

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, NE, 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
September 17, 2014

PETITIONER,
on behalf of STUDENT,¹

Date Issued: September 16, 2014

Petitioner,

Hearing Officer: Peter B. Vaden

v.

PUBLIC CHARTER SCHOOL-2,

Hearing Date: September 9, 2014

Respondent.

Office of Dispute Resolution,
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 Petitioner (the Petitioner or MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (DCMR). In her Due Process Complaint, Petitioner alleges that Student has been denied a free appropriate public education (FAPE) by inappropriate Individualized Education Plans (IEPs) developed for Student by Public Charter School-2 (PCS-2) and by a failure of PCS-2 to appropriately address Student's behavior issues.

¹ Personal identification information is provided in Appendix A.

Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on July 2, 2014, named PCS-2 as Respondent. The parties met for a resolution session on July 31, 2014 and did not reach an agreement. On July 21, 2014, I convened a telephone prehearing conferences with counsel to discuss the hearing date, issues to be determined and other matters. The 45-day period for issuance of this decision began on August 2 2014. On August 28, 2014, I granted Respondent's unopposed request for a 7-day continuance, extending the due date for the final decision to September 22, 2014.

The due process hearing was held before this Impartial Hearing Officer on September 9, 2014 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. The Petitioner and Student appeared in person, and were represented by PETITIONER'S COUNSEL. Respondent PCS-2 was represented by STUDENT SUPPORT DIRECTOR and by PCS-2' COUNSEL and PCS-2' CO-COUNSEL.

Counsel for both parties made opening statements. Petitioner testified and called EDUCATIONAL ADVOCATE, ADMISSIONS DIRECTOR, Student, and SCHOOL PSYCHOLOGIST as witnesses. PCS-2 called SPECIAL EDUCATION COORDINATOR (SEC), CLINICAL PSYCHOLOGIST, and Student Support Director as witnesses. Petitioner's Exhibits P-1 through P-27 were admitted into evidence without objection, with the exception of Exhibit P-12, which was not offered. Respondent's Exhibits R-1 through R-34 were admitted into evidence without objection, except for Exhibits R-2, R-3, and R-24 which were withdrawn, and Exhibits R-8, and R-29 through R-32 which were not offered. Counsel for both parties made closing arguments. Neither party requested leave to file a post-hearing memorandum.

STAY-PUT MOTION

On August, 20, 2014, I issued an order granting Petitioner's motion for "stay-put" protection under the IDEA, 20 U.S.C. § 1415(j). Respondent PCS-2 was ordered, during the pendency of this administrative proceeding, to maintain Student in the educational placement provided in his February 6, 2014 IEP, or if space were no longer available, that Respondent provide a suitable similar placement.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The following issues for determination were certified in the July 21, 2014

Prehearing Order:

- Whether PCS-2 failed to develop an appropriate IEP for Student, on or about June 9, 2014, in that the IEP failed to provide Student with a dedicated aide; and failed to provide sufficient instructional services in an outside of general educational setting;
- Whether PCS-2 failed to develop an appropriate IEP for Student on or about February 6, 2014 in that the IEP failed to provide Student with a dedicated aide; and failed to provide sufficient instructional services in an outside of general educational setting; and
- Whether PCS-2 denied Student a FAPE by failing to refer him for a Functional Behavioral Assessment and/or convene an MDT meeting to develop an appropriate Behavior Intervention Plan to address Student's behavior problems during the 2012-2013 school year and at the beginning of the 2013-2014 School Year.

For relief, Petitioner requests that PCS-2 be ordered to fund Student's private placement at NONPUBLIC SCHOOL, with transportation. Petitioner also seeks an award of compensatory education.

FINDINGS OF FACT

After considering all of the evidence, as well as the argument of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student, an AGE youth, resides with Mother in the District of Columbia. Testimony of Mother. Student is a "child with a disability" as defined by the IDEA and is eligible for special education and related services under the primary disability classification Other Health Impairment - Attention Deficit/Hyperactivity Disorder (OHI-ADHD). Exhibits R-8, R-19.

2. For the 2013-2014 school year, Student was enrolled in GRADE at PCS-2 in Washington, DC. Student began attending PCS-2 at the beginning of the 2012-2013 school year. Previously, Student attended PUBLIC CHARTER SCHOOL 1 (PCS-1). Testimony of Mother.

3. In March 2012, Student was initially determined eligible for special education services at PCS-1 under the primary disability classification Specific Learning Disability (SLD). In the PCS-1 Evaluation Summary Report, Student was reported to have obtained a Full-Scale IQ score of 74, Borderline range, on the Wechsler Intelligence Scale for Children (WISC-IV) and to have scored Below Average on Oral Language, Total Reading, Reading Comprehension and Fluency, and Written Expression, using the Wechsler Individual Achievement Test (WIAT-III). Student's mathematics composite scores on the WIAT-III were Average. Exhibit R-4.

4. In his March 19, 2012 initial IEP at PCS-1, Student was provide annual goals for Reading, Written Expression, Communication/Speech and Language, Emotional, Social and Behavioral Development and Motor Skills Development. The IEP team determined that Student should receive 7.5 hours per week of Specialized

Instruction in the general education setting, 30 minutes per week of Occupational Therapy (OT) and 60 minutes per week of Speech-Language Pathology (SLP). Student was also determined eligible for Extended School Year (ESY) services. Exhibit R-4.

5. Student enrolled in PCS-2 at the beginning of the 2012-2013 school year. PCS-2 has elected to be treated as an "LEA Charter," *i.e.*, as its own local education agency (LEA) for purposes of Part B of the IDEA. *See* 5E DCMR § 923.3. Therefore, with respect to children enrolled in PCS-2, the charter school is responsible for meeting the IDEA requirements applicable to an LEA. Hearing Officer Notice.

6. Special Education Coordinator (SEC) was Student's special education teacher, for the two years he attended PCS-2. She worked with Student on reading and written expression goals. Student was not on grade level and struggled with grade-level skills. The staff at PCS-2 decided that PCS-1' initial IEP was not appropriate because Student lacked foundation skills in reading and needed instruction in phonological and phonemic awareness. On December 2, 2012, PCS-2 convened Student IEP team to revise his IEP. The team revised Student's present levels of performance, added math goals to the IEP, add hours of Behavioral Support Services, and increased Student's hours of Specialized Instruction. In the revised December 2, 2012 IEP, the IEP team provided Student 15 hours per week of Specialized Instruction, including 5 hours outside general education, 1 hour per week of Behavioral Support Services, 30 minutes per week of OT and 60 minutes per week of SLP. Student was also provided transportation services and the IEP was aligned to D.C. Common Core State Standards. Testimony of SEC, Exhibit R-5.

7. Student's PCS-2 IEP team reconvened on February 7, 2013 for the annual IEP review meeting. In the first two quarters of the 2012-2013 school year, Student had

made progress in mathematics and in reading. The IEP team increased Student's Specialized Instruction Services to 20 hour per week, of which 10 hours would be outside general education. Exhibit R-6. The additional hours outside general education were for mathematics instruction. Testimony of Special Education Coordinator. The team added a school-wide Behavior Tracker as a Classroom Aid/Service in the IEP. Exhibit R-6.

8. At the February 7, 2013 IEP team meeting, Mother was told that Student would be retained in Grade, because of his insufficient progress in the general education setting. The decision was made because Student had come to PCS-2 two-to-three grade levels behind. Although he was making progress, he was not on grade level. The PCS-2 IEP team members did not want Student to continue for another year without a change. Testimony of SEC.

9. During his time at PCS-2, Student struggled with focus. The school put in place informal accommodations, including trackers and preferential seating and allowed Student to take schoolwork breaks inside the classroom and to walks in the building. Testimony of SEC. (In rebuttal testimony, Student denied that he was allowed to take breaks at PCS-2. Where, as here, the testimony is in direct conflict and both witnesses appear credible, I find that the Petitioner, who had the burden of proof, did not establish that Student was not allowed to take breaks.)

10. In March 2013, Student was referred to PSYCHOLOGIST for a clinical and ADHD psychological evaluation for attentional concerns. In her May 21, 2013 report, Psychologist reported that behaviorally, it appeared that Student was demonstrating symptoms of ADHD at home and at school. Psychologist predicted that once Student's ADHD symptoms had been treated, it would be clearer whether there were additional

oppositional behaviors that warranted attention. She diagnosed Student with ADHD-Combined Type and Oppositional Defiant Disorder (Provisional). Exhibit R-7.

11. At an eligibility meeting on May 31, 2013, the PCS-2 Multidisciplinary Team (MDT) changed Student's primary IEP disability to OHI-ADHD. Exhibit R-19.

12. Student failed all of his courses, except Literature Circle, for the 2012-2013 school year. Exhibit R-10.

13. Student repeated Grade for the 2013-2014 school year. Student received F's in all courses for the first three quarters, except for a C in History for the Third Quarter. In the Fourth Quarter, Student received A's in Reading and Writing, C's in History, Math Procedures and Math Problem Solving and an F in Science. Student was promoted to the next grade. Exhibit R-20.

14. On IEP Progress Reports, at the end of the first quarter reporting period, ending October 28, 2014, Student was reported as "Progressing" on all of his IEP goals, except for visual motor and fine motor activities, which he had mastered, and structuring in Reading and identifying parts of speech, for which the goals had not been introduced. Exhibit R-21. At the end of the second quarter reporting period, ending February 6, 2014, Student was reported as "Progressing" on all of his IEP goals. Exhibit R-22. At the end of the third quarter reporting period, ending May 5, 2014, Student was reported as "Progressing" on all of his IEP goals, except for three SLP goals, which he was reported to have Mastered. Exhibit R-23.

15. During the second quarter of the 2013-2014 school year, Student's behaviors appeared greatly improved to SEC. This corresponded to the period when Student was receiving medication for ADHD. Student was able to focus for an extended span and did not have to be redirected so often. He was eager to learn and was able to

grasp concepts quickly. Testimony of SEC. Mother decided to take Student off the ADHD medications because he would “zombie out.” Testimony of Mother. In the third quarter of the 2013-2014 school year, redirection no longer worked. Student was non-compliant and unwilling to follow directions to an extent which SEC had not seen before. Testimony of SEC.

16. At the February 6, 2014 IEP annual review meeting, the PCS-2 former special education coordinator reported that Student’s behavior had declined since his medications had been discontinued. Mother explained that she was not opposed to the medication, but that she was having a problem with insurance coverage. The mathematics teacher reported that Student was losing instruction every day and that his weekly quiz grades had declined because of his behavior affecting him in the classroom. The reading teacher reported that Student’s performance had declined since the winter break and that he struggled to stay focused and to avoid being a distraction. SOCIAL WORKER reported that Student’s ability to remain focused and compliant with rules in class was inconsistent. However, Student was demonstrating progress on self-control skills and strategies. Exhibit R-13.

17. The February 6, 2014 IEP left the hours of Student’s Specialized Instruction unchanged at 20 hours per week, including 10 hours per week outside general education. Related Services were continued at 60 minutes per week of Behavioral Support Services, 60 minutes per month of OT and 60 minutes per month of SLP. The IEP team agreed to conduct a Functional Behavioral Assessment (FBA) due to the increase in Student’s problem behaviors. Exhibit R-12.

18. Social Worker conducted an FBA of Student on April 9, 2014. She hypothesized that when Student is seeking to escape an undesired situation or request,

he likely presents off-task, talks out, and/or excessively moves/fidgets and also that the behaviors appeared sometimes to be internally motivated. She reported that Student was more likely to demonstrate on-task behaviors when he had one-on-one support.

Exhibit R-15.

19. PCS-2 developed a Behavior Intervention Plan (BIP) for Student on May 23, 2014, employing self-control strategies taught in behavioral support sessions, a daily behavioral chart, “flip cards” for when Student to flip when he talked out of turn, and unscheduled breaks. The BIP provided for rewards for appropriate behaviors and negative consequences for inappropriate behaviors. Exhibit R-16.

20. Student’s mathematics achievement was tested using the KeyMath-3 Diagnostic Assessment on July 17, 2014. His standard score, 97, was considered Average. Exhibit R-25.

21. On the Woodcock-Johnson III Tests of Achievement administered to Student on August 4, 2014, Student was scored at the following grade-equivalents: Broad Reading - 3.3, Broad Written Language - 4.3, Basic Reading Skills - 3.2 and Written Expression - 4.3. Exhibit R-28.

22. PCS-2 had an April 2014 deadline for current students to apply to re-enroll for the 2014-2015 school year. Because PCS-2 has a waiting list, students who missed the re-enrollment deadline would have to enter the D.C. public charter school common lottery system to regain admission. Although she was aware of the deadline, Mother did not seek to re-enroll Student for the 2014-2015 school year until the July 31, 2014 resolution session meeting for this case, and Student lost his place at the school. At the resolution session meeting, Director of Student Support contacted the PCS-2 Head of School and was able to place Student on PCS-2’ wait list. As of that date, Student was

the 12th student on the wait list. Exhibit R-27. As of the due process hearing date, PCS-2 still had no space for Student. In the interim, Mother had enrolled Student in CITY ELEMENTARY SCHOOL, Student's neighborhood public school. Testimony of Mother.

CONCLUSIONS OF LAW

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

Burden of Proof

The burden of proof in a due process hearing is normally the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

Analysis

1. Did PCS-2 fail to develop an appropriate IEP for Student on February 6, 2014 in that the IEP failed to provide Student with a dedicated aide and failed to provide sufficient instructional services in an outside of general educational setting?

Petitioner contends that PCS-2's February 6, 2014 IEP was inappropriate for Student because the IEP did not provide sufficient instructional services outside general education and did not provide a dedicated aide.

The IDEA ensures that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). The IDEA guarantees children with disabilities the right to a FAPE. *Id.* In seeking an appropriate education for students with disabilities, the child's parents, teachers, school officials, and other professionals collaborate to develop an IEP to meet the child's unique needs. *See* 20 U.S.C. § 1414(d)(1)(B).

“The IEP must, at a minimum, ‘provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.’ ” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005) (quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)).

N.T. v. District of Columbia, 839 F.Supp.2d 29, 33 (D.D.C.2012). “Courts have consistently underscored that the appropriateness of an IEP is not a question of whether it will guarantee educational benefits, but rather whether it is reasonably calculated to do so; thus, the court judges the IEP prospectively and looks to the IEP’s goals and methodology at the time of its implementation.” *K.S. v. District of Columbia*, 962 F.Supp.2d 216, 221 (D.D.C.2013) (internal quotations and citations omitted.)

SEC testified that after Student enrolled in PCS-2 for the 2012-2013 school year, PCS-2 made substantial changes to his IEP in December 2012 and in February 2013 because, in the judgment of PCS-2 staff, Student was already two to three grade-years behind in school and Student’s incoming PCS-1 IEP did not address his lack of foundation in reading skills or his weaknesses in mathematics. The December 2012 and February 2013 IEPs added math goals, increased Student’s hours of Specialized Instruction both inside and outside of general education, and added Behavioral Support Services. Also, at the end of the 2012-2013 school year, following completion of a new psychological evaluation, Student’s primary disability classification was changed from SLD to OHI-ADHD. Despite the increase in Specialized Instruction and the addition of Behavioral Support Services in his IEPs, Student failed all but one of his courses for the 2012-2013 school year. Student was retained in Grade for the 2013-2014 school year, but his grades did not improve before the February 6, 2014 annual IEP review meeting. For the first three quarterly marking periods of the 2013-2014 school year, Student

received F's in all courses except for a C in History.

The IDEA regulations require that at the IEP annual review meeting, the IEP team must review the student's IEP and revise the plan, as appropriate, "to address any lack of expected progress toward the IEP annual goals and in the general education curriculum." See 34 CFR § 300.324(b). When the PCS-2 IEP team convened on February 6, 2014 for Student's annual IEP review, the IEP team discussed Student's struggles to focus on work, to remain seated in class and to avoid being a distraction. Student's inappropriate in-class behaviors were reported to have recently increased after his medication for ADHD was stopped. Notwithstanding Student's failing grades and classroom behavior issues, the IEP team continued Student's Specialized Instruction Services unchanged at 20 hours per week, including 10 hours outside general education. SEC testified that this IEP was appropriate because Student's quarterly IEP progress reports showed he was making progress toward his IEP goals. While it is correct that the IEP progress reports did consistently state that Student was "Progressing" on most of his IEP goals, his failing grades and the concerned comments of his teachers at the February 6, 2014 IEP meeting told a different story. Student was not showing progress in the general education curriculum. I find that by not revising Student's Specialized Instruction services and placement in the February 6, 2014 IEP, the IEP team failed to address Student's lack of progress under the prior IEP. The February 6, 2014 IEP was, therefore, not reasonably calculated to provide some educational benefit to Student. See *A.I. ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 167 (D.D.C.2005) (Highly relevant whether student was making progress

and experiencing meaningful educational benefit from his placement.)² This was a denial of FAPE.

2. Did PCS-2 fail to develop an appropriate IEP for Student on June 9, 2014, in that the IEP failed to provide Student with a dedicated aide, and failed to provide sufficient instructional services in an outside of general educational setting?

For the last quarter of the 2013-2014 school year, Student's grades at PCS-2 improved dramatically. After previously failing most courses, he received two A's, three C's and an F (in Science). At the end of the year, Student was promoted to the next grade. (SEC attributed the improvement to the institution of Student's Behavior Intervention Plan. However the BIP was not adopted until May 23, 2014. The hearing evidence does not establish the reason for Student's academic improvement.) At the June 6, 2014 IEP meeting, Mother's educational advocate requested, *inter alia*, that Student be provided a dedicated aide and a non-public, full-time special education placement. The PCS-2 team members did not agree that Student needed a dedicated aide or a non-public placement, but agreed to increase Student's outside general education Specialized Instruction to 15 hours per week, for a total of 25 hours per week of Specialized Instruction.

In her due process complaint, Mother contends that PCS-2 denied Student a FAPE by not providing the requested dedicated aide or even more hours of services in the outside general education setting. However, at the due process hearing, Mother

² The Petitioner has not established that Student required a dedicated aide in February 2014. The IDEA requires that children with disabilities must be provided supplementary aids and services, including, if needed a dedicated aide, to enable them to be educated with nondisabled children to the maximum extent appropriate and to be involved in and make progress in the general curriculum. *See* 20 U.S.C. § 1401(33); 34 CFR § 300.321(a)(4). There was no competent evidence that Student needed a dedicated aide in order to continue to be educated with his nondisabled peers.

offered no probative evidence that by the time of the June 6, 2014 IEP meeting, Student was not making progress under his prior IEP or that the June 6, 2014 IEP, which increased his Specialized Instruction services, was not reasonably calculated to enable Student to receive educational benefits. *See Board of Educ. of Hendrick Hudson Central School Dist., Westchester County v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 3051 (1982). I find that Petitioner did not meet her burden of proof on this issue.

3. Did PCS-2 deny Student a FAPE by failing to refer him for an FBA and/or convene an MDT meeting to develop an appropriate BIP to address Student's behavioral problems during the 2012-2013 school year or at the beginning of the 2013-2014 School Year?

At the February 6, 2014 IEP annual review meeting, the PCS-2 IEP team agreed to have a Functional Behavioral Assessment (FBA) of Student conducted due to an increase in his problem behaviors, including not staying focused and disrupting his classes. Petitioner contends that PCS-2 denied Student a FAPE by not conducting an FBA or developing a Behavior Intervention Plan (BIP) much sooner after he enrolled in the charter school. SEC testified that PCS-2 initially used other strategies to address Student's behaviors, before resorting to a formal BIP.

The IDEA requires the IEP team, in the case of a child whose behavior impedes the child's learning or that of others, to consider the use of positive behavioral supports, and other strategies to address that behavior. *See* 34 CFR § 300.321(a)(2)(i). This provision focuses on interventions and strategies, not assessments, to address the needs of a student whose behavior impedes the child's learning or that of others. *See* Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46683 (August 14, 2006). Under the IDEA, FBAs and BIPs are only required when a Manifestation Determination Review (MDR) team determines that

a student's code of conduct violation was a manifestation of his disability under 34 CFR §300.530(e). *See* 34 CFR §300.530(f). There was no MDR event alleged in this case.

After Student began attending PCS-2 in the fall of 2012, PCS-2 adopted a number of strategies to address his problem behaviors, including adding behavioral goals and services to his IEP in December 2012, providing for a school-wide Behavior Tracker in his February 7, 2013 IEP, referring Student for a psychological evaluation in early 2013 for "attentional concerns", and changing Student's primary disability classification to OHI-ADHD in May 2013. I find that since Student enrolled in PCS-2, the school has been proactive in addressing the behaviors that impede Student's learning. Petitioner has not established that PCS-2 denied Student a FAPE by not referring him for an FBA before the February 6, 2014 IEP meeting.

Remedy

In this decision, I have found that Student was denied a FAPE by the failure of the PCS-2 IEP team to revise his IEP on February 6, 2014 to address his lack of expected progress. However, in the last quarter of the 2013-2014 school year, Student did make academic progress. Petitioner did not establish that Student's IEP continued to be inappropriate after it was revised on June 6, 2014. I conclude, therefore, that Student was denied a FAPE from February 6, 2014 until his IEP was revised on June 6, 2014.

The IDEA gives Hearing Officers "broad discretion" to award compensatory education as an "equitable remedy" for students who have been denied a FAPE. *See Reid v. District of Columbia*, 401 F.3d 516, 522-23 (D.C.Cir.2005). The award must "provide the educational benefits that likely would have accrued from special education services" that the school district "should have supplied in the first place." *Id.* at 524. A compensatory education award must "rely on individualized assessments" after a "fact

specific” inquiry. *Id.* “In formulating a new compensatory education award, the hearing officer must determine ‘what services [the student] needs to elevate him to the position he would have occupied absent the school district’s failures.’” *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010) (quoting *Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid*, 401 F.3d at 527.) *See, also, e.g., Turner v. District of Columbia*, 952 F.Supp.2d 31 (D.D.C.2013). The ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Gill v. District of Columbia*, 770 F.Supp.2d 112, 116-117 (D.D.C.2011), *aff’d.*, *Gill v. District of Columbia*, 2011 WL 3903367, 1 (D.C.Cir. Aug. 16, 2011).

I find that the services, which the February 6, 2014 PCS-2 IEP team should have supplied in the first place, were the 15 hours per week of Specialized Instruction outside general education (pull-out instruction) provided in the June 23, 2014 IEP. The February 6, 2014 IEP provided only 10 hours per week of pull-out instruction. Therefore for a period of approximately 16 weeks, Student was provided only two-thirds of the pull-out instruction he needed. Educational Advocate recommended a compensatory education award of 72 hours of independent tutoring. However, her proposal assumes that Student should also be compensated for PCS-2's not providing him a dedicated aide, which I have found was not a denial of FAPE. Notwithstanding, a student is not required “to have a perfect case to be entitled to compensatory education.” *See Cousins v. District of Columbia*, 880 F.Supp.2d 142, 148 (D.D.C.2012) (citations omitted.) Therefore, I will reduce Educational Advocates’ recommendation by one-half and will order PCS-2 to provide Student 36 hours of independent tutoring as compensatory education.

ORDER

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

ORDERED:

1. As compensatory education for the denial of FAPE in this matter, Respondent PCS-2 is ordered to fund 32 hours of individual tutoring for Student in those academic areas, and on a schedule, as may be reasonably agreed between Petitioner and Respondent. Since Student is not currently enrolled at PCS-2, Respondent shall arrange to promptly confer with Mother or her representative to set up a tutoring schedule and location; and
2. All other relief requested by the Petitioner herein is denied.

Date: September 16, 2014

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).