the second term of the 2017-2018 school year.

With regard to Educational Advocate 2's recommendation for compensatory

behavioral support services, the hearing evidence did not establish that Student needed additional behavioral services. The purpose of such related services is to assist a child with a disability to benefit from special education. *See* 34 CFR § 300.34(a). The hearing record indicates that Student is provided counseling services by other District agencies. Guardian testified that the child is already showing a lot of improvement with the play therapy services being provided by City School's social worker. I find that there was no competent evidence that Student's appropriate education would be enhanced by additional behavioral support services. *See Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523–24 (D.C. Cir. 2005) (No obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.) For that reason, I decline to award behavioral support services as compensatory education for Student.

ORDER

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

ORDERED:

1. Within 21 school days of the date of this decision, DCPS shall conduct, or provide funding authorization for the Parent to obtain, a neuro-psychological evaluation of Student;
2. Within 10 school days of the date of this decision, DCPS shall conduct a thorough records search to locate all education records relating to Student that have been collected, maintained, or used by the District and shall issue a written certification to the Parent that this records search has been completed and whether additional records have been located. DCPS shall promptly provide the Guardian's representatives copies of all such located records for the 2017-2018 and 2018-2019 school years, not heretofore

furnished to Law Firm;

3. As compensatory education for the denials of FAPE determined in this decision, within 10 school days of the date of this decision, DCPS shall issue funding authorization for the Parent to obtain 300 hours of individual academic tutoring for Student and
4. All other relief requested by the Petitioner herein is denied.

Date: October 23, 2019

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

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

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