

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

OSSE
Office of Dispute Resolution
October 03, 2015

PETITIONER, on behalf of STUDENT, ¹)	Date Issued: October 3, 2015
)	
Petitioner,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2015-0246
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	Hearing Date: September 17, 2015
)	
Respondent.)	Office of Dispute Resolution, Room 2004 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 (D.C. Regs.). In her due process complaint, Petitioner alleged that respondent District of Columbia Public Schools (DCPS) denied Student a free appropriate public education (FAPE) by not offering an appropriate Individualized Education Plan (IEP) following an IEP team meeting on November 3, 2014 and by not evaluating Student in all areas of suspected disabilities.

¹ Personal identification information is provided in Appendix A.

Student, an AGE child, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on July 22, 2015, named DCPS as respondent. The undersigned Hearing Officer was appointed on July 23, 2015. The parties met for a resolution session on August 17, 2015, but did not reach an agreement. The 45-day period for issuance of this Hearing Officer Determination began on August 22, 2015. On August 6, 2015, I convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before this Impartial Hearing Officer on September 17, 2015 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. Petitioner appeared in person and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Petitioner testified and called as witnesses MARYLAND SPECIAL EDUCATION TEACHER and MARYLAND SPEECH-LANGUAGE PATHOLOGIST. DCPS called as witnesses DCPS SPECIAL EDUCATION TEACHER, DCPS SPEECH PATHOLOGIST, and COMPLIANCE CASE MANAGER. Petitioner's Exhibits P-1 through P-30 and DCPS' Exhibits R-1 through R-4 were all admitted into evidence without objection. Counsel for both parties made opening statements and 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 following issues for determination were certified in the August 6, 2015 Prehearing Order:

- Whether DCPS failed to comprehensively evaluate Student by not conducting a speech and language evaluation and a functional behavioral assessment as indicated by Student’s prior evaluations, and by not conducting reevaluations requested by the parent beginning in November 2014;
- Whether DCPS failed to develop an appropriate IEP for Student on November 3, 2014, including an appropriate behavior intervention plan, in that the IEP lacked speech and language services, and failed to address Student’s needs for intensive instruction in adaptive living skills and intensive behavior management services; and
- Whether DCPS failed to afford the parent access to Student’s educational records as requested by the parent in April 2015.

For relief, Petitioner requests that the Hearing Officer order DCPS to ensure that Student’s IEP is revised to provide for not less than 90 minutes per week of speech and language therapy to be provided in thirty minute sessions three times per week, as well as, for adaptive living goals and behavioral supports; to fund Independent Educational Evaluations (IEE) of Student including a comprehensive psychological evaluation, speech and language evaluation, adaptive behavior assessment, an occupational therapy evaluation, and an FBA, and to ensure that Student’s IEP team reviews these assessments and revises, as appropriate, Student’s IEP. In addition, Petitioner seeks an award of compensatory education for the denials of FAPE alleged in the due process complaint.

FINDINGS OF FACT

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

1. Student, an AGE child, resides with Mother in the District of Columbia.

Testimony of Mother.

2. Student is eligible for special education and related services under the primary disability classification Other Health Impaired, based upon an underlying

Attention Deficit-Hyperactivity Disorder (OHI-ADHD) disability. Exhibit P-9.

3. For the 2014-2015 school year, Student was enrolled in the GRADE at CITY ELEMENTARY SCHOOL 2. Testimony of Mother.

4. Student had significant behavior problems after starting Kindergarten. A D.C. Department of Mental Health psychiatrist diagnosed Student with sensory integration disorder, ADHD and Oppositional Defiant Disorder. Subsequently, Student was seen by a psychiatrist at PEDIATRIC HOSPITAL. The psychiatrists placed Student on a series of medications for the diagnosed conditions. Exhibit P-4.

5. In the fall of 2012, when Student attended CITY ELEMENTARY SCHOOL 1, Student was referred to E.A.R.L.Y. Stages for an initial comprehensive developmental assessment based upon Mother's concerns about his behaviors. According to Student's teachers and the school social worker, Student had significant difficulty participating in group instruction and following procedural tasks and classroom routines. It was reported that Student was frequently confrontational or aggressive toward others and that he wandered around and had frequent verbal outbursts. Behavioral observations and anecdotal reports indicated that Student exhibited executive functioning deficits as well as difficulties with self regulation, including difficulties inhibiting impulses, modulating emotions, adapting to change, and planning and organizing problem-solving approaches. The E.A.R.L.Y. Stages evaluator was unable to conduct standardized testing because Student exhibited significant difficulty exerting mental control and engaging in goal directed behavior. The evaluator reported that Student appeared to meet criteria for special education under the OHI-ADHD classification. She reported that Student would likely have difficulty functioning in a general classroom setting and might have difficulty initiating social interactions with his peers. The

evaluator recommended that Student required placement with a low student to teacher ratio and in a highly structured environment that carefully incorporated child initiated activities, teacher scaffolding and explicit instruction. Exhibit P-10.

6. The E.A.R.L.Y. Stages evaluator also recommended, *inter alia*, that a functional behavioral assessment (FBA) be conducted to further elucidate the reasons behind Student's behavioral difficulties and that Student would benefit from an in-class reward system or behavior intervention plan (BIP). Exhibit P-10. The recommended FBA has never been conducted. Testimony of Mother.

7. In October 2012, an E.A.R.L.Y. Stages evaluation coordinator undertook an Educational Assessment of Student. Testing was not able to be completed as a result of Student's noncompliance and aggressive behavior and assessment results were not obtained. Based on a classroom observation and feedback from Mother, Student's psychiatrist and school staff, the evaluation coordinator reported that Student presented as a child who used verbal and physical means to request attention in both positive and negative ways, that he had difficulty attending to classroom activities on a daily basis, and that when in the classroom, Student did not access the curriculum alongside his peers. Exhibit P-12.

8. In the fall of 2012, an E.A.R.L.Y. Stages occupational therapist conducted an Occupational Therapy (OT) assessment of Student. The therapist reported that responses to Student's sensory profile indicated that Student was exhibiting sensory-related behaviors in multiple areas, that he demonstrated auditory and visual sensibilities which made it difficult for him to sustain attention in noisy and visually bright and cluttered settings, that he exhibited sensory distractibility in active environments (multi-sensory processing), that he appeared to display some sensitivity

to touch and some sensory seeking behavior in the areas of touch and movement and that he displayed oral sensitivities and some oral seeking behaviors. The occupational therapist provided recommendations and strategies to help Student manage his sensory needs in the classroom. Exhibit P-11.

9. On December 13, 2012, a multidisciplinary team (MDT) was convened at City Elementary School 1 and determined that Student was eligible for special education under the OHI-ADHD primary disability. Student's initial IEP was developed the same day. The initial IEP included annual goals for Reading, Emotional, Social and Behavioral Development and Motor Skill/Physical Development areas of concern. The December 13, 2012 IEP provided for Student's placement in a full-time, 26 hours per week, behavior containment classroom, outside general education, and provided one hour per week of Behavioral Support and two hours per month of OT as related services. The initial IEP also provided for special education transportation. Exhibit P-9. On May 31, 2013, Student's initial IEP was amended, apparently without an IEP team meeting, to add Extended School Year (ESY) services. Exhibit P-8.

10. In February 2014, Student was evaluated at AUTISM CENTER upon the referral of his psychiatrist, because of Mother's concerns about Student's behavior problems, rigidity and obsessions. The Autism Center psychologist administered a battery of rating scales to Mother and a teacher and she observed and evaluated Student. Her diagnostic summary was that Student's cognitive profile and behavior presentation met criteria for a diagnosis of Autism Spectrum Disorder, that Student exhibited a communications and speech-language disorder and that Student met criteria for a diagnosis of ADHD-Combined Type. The Autism Center psychologist recommended that Mother should request that Student's special education disability

“code” be changed to Autism, that Student receive special education services as a child with autism, that Student required a multidisciplinary education team, that included, *inter alia*, a speech and language pathologist, a behavior management expert, an occupational therapist and special educators who were trained and experienced in working with children with autism. She recommended that generally, Student required education in a small, structured environmental setting with a low student to teacher ratio and one-to-one support. The Autism Center psychologist also wrote that Student should receive school-based speech-language therapy at least 3 times a week; intensive behavior management and a learning plan derived from an applied behavior analysis (ABA) framework, overseen by a qualified Board Certified behavior analyst; and direct instruction in adaptive living skills and explicit teaching of social and play skills. Exhibit P-4.

11. Mother provided a copy of the Autism Center report to DCPS in early March 2014. It was Mother’s understanding that City Elementary School 2 did not have an autism program and that Student would have to transfer to another school if he were to be placed in an autism program. Mother asked that the school not act on the changes recommended in the Autism Center report until the next school year, because Student does not like changes. For the rest of the 2013-2014 school year, City Elementary School did not convene an IEP team meeting to review the Autism Center Report.

12. On November 3, 2014, Student’s IEP team convened at City Elementary School 2. Mother attended the meeting. Documentation was provided to the team that Student “exhibits characteristics of Autism.” It was noted that Student had made progress academically and that he continued to struggle with focusing and with being on task. The team discussed changing Student’s primary disability classification to Autism

and adding the services recommended by Autism Center. Mother understood from discussion at the November 3, 2014 meeting that additional testing of Student needed to be completed before his IEP was revised. The meeting minutes stated that the team would reconvene on November 24, 2014 “to discuss the Disability of Autism” and that the school psychologist would review assessments and provide a summary for the team. Exhibits P-1, P-2; Testimony of Mother.

13. By the week before November 24, 2014, Mother had not heard anything about Student’s IEP team reconvening. She telephoned the school and was told the meeting had been cancelled because further testing of Student had not been completed. No subsequent IEP meeting was ever convened. Testimony of Mother.

14. A revised IEP for Student was issued following the November 3, 2014 IEP meeting. The November 3, 2014 IEP noted that Student currently received speech and language services to address his communication needs. The IEP stated that Student’s behavior did not impede his learning or that of other children. The IEP included Annual Goals for Reading and Writing, Emotional, Social and Behavioral Development and Motor Skill/Physical Development areas of concern. There is no mention in the IEP that Student had been diagnosed by the Autism Center with Autism Spectrum Disorder. Student’s Special Education and Related Services were continued in the November 3, 2014 IEP at 26 hours per week of Specialized Instruction outside general education, 120 minutes per month of OT and 240 minutes per month of Behavior Support Services. The November 3, 2014 IEP did not include provision for Speech and Language Services or for a Behavior Intervention Plan. Exhibit P-1.

15. For the 2014-2015 school year, Student’s case was dropped from DCPS Speech Pathologist’s computerized case load roster. No explanation for this computer

error was provided at the due process hearing. Because of the DCPS computer data malfunction, during the 2014-2015 school year, DCPS Speech Pathologist did not complete IEP annual goals, progress reports or services trackers for Student. Although Student's name was erroneously omitted from her computerized caseload roster, DCPS Speech Pathologist provided Speech and Language services to Student during the 2014-2015 school year for one hour per week (240 minutes per month). In the current 2015-2016 school year, DCPS Speech Pathologist provides Student services for one hour per week. DCPS Speech Pathologist has maintained data sheets for her services to Student. Testimony of DCPS Speech Pathologist, Testimony of DCPS Special Education Teacher.

16. On May 7, 2015, Petitioner's Counsel wrote the principal of City Elementary School 2 to request that Student be reevaluated for special education and related services to include speech, OT, FBA and comprehensive psychological assessments. Exhibit P-18. As of the September 12, 2015 due process hearing date, an educational reevaluation and a speech and language reevaluation had been completed. The comprehensive psychological reevaluation was in progress. None of these reevaluation reports had yet been provided to Mother. Testimony of DCPS Special Education Teacher.

17. On May 7, 2015, Petitioner's Counsel wrote the principal of City Elementary School 2 to request a copy of Student's education records. Exhibit P-17. Most of the requested records were provided at or before the resolution session for this case on August 17, 2015. At that meeting, Petitioner's Counsel advised Compliance Case Manager, in writing, that the parent still needed Student's report cards, progress reports behavior logs/discipline records and standardized test scores. Exhibits R-1, P-19.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument and legal memoranda 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 the responsibility of the party seeking relief – the Petitioner in this case. *See* D.C. Regs. 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

A.

Did DCPS fail to develop an appropriate IEP for Student on November 3, 2014, including an appropriate behavior intervention plan, in that the IEP lacked speech and language services, and failed to address Student's needs for intensive instruction in adaptive living skills and intensive behavior management services?

At the November 3, 2014 IEP meeting at City Elementary School 2, Student's IEP team discussed the February 2014 Psychological and Social Communication Evaluation of Student prepared by Autism Center, including his new Autism Spectrum Disorder diagnosis. The team agreed to meet again in three weeks to allow time for the school psychologist to review the assessments and provide a summary for the IEP team. The team never met again, but a finalized November 3, 2014 IEP was issued. That IEP does not mention Student's Autism Spectrum Disorder impairment, the Autism Center's assessment or the Autism Centers' recommendations for services and accommodations. Nor does the November 3, 2014 IEP provide annual goals or services for Speech and Language, even though DCPS Speech Pathologist provided Speech and Language

services to Student before and after the November 3, 2014 IEP was formulated.

Petitioner contends that the failure of the IEP team to address the data on Student provided by Autism Center and to adopt Autism Center's recommendations for services and accommodations was a denial of FAPE. In its answer to Petitioner's due process complaint, DCPS responded that the November 3, 2014 IEP was appropriate for Student.

To determine whether an IEP is adequate to provide a FAPE, a hearing officer must determine "[f]irst, has the [District] complied with the procedures set forth in the [IDEA]? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the [District] has complied with the obligations imposed by Congress and the courts can require no more." *A.M. v. District of Columbia*, 933 F.Supp.2d 193, 203-204 (D.D.C.2013) (quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982).)

I find that DCPS failed to comply with IDEA's procedural requirements in formulating the November 3, 2014 IEP. The IDEA regulations require that the IEP team must consider, *inter alia*, the results of the initial or most recent evaluation of the child. *See* 34 CFR § 300.324(a). Student was evaluated by Autism Center and diagnosed with Autism Spectrum Disorder in February 2014. At the November 3, 2014 IEP team meeting, the IEP team decided to reconvene in three weeks to allow time for the school psychologist to review and summarize the Autism Center's February 2014 report. However, Student's IEP was finalized on November 3, 2014, omitting any reference to the Autism Center report or goals and services to address Student's autism disability.

The IEP team's failure to include Speech and Language goals and services in the November 3, 2014 IEP was also a procedural violation of the IDEA, which requires annual goals designed to meet the child's needs and a statement of both the special education and related services to be provided to the child. *See* 34 CFR § 300.320(a). DCPS Speech Pathologist evaluated Student when he was in Kindergarten and has been providing Student Speech and Language services since at least the beginning of the 2014-2015 school year. Yet neither Student's need for Speech and Language services nor the fact that he was regularly being provided such services was written in the November 3, 2014 IEP.

Only those procedural violations of the IDEA which result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable. *See Lesesne, ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006). I find that the IEP team's failure to consider the Autism Center's report on Student in developing the November 3, 2014 IEP undoubtedly resulted in loss of education opportunity for Student. For example, one of the Autism Center's recommendations was for Student be provided a learning plan based upon the Applied Behavioral Analysis (ABA) framework. It appears that Student's IEP team never considered the merits of this recommendation.

The failure of DCPS to ensure that Student's November 3, 2014 IEP addressed Student's need for Speech and Language services – even if those services were in fact provided to Student – deprived Mother of her right to participate in the IEP process. *See, e.g., Lofton v. District of Columbia*, 7 F.Supp.3d 117, 124 (D.D.C.2013) (IDEA mandates that the parent be allowed to meaningfully participate in the development of his or her child's IEP); *Lague v. District of Columbia*, 2015 WL 5467629, 4 (D.D.C. Sep.

15, 2015) (IEP is a written document which includes a description of the impact of a child's disabilities, annual academic and functional goals for the child, and the forms of individualized education and support that will be provided to the child in view of the child's disabilities and in order to aid the child's developmental academic progress.) A parent is not able to meaningfully participate in an IEP meeting if the Student's goals and services are not set out in IEP document under review. *Cf. A.K. ex rel. J.K. v. Alexandria City School Bd.*, 484 F.3d 672, 682 (4th Cir. 2007) (In evaluating whether a school district offered a FAPE, a court generally must limit its consideration to the terms of the IEP itself.) I conclude these procedural violations in the development of the November 3, 2014 IEP resulted in denial of FAPE to Student.

Turning to the second, substantive, prong of the *Rowley*, the inquiry is whether DCPS' November 3, 2014 IEP was reasonably calculated to enable Student to receive educational benefits. In *K.S. v. District of Columbia*, 962 F.Supp.2d 216 (D.D.C. 2013), U.S. District Judge Boasberg reviewed case law precedents on the requirements for an appropriate IEP:

The IEP must be formulated in accordance with the terms of IDEA and "should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Rowley*, 458 U.S. at 204, 102 S.Ct. 3034. IDEA also requires that children with disabilities be placed in the "least restrictive environment" so that they can be educated in an integrated setting with children who do not have disabilities to the maximum extent appropriate. *See* [20 U.S.C.] § 1412(a)(5)(A). . . . IDEA provides a "basic floor of opportunity" for students, *Rowley*, 458 U.S. at 201, 102 S.Ct. 3034, rather than "a potential-maximizing education." *Id.* at 197 n. 21, 102 S.Ct. 3034; *see also Jenkins v. Squillacote*, 935 F.2d 303, 305 (D.C. Cir. 1991) (inquiry is not whether another placement may be "more appropriate or better able to serve the child") (emphasis in original); *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009) (IDEA does not guarantee "the best possible education, nor one that will maximize the student's educational potential"; instead, it requires only that the benefit "cannot be a mere modicum or *de minimis*; rather, an IEP must be likely to produce progress, not regression or trivial

educational advancement.”) (quoting *Cypress–Fairbanks Indep. Sch. Dist. v. Michael F. ex rel. Barry F.*, 118 F.3d 245, 248 (5th Cir.1997)). Consistent with this framework, “[t]he question is not whether there was more that could be done, but only whether there was more that had to be done under the governing statute.” *Houston Indep. Sch. Dist.*, 582 F.3d at 590.

K.S. 962 F.Supp.2d at 200-221. “[B]ecause the question . . . is not whether the IEP will guarantee some educational benefit, but whether it is reasonably calculated to do so, . . . the measure and adequacy of an IEP can only be determined as of the time it is offered to the student.” *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66-67 (D.D.C. 2008)(quoting *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir.2008) (internal quotation marks and citation omitted).

By omitting Speech and Language goals and services, the November 3, 2014 IEP, on its face, was obviously deficient. When the IEP team met on November 3, 2014, Student’s need for Speech and Language services was undisputed and had, in fact, been confirmed the Autism Center’s February 2014 report on Student. Even more troubling is the complete failure of the IEP team to address Student’s autism diagnosis and his need for special education, related services and other accommodations that resulted from this condition. These omissions include the failure to address Student’s reported need for intensive instruction in adaptive living skills and intensive behavior management services described in the Autism Center’s report. I conclude that at the time the November 3, 2014 IEP was offered, it was not reasonably calculated to provide educational benefits to Student and Student was denied a FAPE as a result.

B.

Did DCPS fail to comprehensively evaluate Student by not conducting a speech and language evaluation and a functional behavioral assessment as indicated by Student’s prior evaluations, and reevaluations requested by the parent beginning in November 2014?

Next Parent contends that DCPS violated the IDEA by not conducting a speech and language evaluation and a functional behavioral assessment (FBA) after the November 3, 2014 IEP meeting. The failure to complete all necessary evaluations results in a substantive denial of FAPE which results in harm to the disabled child. *See Long v. District of Columbia*, 780 F.Supp.2d 49, 60-61 (D.D.C.2011). (“[I]n the absence of necessary and appropriate evaluations the district cannot develop a program that is tailored to the student’s unique needs and reasonably calculated to enable him to receive educational benefits.” *Id.* (citation omitted.))

With regard to Student’s need for an FBA, the IDEA requires, in the case of a child whose behavior impedes the child’s learning or that of others, that the IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. *See* 34 CFR § 300.324(a)(2)(i). An FBA is “essential to addressing a child’s behavioral difficulties, and, as such, it plays an integral role in the development of an IEP.” *Harris v. District of Columbia*, 561 F.Supp.2d 63, 68 (D.D.C.2008). Here the record is replete with evidence that Student’s behavior impeded his learning. For example, Student’s November 3, 2014 IEP reported that he was easily distracted by extraneous stimuli which often frustrated him and caused aggression towards other students and that his attention difficulties, hyperactivity and behavioral dyscontrol negatively impacted his ability to participate in academic activities in the general education setting.

As early as December 2012, E.A.R.L.Y. Stages recommended that an FBA of Student be conducted, but the behavioral assessment was never done. By letter of May 7, 2015, Petitioner’s Counsel also requested comprehensive re-evaluations of Student,

including an FBA. Although DCPS' evidence establishes that in the fall of 2015, several reevaluations of Student have been completed or are underway, these assessments were not reported to include an FBA. I find that DCPS' failure to conduct an FBA of Student constitutes a denial of FAPE.

Petitioner did not meet her burden of proof to show that Student was denied a FAPE by not receiving a Speech and Language evaluation. DCPS Speech Pathologist testified that she conducted a Speech and Language evaluation of Student when he was in Kindergarten. Student's triennial reevaluations are not due until December 2015. *See* 34 CFR § 300.303. There was no evidence that the parent disagreed with the DCPS Speech and Language evaluation or, that prior to filing her due process complaint, she requested an independent evaluation. In May 2015, Petitioner's Counsel requested DCPS to conduct a speech and language reevaluation of Student. DCPS conducted a speech and language reevaluation of Student at the beginning of the 2015-2016 school year, which has not yet been reviewed by the parent and Student's IEP team. Considering that Student did not attend school in the summer of 2015, I find that DCPS' conducting the requested evaluation at the beginning of the current school year was not an undue delay. *See Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005). (Reevaluations should be conducted in a reasonable period of time, or without undue delay, as determined in each individual case.)

C.

Has DCPS failed to afford the parent access to Student's education records as requested by the parent in April 2015?

Finally, Petitioner contends that DCPS has violated the IDEA by failing to provide her representatives access to all of Student's education records. DCPS responds that it

has attempted to comply with the May 7, 2015 records request from Petitioner's Counsel. However, it is reported that Petitioner still has not received certain requested records, including copies of report cards, progress reports, behavior logs/discipline records and standardized test scores.

The IDEA regulations afford parents an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to the student. *See* 34 CFR § 300.501(a); *Friendship Edison Public Charter School Collegiate Campus v. Murphy* 2006 WL 2711524, 4 (D.D.C.2006). The term "education records" is defined as those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution, or by a party acting for the agency or institution. *See* 34 CFR § 99.3. Therefore, I will order DCPS to ensure that Mother is provided copies of the "missing" documents – to the extent that exist.

DCPS Speech Pathologist testified that she did not maintain Service Tracker logs or progress reports of her speech and language services to Student because Student was dropped from her caseload roster in DCPS' electronic Special Education Data System (SEDS). DCPS Speech Pathologist's data sheets apparently are the only records of speech and language services provided to Student since the beginning of the 2014-2015 school year. DCPS Speech Pathologist was acting for DCPS when she created the data sheets. Therefore, it is appropriate to order DCPS to ensure that copies of the data sheets are provided to Mother and I will so order.

Compensatory Education Remedy

For her remedy in this case, the Petitioner requests that Student be awarded compensatory education. If a parent has established a denial of the education

guaranteed by the IDEA, the hearing officer must undertake “a fact-specific exercise of discretion” designed to identify those compensatory services that will compensate the student for that denial. Compensatory education is educational service that is intended to compensate a disabled student, who has been denied the individualized education guaranteed by the IDEA. The proper amount of compensatory education, if any, depends upon how much more progress a student might have shown if he had received the required special education services and the type and amount of services that would place the student in the same position he would have occupied but for the school district’s violations of the IDEA. *See Walker v. District of Columbia*, 786 F.Supp.2d 232, 238-239 (D.D.C.2011) (citing *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005)).

In this decision, I have concluded that DCPS committed both procedural and substantive violations of the IDEA in the development of Student’s November 3, 2014 IEP. Most concerning is that DCPS failed to ensure that Student’s IEP team reviewed Autism Center’s comprehensive Psychological and Social Communication Evaluation of Student and that the team did not consider or act on Autism Center’s detailed recommendations, including that Student should receive special education services as a child with Autism and that he be provided intensive behavior management and a learning plan derived from an ABA framework. As a result from November 2014 to the end of the 2014-2015 school year, Student was not provided IEP services targeted at his reported autism spectrum disability. I conclude that a compensatory education award is warranted for the denials of FAPE in this case.

Maryland Special Education Teacher prepared a compensatory education proposal intended to address the alleged denials of FAPE to Student resulting both from

the inadequate November 3, 2014 IEP and for an alleged, but unproven, failure to provide Speech and Language services to Student. To remedy the harm from the inappropriate IEP, the witness recommended 80 hours of specialized tutoring to support and remediate Student's academic and social-emotional deficits. I find that this remedy is supported by the evidence and reasonably calculated to compensate Student for the harm in this case. *See Joaquin v. Friendship Public Charter School*, 2015 WL 5175885, 5 (D.D.C. Sept. 3, 2015) (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.) Maryland Special Education Teacher also recommended a compensatory education award of behavioral support through an ABA services organization. Except for the recommendation for ABA instruction in the February 2014 Autism Center report, there was no competent evidence at the due process hearing that Student does, or does not, require ABA-based instruction in order to receive educational benefit. I, therefore, decline to award Student ABA-based behavioral support as compensatory education.

Educational Evaluations

Petitioner also requested that I order DCPS to fund Independent Educational Evaluations (IEEs) of Student including a comprehensive psychological evaluation, speech and language evaluation, adaptive behavior assessment, an occupational therapy evaluation, and an FBA. It was established at the hearing that Speech and Language, educational and psychological reevaluations of Student have been completed or are in progress. Student's need for adaptive behavior or OT assessments was not established by the evidence. I have found that Student does require a behavioral assessment and will order DCPS to ensure that an FBA is conducted. Because some 19 months have

lapsed since Autism Center's February 2014 comprehensive evaluation of Student was completed, in order to ensure that Student's IEP team will have comprehensive data, I will also order DCPS to fund a reassessment of Student by Autism Center, updated as determined appropriate by that provider's examiners. See 34 CFR 300.502(d).

ORDER

1. As compensatory education for the denials of FAPE in this case, DCPS shall provide Student 80 hours of publicly funded one-on-one independent tutoring in such academic subjects as Petitioner and DCPS may reasonably agree are most needed. These tutoring services must be used by the end of the 2015-2016 school year or shall be forfeited;
2. DCPS shall promptly complete a Functional Behavioral Assessment of Student and shall, within 10 calendar days, provide funding authorization for Autism Center to update its February 2014 Psychological and Social Communication Evaluation of Student, as deemed warranted and appropriate by the examiners at Autism Center. Upon receipt of these assessments and the other assessments of Student heretofore initiated by DCPS, DCPS shall ensure that Student's IEP team is promptly convened to review all data on Student and to revise and update Student's IEP and placement as appropriate;
3. DCPS shall ensure that the parent and her attorneys are provided access to all of Student' education records. In addition DCPS shall ensure that the parent is provided copies of the "Data Sheets" concerning Student compiled by DCPS Speech Pathologist and, to the extent such documents exist, copies of Student's report cards, progress reports, behavior logs or discipline records and standardized test scores; and
4. All other relief requested by the Petitioner herein is denied.

Date: October 3, 2015

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
Chief Hearing Officer
OSSE - SPED
DCPS Resolution Team