

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

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OSSE  
Office of Dispute Resolution  
September 07, 2022

PETITIONER,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: September 7, 2022

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2022-0037

PUBLIC CHARTER SCHOOL 1,

Online Video Conference Hearing

Respondent.

July 26, 27 and 28, 2022

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**HEARING OFFICER DETERMINATION - FINAL**

**Background**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (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 (“D.C. Regs.”). In her due process complaint, Petitioner sought relief for Public Charter School 1’s (PCS-1) allegedly not timely determining Student eligible for special education and not providing Individual Education Programs (IEPs) for Student during the 2016-2017, 2017-2018, 2018-2019, 2019-2020 and 2020-2021 school years. Following a videoconference due process hearing on July 26, 27 and 28, 2022, this hearing officer

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<sup>1</sup> Personal identification information is provided in Appendix A.

issued an Interim Hearing Officer Determination on August 2, 2022 (the Interim Decision).<sup>2</sup>

In the Interim Decision, I concluded that PCS-1 had denied Student a free appropriate public education (FAPE) by not evaluating him/her for special education eligibility in the 2017-2018 school year and by not developing appropriate IEPs beginning by the start of the 2018-2019 school year. I determined that Student was entitled to a compensatory education remedy calculated to provide the educational benefits that would likely have accrued to Student, had PCS-1 provided appropriate IEPs for the 2018-2019, 2019-2020 and 2020-2021 school years. At the due process hearing, Petitioner's expert witnesses proposed two separate compensatory education plans. However, for the reasons explained in the Interim Decision, I found that neither plan provided the information needed by the hearing officer to make an appropriate compensatory education award. In the Interim Decision, I ordered PCS-1 to obtain an independent compensatory education assessment by a qualified professional to provide the information needed by the hearing officer to craft an appropriate compensatory education award for Student. Specifically, I ordered PCS-1 to,

engage a qualified independent professional, who is not an employee of PCS-1, to review Student's education records and, if needed, assess Student, as appropriate (1) to address where Student would likely be now if he/she had been provided appropriate IEPs from the start of the 2018-2019 school year, recognizing that PCS-2 has been Student's LEA since the fall of 2021, and (2) to make a written recommendation for an award of compensatory education reasonably calculated to put Student in

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<sup>2</sup> For complete case background and procedural history, please refer to the Interim Decision.

that position.

Interim Decision at 21-22. I kept this case open solely to obtain the additional information needed to make an appropriate compensatory education award.

On August 4, 2022, Petitioner, by counsel, filed a motion seeking leave to file an “independent written compensatory education plan.” PCS-1 opposed the motion. For the reasons explained in my order issued September 6, 2022, I denied Petitioner’s motion. In that order, I declined to re-open the hearing record for the Petitioner to submit a new compensatory education proposal.

On August 30, 2022, as required by the Interim Decision, PCS-1 filed an Independent Compensatory Education Assessment prepared by INDEPENDENT ASSESSOR. By email of August 31, 2022, at the request of Petitioner’s counsel, I granted Petitioner leave to file a response to Independent Assessor’s assessment on or before September 7, 2022. Instead, on September 4, 2022, Petitioner filed a report by SPECIAL EDUCATION CONSULTANT titled “Supplemental Expert Report Based on Interim Order.” Special Education Consultant testified at the due process hearing and her written special education report, including her original compensatory education recommendation, was received into evidence (Exhibit P-55). On September 6, 2022, PCS-1, by counsel, filed its opposition to Petitioner’s filing of her expert’s supplemental report. I have reviewed Special Education Consultant’s supplemental report and find that it does not constitute a response to the independent compensatory education

assessment made by Independent Assessor, or even address the independent assessment. It is rather an update of Special Education Consultant's prior special education report, already in evidence. In accordance with my August 10, 2022 order, I decline to consider Special Education Consultant's supplemental report.

Independent Compensatory Education Assessment

In the Interim Decision, I concluded that an appropriate compensatory education remedy for Student must be calculated to provide the educational benefits that would likely have accrued to him/her, had PCS-1 provided appropriate IEPs for the 2018-2019, 2019-2020 and 2020-2021 school years. Independent Assessor reports that he reviewed the records in this case, including, *inter alia*, the respective parties' five-day disclosures, the June 2021 initial IEP for Student, and Student's grades, progress reports and standardized testing scores for the 2021-2022 school years and the hearing officer's Interim Decision. In his Independent Compensatory Education Assessment, Independent Assessor assumed that had PCS-1 provided IEPs for Student for the 2018-2019, 2019-2020 and 2020-2021 school years, these IEPs would have provided the services which the June 2021 PCS-1 IEP team ultimately determined that Student needed – that is,

Five hours per week of special education in reading (in general education)  
Four hours per week in reading (outside general education)  
Five hours per week in math (inside general education)  
Four hours per week in math (outside of general education), and  
30 minutes per week of behavioral support services. (within general education).

Independent Assessor calculated that having missed special education and behavioral support services over three school years, Student was denied, in total, 1,094 hours of specialized education in math/reading inside general education, 875 hours in math/reading outside of general education, and 54 hours of behavioral support services inside general education.

From these data and his review of Student's education records, Independent Assessor opined that it is likely that had Student been identified for special education and had IEP services in place beginning with the 2018-2019 school year, he/she would likely have further progressed 2.0 to 2.5 grade levels in his/her reading and math skills, and had Student received support from a counselor to support his/her hyperactivity, and inattention, he/she might have been more focused during academic instruction, allowing for increased academic progress.

Independent Assessor next addressed, based on Student's cognitive profile and projected growth, how many hours of 1 on 1 compensatory services provided by skilled instructors might "propel" Student from where he/she currently stands in reading and math to the level he/she likely would have been at if he/she had been provided appropriate IEP services for the 2018-2019, 2019-2020 and 2020-2021 school years. Independent Assessor recommends that to help overcome the deficits accumulated due to the denials of FAPE found by the hearing officer in the Interim Decision, Student be awarded 400-450 hours of compensatory education to focus on Student's reading and

writing skills; 150-175 hours of compensatory education to focus on math skills and 40-50 hours of compensatory education to focus on Student's emotional, social, and behavioral development.

Courts in this jurisdiction have pronounced that the compensatory education inquiry must be "qualitative, fact-intensive" and "tailored to the unique needs of the disabled student." *See Butler v. Dist. of Columbia*, No. 16-CV-01033 (APM), 2020 WL 4001457, at \*7 (D.D.C. July 15, 2020), quoting *Branham v. District of Columbia*, 427 F.3d 7, 9 (D.C. Cir. 2005). The hearing officer finds that Independent Assessor's recommendation is the product of such a qualitative, fact-intensive inquiry, and it is tailored to meet Student's unique needs. *See, Butler, supra*. Independent Assessor's hours of recommended compensatory services are not an hour-for-hour replacement of service hours that Student was denied, implicitly recognizing the efficiency of individual one-on-one services.

Independent Assessor has testified as a compensatory education expert in the U.S. District Court for the District of Columbia. *See Butler v. Dist. of Columbia*, No. 16-CV-01033 (APM), *supra*. As noted above in this decision, Petitioner did not file an objection or response to Independent Assessor's recommendation, except to submit the updated report by Educational Consultant which did not address the independent assessment. As U.S. District Judge Mehta recognized in the *Butler* decision, calculating the value of the education a student has been denied is an imprecise endeavor. The

hearing officer is satisfied that this independent expert's recommended award is reasonably calculated to provide the educational benefits that likely would have accrued had PCS-1 provided appropriate special education and related services to Student for the 2018-2019, 2019-2020 and 2020-2021 school years. *See B.D. v. Dist. of Columbia*, 817 F.3d 792, 798 (D.C. Cir. 2016) (Compensatory education aims to put student in the position he would be in absent the FAPE denial.) Because the denial of FAPE in this case was so lengthy – continuing for three school years – the hearing officer will adopt the higher end of Independent Assessor's recommended compensatory services.

In his report, Independent Assessor recommended specific areas of focus and strategies for the compensatory education providers. I find it is more appropriate to leave those methodology decisions to the educational professionals who will work with Student. *Cf. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 178, 102 S. Ct. 3034, 3036, 73 L. Ed. 2d 690 (1982) (Courts must be careful to avoid imposing their view of preferable educational methods upon the States.)

#### ORDER

For the foregoing reasons, as compensatory education for the denials of FAPE found in the Interim Decision, the hearing officer orders PCS-1 to promptly issue funding authorization to the Parent to obtain the following compensatory education services for Student:

(1) 625 hours of one-on-one tutoring by a skilled special education professional to focus on Student's reading, writing and mathematics skills; and

(2) 50 hours of individual counseling by a qualified counselor or social worker to focus on Student's emotional, social and behavioral development.

For so long as Student remains eligible for special education services, there shall be no time limitation on the use of these services. The methodology and content of the compensatory education tutoring and counseling services shall be left to the reasonable discretion of the professional providers with due consideration of the input of the parent and Student's educators.

SO ORDERED.

Date: September 7, 2022

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  
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