

On August 21, 2017, Petitioner, by counsel, filed a pleading styled “Motion for Reconsideration of Hearing Officer’s Determination Regarding the Student’s Current Educational Placement & Needs.” I granted in part and denied in part Petitioner’s motion. Specifically, I ordered that the Interim HOD be amended to provide that before the final decision in this case was issued, Petitioner would be allowed to file a request to amend her due process complaint, should she disagree with the decisions made by Student’s IEP team convened pursuant to the original order in the Interim HOD. Petitioner’s requests, as otherwise set forth in the Motion for Reconsideration, were denied. At an on-the-record conference on September 7, 2017, Petitioner’s Counsel notified the hearing officer that Petitioner had appealed the Interim HOD to the U.S. District Court for the District of Columbia and that Petitioner would not seek to amend her due process complaint.

On September 1, 2017, Petitioner filed a revised compensatory education request, supported by attached statements of EDUCATIONAL ADVOCATE and the director of the Lindamood-Bell (LMB) Reading Center (CENTER DIRECTOR). On September 6, 2017, DCPS filed a response in opposition to the revised compensatory education request, supported by a declaration of DCPS’ program manager in the Office of Teaching and Learning (PROGRAM MANAGER). At the conference on September 7, 2017, DCPS requested a hearing on the revised compensatory education proposal in order to have the opportunity to examine Petitioner’s experts.

The evidentiary hearing, scheduled for September 12, 2017 at 12:00 p.m., was delayed for some 45 minutes due to a calendaring mistake by DCPS’ Counsel. When the hearing eventually was convened, I determined that due to DCPS’ not arriving in time for the hearing, I would admit the written declaration of Center Director and would not

allow DCPS to cross-examine that witness. Petitioner also recalled Educational Advocate, who testified as a compensatory education expert and was cross-examined by DCPS' counsel. DCPS called Program Manager as its only witness for the compensatory education hearing. I admitted into evidence Educational Advocate's August 31, 2017 compensatory education proposal with attachments and the exhibits attached to DCPS' September 6, 2017 response in opposition (Exhibit R-15). At the beginning of the September 12, 2017 hearing, DCPS, by counsel, objected to the hearing officer's receiving additional compensatory education evidence after the original record was closed on August 5, 2017. I overruled the objection. I also denied DCPS' motion to strike Petitioner's compensatory education evidence offered on September 12, 2017.

FINDINGS OF FACT

I incorporate, by reference, the findings of fact from my August 18, 2017 Interim Hearing Officer Determination. I further find that subsequent to the issuance of the Interim HOD, the parties met for an IEP team meeting as ordered in the interim decision. Representation of Counsel. In the 2017-2018 school year, Student has been attending City School 4, where Student is enrolled in a self-contained Behavior and Education Support (BES) classroom as an agreed "stay-put" placement. Representation of Counsel.

ANALYSIS

In the Interim HOD, I concluded that DCPS denied Student a FAPE by not conducting a functional behavioral assessment (FBA) when requested by the parent in September 2015, by failing to ensure that Student was offered an appropriate Individualized Education Program (IEP) on March 22, 2016 and by allowing the March 16, 2017 IEP to be finalized without ensuring the parent was able to participate in

completing the development of the IEP. I determined that Student was entitled to an award of compensatory education for these denials of FAPE.

As I explained in the Interim HOD, “[i]f a hearing officer concludes that the school district denied a student a FAPE, he has ‘broad discretion to fashion an appropriate remedy,’ which may include compensatory education. *See B.D. v. District of Columbia*, 817 F.3d 792, 800 (D.C. Cir. 2016). Compensatory education consists of prospective educational services designed to ‘compensate for a past deficient program.’ *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. Cir. 2005) (internal quotation marks omitted). A final award relies on “individualized assessments,” requires a “fact-specific” inquiry, and must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Id.* at 524. The Hearing Officer should be guided by the principle that, “[t]o fully compensate a student, the award must seek not only to undo the FAPE denial’s affirmative harm, but also to compensate for lost progress that the student would have made.” *B.D.* at 798. That inquiry requires “figuring out both [(1)] what position a student would be in absent a FAPE denial and [(2)] how to get the student to that position.” *Id.* at 799. *Butler v. District of Columbia*, Case No. 16-cv-01033 (D.D.C. Aug. 14, 2017).

For her August 31, 2017 Revised Compensatory Education Plan, Educational Advocate assumed, based on the analysis in the Interim HOD, that Student had been denied a FAPE for some 17 calendar months, or 1 and 3/4 school years. This expert opined that, if over this 17 month period Student had been receiving appropriate services to address Student’s behaviors and had been provided appropriate IEPs, Student would have made at least 2.5 years’ growth in Reading, putting Student at

approximately the PROJECTED GRADE reading level. Based on her consultation with Center Director, Education Advocate opined that with 400 hours of LMB tutoring, Student would be likely to get to the position Student would have been in academically, absent the denials of FAPE found in the Interim HOD. Educational Advocate also recommended that Student be awarded 75 hours of mentoring to address the social-emotional/behavioral harm to Student and the alleged deterioration of Student's self-esteem and mental health status resulting from DCPS' failure to timely conduct an FBA, as found in the Interim HOD, and to provide Student with an appropriate IEP since March 2016.

DCPS' witness, Program Manager, opined that the proposed LMB program would not be appropriate for Student, primarily because Student's maladaptive behaviors have been so severe and LMB's teachers are not trained to intervene behaviorally.² He opined that Student needs a fully trained educator who is equipped to work with Student's behavioral challenges. However, DCPS has not proposed an alternative compensatory education program using a reading specialist with training in behavior management. Moreover, Educational Advocate explained that Student's behavior challenges manifest when in a group instruction situation and that Student does very well in one-on-one settings.

Educational Advocate has known Student for a number of years and was also

² Program Manager also testified that DCPS had concluded that the LMB reading program had not been effective when used with groups of special education and regular education student in a DCPS trial program in school years 2013-2014 and 2014-2015. The alleged lack of success of that school-based program has little bearing on the compensatory education program proposed for Student which would provide one-on-one instruction at the LMB Reading Center and would be tailored to Student's individualized needs.

familiar with how Student behaved when recently assessed at LMB. By contrast, Program Manager, who has never met Student, based his testimony on a review of hearing exhibits. Recognizing that 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), I am persuaded that this expert’s recommendation is “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.” *Reid, supra*, 401 F.3d at 524. Accordingly, I will award Student compensatory education relief as recommended by Educational Advocate in her August 31, 2017 proposal.

ORDER

My Findings of Fact and Conclusions of Law from the Interim HOD are incorporated herein by reference. Based upon those findings and the additional Findings of Fact and Conclusions of Law herein, it is hereby further ORDERED:

1. As compensatory education for the denials of FAPE determined in the Interim IEP, DCPS shall fund 400 hours of individual reading instruction for Student, to be provided by the Lindamood-Bell Reading Center as set forth in Educational Advocate’s August 31, 2017 Revised Compensatory Education Plan. In addition, DCPS shall provide or fund transportation for Student to attend the instruction program at Lindamood-Bell. Finally DCPS shall provide Student 75 hours of mentoring services by a qualified DCPS or third party social worker or counselor to work on Student’s Social-Emotional/Behavioral deficits attributed to the denials of FAPE in this case;
2. To the extent that the provisions of my order in the Interim HOD have not yet been fully implemented, those requirements shall remain in full force and effect;
3. All other relief requested by the Petitioner herein is denied and
4. This is a final decision.

Date: September 12, 2017

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 Division of Specialized Education
DCPS Resolution Team