

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
810 First Street, NE, 2nd Floor, Washington, DC 20002
(202) 698-3819 www.osse.dc.gov

Parent, on behalf of Student,¹)	Room: 2004
Petitioner,)	
)	
v.)	Case No.: 2015-0307
)	
District of Columbia Public Schools,)	Hearing: 10/7 (2015)
)	
Respondent.)	Hearing Officer: Michael Lazan

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving a [REDACTED] year old female student who is eligible, as of September 2, 2015, for services as a Student with a Specific Learning Disability. (the “Student”)

A Due Process Complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on September 14, 2015 in regard to the Student. On September 1, 2015, Respondent filed a response. A resolution meeting was held on September 26, 2015. The resolution period in this expedited case expired on September 21, 2015. The HOD was due on October 22, 2015, ten school days after the hearing date of October 7, 2015.

II. Subject Matter Jurisdiction

¹Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Improvement Act (“IDEIA”), 20 U.S.C. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

III. Procedural History

On September 30, 2015, this Hearing Officer held a prehearing conference. Carolyn Houck, Esq., counsel for Petitioner, appeared. William Jaffe, Esq., counsel for Respondent, appeared.

A prehearing conference order issued on October 2, 2015, summarizing the rules to be applied in this hearing and identifying the issues in the case.

One hearing date followed, on October 7, 2015. This was a closed proceeding. Petitioner was represented by Carolyn Houck, Esq. Respondent was represented by William Jaffe, Esq. Petitioner moved into evidence Exhibits 1-19. There were no objections. Exhibits 1-19 were admitted. Respondent moved into evidence Exhibits 1-11. There were no objections. Exhibits 1-11 were admitted.

The parties presented closing statements orally, on the record, after completion of testimony on October 7, 2015. After seeking permission from the Hearing Officer, and without objection, Petitioner then submitted an email with case citations on October 13, 2015. No such email was submitted by DCPS.

Petitioners presented as witnesses: Petitioner; the Student; Witness A, Director of Organization A; Witness B, an advocate (expert: IEP development and programming);

Witness C, a psychologist (expert: clinical psychology). Respondent presented as a witness; Witness D, a social worker.

IV. Credibility.

I found all the witnesses to be credible in this proceeding. There were no material inconsistencies found with respect to documents, their own testimony, or other witnesses' testimony. There were no statements made by these witnesses that were patently false or misleading, and the testimony was presented with reasonable candor.

V. Issues

As identified in the Prehearing Conference Summary and Order and in the Due Process Complaint, the issues to be determined are as follows:

1. Did DCPS violate "child find" requirements and thereby fail to evaluate, classify, and provide services to the Student for the 2013-2014, 2014-2015, and the start of the 2015-2016 school years? If so, did DCPS violate 34 CFR Sect. 300.111 and then the related provisions at 34 CFR Sect. 300.301-305, 306 and 308? If so, did DCPS deny the Student a FAPE?
2. Did DCPS fail to provide the Student with disciplinary protections when she was suspended during the 2013-2014 and 2014-2015 school year? If so, did DCPS violate 34 CFR Sect 300.534? If so, did DCPS deny the Student a FAPE?
3. Did DCPS fail to allow the parent to meaningfully participate in the IEP meetings in August/September, 2015? If so, did DCPS violate 34 CFR Sect. 300.513(a)? If so, did DCPS deny the Student a FAPE?
4. Did DCPS provide the Student with an inappropriate IEP in September, 2015? If so, did DCPS violate 34 CFR 300.320 and Hendrick Hudson Bd. Of Educ. v.

Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

5. Did DCPS fail to provide the Student with an appropriate educational placement for the 2015-2016 school year? If so, did DCPS act in violation of the principles in such cases as Gellert v. District of Columbia, 435 F. Supp.2d 18 (D.D.C. 2006)? If so, did DCPS deny the Student a FAPE?

6. Did DCPS fail to implement the Student's IEP for the 2015-2016 school year? If so, did DCPS act in violation of the principles of Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007)? If so, did DCPS deny the Student a FAPE?

As relief, Petitioner seeks reimbursement for services provided by Organization A, an order directing payments to Organization A until an appropriate educational placement is found for the Student, an order directing that an appropriate educational placement be found for the Student, a Functional Behavior Assessment, an Occupational Therapy assessment, and compensatory education in the form of 50 hours of academic tutoring, 50 hours of counseling, and 100 hours of functional life skills training.

VI. Findings of Fact

1. The Student is a [REDACTED] year old who is, as of September 2, 2015, is eligible for services as a student with Emotional Disturbance. (R-6)

2. She has suffered considerable personal tragedy. She found her uncle dead in the basement of her home in or about the ninth grade, and she has been very upset about the death of her father during sixth grade. (P-10-2-3)

3. She has been hospitalized for depression and is the victim of rape. (P-10-3)

4. She has tried to commit suicide several times. (Testimony of Witness B)
5. The Student has been diagnosed with Bipolar Disorder. This means her moods are not steady. She might get hyper-excited or have a sense of grandiosity as a manifestation of this disorder. (Testimony of Witness C; P-4-1)
6. She is diagnosed with Chronic Depression. (P-10-2)
7. Her mood is often dysregulated, and she has a hard time “scanning the environment.” (Testimony of Witness C)
8. She is hypersensitive to criticism and is wary of people touching her. (Testimony of Witness C)
9. She tends to have problems with males. (Testimony of Witness C)
10. The Student has been acting out in school since sixth grade. She thinks people do not like her and want to hurt her, so she retaliates. She is unable to make progress due to her difficulty with social interactions and managing her emotions. She cannot focus in class and has trouble working independently on class work. Due to mood swings, she has trouble attending to classroom instruction. (Testimony of Witness C; P-12-4)
11. She will get into fights, and engage in out of control behavior. The large school setting is not appropriate for her. (Testimony of Witness C; Testimony of Witness B)
12. She struggles with more “nuanced” writing concepts. (P-6-2)
13. She does not know how to tell time, do division, or make change up to five dollars. (Testimony of Witness B)

14. During elementary school, she did not have any major academic or behavioral problems. (P-10-2)

15. Starting in sixth grade, she started getting into fights in school. In seventh grade, she started breaking objects at home and continued fighting in school. (P-10-2)

16. For eighth grade, she attended School A. She did not attend much, fought a lot at school, and was suspended often. (P-10-3)

17. In the middle of the school year, she transferred to School B. Again, she started fighting and was suspended, earning D and F grades. (P-10-3)

18. For the 2013-2014 school year, she attended School C High School until a safety transfer in April, 2014. She finished the year at School D High School.

(Testimony of Petitioner)

19. The Student was suspended on September 12, 2013 to September 18, 2013, October 7, 2013 through October 23, 2013, February 18, 2014 to March 4, 2014, and June 6, 2014 through June 19, 2014. All these suspensions were because of fighting. She was also suspended on March 12, 2015 because of an “emergency condition.” The parent did not receive any documents as a result of these suspensions. (Testimony of Petitioner; R-1-7)

20. At this time, the parent was at the school frequently to get retrieve the Student or have a meeting with school staff about the Student. (Testimony of Petitioner)

21. At about this time, the parent asked for the Student to be evaluated, as did a community support worker and a lawyer. (Testimony of Petitioner)

22. When the Student experienced particular distress at school, Social Worker A would go and get the Student and talk to her. This would calm her down.

(Testimony of Witness B)

23. For the 2014-2015 school year, the Student began at School D High School. (Testimony of Petitioner)

24. The Student's grades for term 1 for the 2014-2015 school year included F grades in Advisory 1.0 and Algebra II and Trigonometry. She also received a B- in history and a B in Physical Education II. (P-5)

25. She missed many classes in Spanish and Geometry, and was easily distracted when certain students were around. (P-6-2)

26. During class at School D from August- December, 2014, the Student was quiet and focused on some days, and talkative and distracted on other days. In math, there were many confrontations with peers. (P-10-3)

27. She was suspended from School D in December, 2014, because a male staff member tried to stop her from fighting in the hall and then she "flipped" the staff member to the ground injuring him. (P-10-2)

28. A manifestation determination review on January 16, 2015 included the Student, the parent, Social Worker A, and a dean. It was determined that the behavior -- an attack on the student and staff -- was not a manifestation of the Student's disability. (R-1-1-5)

29. The Student was placed on long term suspension and was told that she had to go to School E. (Testimony of Witness B)

30. The parent did not receive any documents relating to the suspension.

(Testimony of Petitioner)

31. A Section 504 plan was drafted for the Student on January 16, 2015. This document provided the Student with a social worker to teach coping strategies (individual or group sessions), special seating arrangements, co-taught classes, and the plan directed teachers not to touch her unless she “okays it.” (P-6-3)

32. The plan provided that the Student will be allowed to see Social Worker A and or another staff member during class time if she has behavioral problems. If her behaviors escalate to the point of aggression and/or threatening behaviors, she was to be removed from the environment and her parent needed to be called. (P-6-3)

33. The plan also allowed for make-up work and “cool down days” after incidents during which she would become aggressive or threaten to be aggressive. (P-6-4)

34. To serve the suspension, the Student tried to enroll at School E.

(Testimony of Witness B)

35. School E then told the parent that they were not aware that the student was supposed to go there. They did not let her in initially and the parent had to go through several additional steps to insure that the Student attended the school. (Testimony of Witness B)

36. The Student attended School E up to March 9, 2015. (Testimony of Witness B)

37. At School E, the Student received C grades in her two subjects, U.S. History/Geography and Physics I. In both classes, she was considered to have good participation in class. (P-8-2)

38. After she finished serving her suspension at School E, she was supposed to return to School D. School D, however, would not let her back into school.

Thereafter, DCPS did not assign her to a new school. (Testimony of Witness B)

39. She has not been school since March, 2015. (Testimony of Witness B)

40. The Student did not get a new location of services after her expulsion from School D -- until the resolution meeting for this case. (Testimony of Petitioner)

41. Testing was conducted by Witness C as a result of an I.E.E. in or about June, 2015. (Testimony of Witness C)

42. The Student's IQ, as measured by the Woodcock-Johnson III BIA score, was a very low 69. Her verbal ability was particularly low, with a standard score of 44. (P-10-4)

43. Testing revealed that she has very low verbal skills. (Testimony of Witness C)

44. Testing also revealed that the Student received an extremely low score copying geometric designs, which suggests that she needs an occupational therapy evaluation. (Testimony of Witness C)

45. On the Woodcock-Johnson III Tests of Achievement, Form A, she tested at low average in broad reading (7.6 grade level equivalent) and broad written expression (6.6 grade level equivalent) and in the very low range in math (4.7 grade level equivalent). (P-10-5)

46. On the BASC-2, she was at-risk in Externalizing Problems and Social Skill according to her teacher. (P-10-7)

47. According to teacher assessments on the ADHDT test, she had a low probability of having ADHD. (P-10-9)

48. An eligibility meeting was held on August 27, 2015. At the meeting, DCPS “first found” her ineligible. Then, after input from Social Worker A, the team became convinced that she should be deemed eligible. (Testimony of Petitioner)

49. There was supposed to be another meeting to write the IEP, but Petitioner never knew of or attended such meeting. (Testimony of Petitioner)

50. Since mid-September, 2015, the Student has been getting instruction at Organization A for four days a week, for two hours daily. She takes a G.E.D. course, where she works on math and basic skills on an individualized basis. (Testimony of Witness A)

51. There are four students in a room with a teacher at a time, with eight students enrolled. There are two staff members working with the students in the room, one of whom is a certified special education teacher. (Testimony of Witness A)

52. Teaching assistants are people with “highly qualified” designation or college graduates. (Testimony of Witness A)

53. The Student work is through an online program. At least 50 percent of the time there is a teacher in the room to help the students with the program(s). (Testimony of Witness A)

54. The Student likes to go to Organization A. She gets up and goes to it, “which is surprising” because she always had trouble going to school. (Testimony of Petitioner)

55. Petitioner did not notify DCPS about obtaining the services from Organization A prior to the Student receiving such services. (Testimony of Petitioner)

56. An IEP for the Student dated 10/1/15 determines her to be eligible for services as a Student with emotional disturbance and provides goals in math and emotional, social and behavioral development. (P-12)

57. The DCPS staff who wrote the IEP were prevented from offering the parent more than six hours of specialized instruction because such a request must be approved by an “LRE team” consisting solely of school district personnel. (Testimony of Witness D)

58. The IEP provides for six hours per week of special instruction in general education with 240 minutes per month of counseling. (P-12-6)

59. At the resolution session, DCPS offered the Student School F High School, a large high school. School F can implement the Student’s IEP. (Testimony of Witness D; R-7)

VII. Conclusions of Law

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

The burden of proof in a special education due process hearing lies with the party seeking relief. 5-EDCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005). However, in reviewing a decision with respect to the manifestation determination, the hearing officer must determine whether DCPS has demonstrated that the child's behavior was not a manifestation of such child's disability. 5 DCMR Sect. 2510.16

The central purpose of the IDEA is to ensure that all children with disabilities have available to them special education and related services designed to meet their unique needs and provided in conformance with a written IEP (i.e., free and appropriate public education, or “FAPE”). 20 U.S.C. Sects. 1400(d)(1)(A), 1401(9)(D), 1414(d); 34 C.F.R. Sects. 300.17(d), 300.320; Shaffer v. Weast, 546 U.S. 49, 51 (2005).

Pursuant to the Supreme Court's decision in Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176, (1982), the IEP must, at a minimum, “provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005).

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only 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 Sect. 300.513(a).

1. Issue # 1: Child Find.

The "child find" provisions of the IDEA require each State to have policies and procedures in effect to ensure that "[a]ll children with disabilities residing in the State . . . who are in need of special education and related services, are identified, located, and evaluated." 20 U.S.C. Sect. 1412(a)(3)(A); 34 C.F.R. Sect. 300.111(a). Child find must include any children "suspected of being a child with a disability under Section 300.8 and in need of special education, even though they are advancing from grade to grade." 34 C.F.R. Sect. 300.111(c) (1).

Federal case law indicates that these provisions impose an affirmative duty to identify, locate, and evaluate all such children. Reid v. District of Columbia, 401 F.3d 516, 518-19 (D.C. Cir. 2005); Hawkins v. District of Columbia, 539 F. Supp. 2d 108 (D.D.C. 2008). Consistent with the statutory language, the "child find" obligation "extends to all children suspected of having a disability, not merely to those students who are ultimately determined to have a disability." N.G. v. District of Columbia, 556 F. Supp. 2d 11 (D.D.C. 2008).

The record shows that the Student has been misbehaving and fighting in school since the sixth grade. Then, during the 2013-2014 school year, the parent was forced to be at the school frequently to pick up the Student or have a meeting with school staff about the Student. At some point during this school year, the parent asked for the Student to be evaluated. A community support worker and a lawyer also asked for the Student to be evaluated, per the uncontested testimony of the parent. It is unclear from the testimony of the parent as to actually when these requests occurred except that they did occur during the 2013-2014 school year.

The 2013-2014 school year was difficult for the Student, who was engaging in so many severe behavioral episodes that Social Worker A was intervening in the Student's education frequently at this time. The record indicates that Social Worker A had a "calming influence" on the Student, suggesting that she might be in need of special education services to address her emotional issues.

When viewed together, the parent's request for an evaluation, a community support worker's request for an evaluation, a lawyer's request for an evaluation, multiple suspensions, and frequent interventions by a social worker should have alerted DCPS that

the Student needed an IDEA evaluation, certainly by the end of the 2013-2014 school year. Respondent therefore violated child find for the entirety of the 2014-2015 school year when it failed to conduct an evaluation of the Student.

2. Issue #2: Suspensions without Manifestation Determination Reviews.

Petitioner claims that DCPS failed to provide the Student with disciplinary protections when she was suspended during the 2013-2014 and 2014-2015 school years.

Students who are not eligible for services may be subject to the protections of the IDEA under certain circumstances. 34 CFR Sect. 300.534(a). To gain this protection in connection to violations of codes of conduct, the public agency must have had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

This knowledge can be acquired in three ways. The parent can express concern in writing to a supervisor or administrative personnel of the agency. The parent can request an evaluation of the child. Also, a teacher, or other personnel of the LEA, can express specific concerns about the pattern of behavior demonstrated by the child directly to the director of special education of the agency or other supervisory personnel of the agency. 34 CFR Sect. 300.534(b)

If such knowledge has been established, the disciplinary protections apply. 34 CFR Sec. 300.530(b) provides that school personnel "may remove a child with a disability who violates a code of student conduct from his or her current placement ...for not more than 10 consecutive school days . . . as long as those removals do not constitute a change of placement under §300.536." 34 CFR Sect.300.530 (b). Section 300.536, in turn, provides that a "change of placement" occurs if either (1) the removal is for more

than 10 consecutive school days, or (2) the child is subject to a series of removals totaling more than 10 school days in a school year that constitute a "pattern."

If such a "change of placement" occurs, then within 10 school days, the LEA must convene a meeting of the IEP team to make a "manifestation determination" as provided in Sect.34 CFR 300.530(e). The IEP Team is to review all relevant information and then determine if the conduct in question was "caused by, or had a direct and substantial relationship to, the child's disability" or was "the direct result of the LEA's failure to implement the IEP." 34 CFR Sect. 300.530 (e)(1). If the IEP Team determines that the conduct was a manifestation of the child's disability, then the Team must either (i) conduct an FBA and implement a BIP, or (ii) review and modify an existing BIP. 34 C.F.R. Sect. 300.530 (f)(1). In addition, the child generally must be returned to the placement from which the child was removed. 34 CFR Sect. 300.530 (f)(2).

As I have found, the record indicates that the parent requested an evaluation by the end of the 2013-2014 school year. There is nothing in the record to establish that the parent submitted a request to evaluate in writing, or that DCPS personnel expressed specific concerns about the pattern of behavior demonstrated by the child directly to the director of special education of the agency or other supervisory personnel of the agency. Accordingly, the disciplinary protections of the IDEA apply to benefit this Student only for the 2014-2015 and 2015-2016 school years.

There was a suspension for the 2014-2015 school year, which is the long suspension that ultimately resulted in the Student being transferred to School E and then expelled from School D. However, this suspension did result in a manifestation determination, and there is no claim in the prehearing order challenging the actual result

that the manifestation determination team came up with. Accordingly, I cannot find that Respondent violated 34 CFR Sect. 300.534(a) on the allegations here.

3. Issue #3: Meaningful Participation.

Congress sought to protect individual children by providing for parental involvement in the formulation of a child's individual educational program. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 208 (1982). Accordingly, the regulations require that parents of a child with a disability be afforded an opportunity to participate in meetings with respect to the educational placement of the child. 34 C.F.R. Sect. 300.501(b)(1); 20 U.S.C. Sect. 1414(e). To this end, Districts have a duty to insure that parents meaningfully participate in an IEP review. Paolella ex rel. Paolella v. Dist. of Columbia, 210 F. App'x 1, 3 (D.C. Cir. 2006); A.M. v. Dist. of Columbia, 2013 WL 1248999 (D.D.C. Mar. 28, 2013); T.T. v. Dist. of Columbia, 2007 WL 2111032 (D.D.C. July 23, 2007).

On August 27, 2015, DCPS held an eligibility meeting which the parent attended. There is nothing in the record to suggest that the parent was denied the right to participate in the meeting, which resulted in the Student being determined to be eligible for services. This is what the parent was seeking at the meeting.

The parent testified that, at the meeting, the understanding was that a second meeting would be called, at which time an IEP team would write up an IEP.

No such meeting was called with the parent in attendance. Though the parent is listed in the section of the IEP entitled "Signatures of IEP Team Participants," she is not listed as having attended the meeting. DCPS did not call any witnesses to contest the parent's testimony that she did not attend the meeting, and did provide an excuse for

failing to insure that the parent was not at the meeting. As a result, I find there was a denial of FAPE because DCPS significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student.

4. Issue #4: Appropriateness of the IEP.

Petitioner contends that the Student needs a “full-time” IEP in a “therapeutic” setting, with social workers and psychologists on staff to address any emotional issues that may come up as a result of her disabilities. Petitioner contends that the offer of six hours of specialized instruction weekly is inadequate. Petitioner also contends that the IEP does not contain a transition plan or transition services.

The Student has Bipolar Disorder and reacts very strongly to certain people, especially males. She does not like people to touch her. She constantly gets into fights, gets suspended, and has been transferred from school to school in search of an academic home. She clearly needs behavioral support services, and the IEP does in fact provide 240 minutes of behavioral support services for the Student monthly.

Still, the record shows that the Student particularly benefitted from working with counseling *as necessary*, i.e., after an outburst in an unscheduled way. While the IEP does provide for 240 minutes of counseling per month, it does not clearly require a social worker to be, in effect, be “on call” when the Student engages in outbursts. To this IHO, it should be clear on the IEP that a social worker or psychologist shall be “on call” for the Student throughout the school day should any outbursts occur.

The IEP also recommends six hours of specialized instruction, in general education. As a result, more than two thirds of her school day would be exactly the

same with this IEP. All of her classes would be in the general education environment.

However, is a Student who has done poorly in general education for years at four different schools, fighting and getting suspended all too frequently. Given her behavioral deficits, including her sensitivity to the environment and negative reactions to certain peers, I find this Student needs more adult attention that can be delivered in a program with all large general education classes. It is noted that the Student has an IQ of 69 and would seem to have to struggle in general education even if her behavior were perfect.

Parenthetically, the record suggests that the Student would do better if she were taught in a smaller group. She “enjoys” the smaller teacher to student ratio and school size at Organization A, and also benefits from 1:1 interaction with adults such as Social Worker A. I agree with Petitioner that the recommendation for six hours per week of specialized instruction inside general education is inadequate for the Student.

Finally, I agree with Witness B that the transition plan here is inadequate. A review of the plan reveals that virtually every entry is left blank because “the student was not available to provide input.” However, although the Student was not attending school at the time, there is nothing in the record to suggest that the Student refused to participate in the formulation of the transition plan, which at one point refers to a student named [REDACTED].”

As a result of the foregoing, I find that the IEP at issue caused the Student a deprivation of educational benefit. As a result, DCPS denied the Student a FAPE.

5. Issues # 5 and 6:

Petitioner contends that DCPS failed to provide the Student with an appropriate placement for the 2015-2016 school year, and that DCPS failed to implement the Student's IEP.

In regard to Petitioner's placement/location of services claims relating to School B, courts hold that school districts may designate schools for students as long as the district assigns a school that may appropriately implement a Student's IEP. T.Y. v. New York City Department of Educ., 584 F.3d 412 (2d Cir. 2009). That implementation must start at the beginning of each school year. 34 CFR Sect. 300.323(a). Although the LEA has some discretion with respect to the location of services, that discretion cannot be exercised in such a manner to deprive a Student of a FAPE. Gellert v. District of Columbia, 435 F. Supp.2d 18 (D.D.C. 2006); Holmes v. District of Columbia, 680 F. Supp. 40 (D.D.C. 1988).

There was no specific school placement offered in this case until the resolution meeting well after the start of school, at which point DCPS offered the Student School F. Since DCPS must offer the Student a location of services by the beginning of the school year, this is a violation of 34 CFR Sect. 323(a).

School F, a large high school, can implement the IEP, as testified to by Witness D. However, as pointed out by Witness B, School F is an inappropriate location of services for the Student given her history. The record establishes that the Student tends to react to large environments by getting into fights with peers, including outside of class in the halls. As stated earlier, the Student likes the small size of Organization A. I agree with the parent that the Student needs a different kind of school setting, with less students in the total school environment.

I find that DCPS caused a deprivation of educational benefits by failing to provide the Student with an appropriate location of services for the 2015-2016 school year, denying the Student a FAPE.

VIII. Relief

As a remedy, Petitioner asserts that appropriate relief in this matter is to order compensatory education in the form of 160 hours of tutoring, online credit recovery classes geared for students with disabilities, and 40 hours of behavioral support services.

When school districts deny Students a FAPE, courts have wide discretion to insure that students receive a FAPE going forward. As the Supreme Court stated:

The statute directs the court to “grant such relief as [it] determines is appropriate.” The ordinary meaning of these words confer broad discretion on the court. The type of relief is not further specified, except that it must be “appropriate.” Absent other reference, the only possible interpretation is that the relief is to be “appropriate” in light of the purpose of the Act. As already noted, this is principally to provide handicapped children with “a free appropriate public education which emphasizes special education and related services designed to meet their unique needs.

School Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985).

1. Reimbursement For Tutoring/Tutoring Going Forward.

Parents may be reimbursed for tutoring expenses incurred during a time period wherein an LEA denied a Student a FAPE. Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 16 (1993); Solomon-Lane v. District of Columbia, 2005 WL 763533 (D.D.C. 2005); Anchorage School District v. M.P., 2011 WL 5149140 (9th Cir. 2011).

The Student has been at Organization A since mid-September, receiving classes for four days a week, for two hours daily. It is a General Equivalency Diploma class,

where she works on math and basic skills on an individualized basis. There are four students in a room with a teacher at a time, with eight students enrolled in total. There are two staff members working with the class, one of whom is a certified special education teacher.

The record shows that likes to go to Organization A and has been attending regularly, “which is surprising” because she has always had trouble going to school. The record also suggests that the parent had no other choice and would have ended up keeping the Student home were it not for the program at Organization A.

DCPS points out that the parent did not provide it with notice of the placement at Organization A. While it is true that tuition payments can be denied if school districts are not provided with notice of that placement ten business days before the placement starts, (see 34 CFR Sect. 148(d)(i), (ii)), under 20 U.S.C. Sect. 1412(a)(10)(C)(iii)), a denial or reduction in reimbursement is discretionary for the hearing officer. I find that this is in appropriate matter to exercise that discretion. The parent was left without a school for her daughter, and had to do whatever she could to try to get her some kind of education during the school year. The record indicates that Organization A does provide the Student with educational benefit. It is worth noting that the Student was not getting any educational services from March until June, 2015. The parental placement here, while not ideal, was appropriate under the circumstances. Moreover, I agree that the Student should continue to receive services at this placement until a school is offered to the Student that satisfies the requirements of this HOD.

2. Compensatory Education.

One of the equitable remedies available to a hearing officer, exercising his authority to grant "appropriate" relief under IDEA, is compensatory education. Under the theory of compensatory education, courts and hearing officers may award "educational services to be provided prospectively to compensate for a past deficient program." Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, 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. Id., 401 F. 3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to craft an award 'tailored to the unique needs of the disabled student'").

A Petitioner need not "have a perfect case" to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011) Under the IDEA, if a Student is denied a FAPE, a hearing officer may not "simply refuse" to grant one. Henry v. District of Columbia, 55 IDELR 187 (D.D.C. 2010) Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

Petitioner seeks fifty hours of individualized reading, fifty hours of counseling, and 100 hours of functional life skills training through a compensatory education plan reviewed by all three of the parent witnesses. The plan applies Reid and reasonably concludes that the Student would require this amount of services to be brought to where she would have been if she had been offered a FAPE.

I find the request of fifty hours to be reasonable, and I find the fifty hours to be reasonable as well in view of the considerable time that the Student has missed school. However, the record is unclear on what the nature of “functional life skills training” is. There was no clear testimony explaining what this training is or why this Student requires it to get to where she would have been were she to have received a FAPE. I decline to order such training.

3. Other Relief.

Finally, Petitioner also seeks a Functional Behavior Assessment and an Occupational therapy assessment. I agree that both are required for this Student. An FBA is needed to determine, among other things, what the antecedents of the Student’s behaviors are and how those antecedents can be replaced. An occupational therapy assessment is needed because of the unrebutted findings of Witness C to the effect that testing revealed that the Student had visual motor issues, and that such issues may be appropriately addressed through occupational therapy.

IX. Order

As a result of the foregoing:

1. Respondent is hereby ordered to provide the Student with fifty hours of 1:1 individualized tutoring;
2. All tutoring shall be directly provided by a certified special education teacher who shall be paid at a reasonable and customary rate;
3. DCPS shall reimburse Petitioner for tuition and fees paid to Organization from September, 2015 until an IEP is written for the Student in full compliance with this

order and a location of services is selected for the Student in full compliance with this order;

4. The Student shall receive an appointment for an occupational therapy assessment within thirty calendar days;

5. DCPS shall complete a Functional Behavior Assessment of the Student within sixty calendar days;

6. The Student's IEP shall be revised to: a) require a school with less than 500 students total in the building; b) require classes with no greater a student-teacher ratio than twelve students to one certified teacher per class; c) require that math classes shall be led by a special education teacher; d) include a detailed, meaningful transition plan that is personalized to the Student; e) provide for "at-risk" counseling when the Student is experiencing significant behavioral issues;

7. DCPS shall provide a location of services to the Student that can fully implement the revised IEP by December 1, 2015;

8. Petitioner's other requests for relief are hereby denied.

Dated: October 22, 2015

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Carolyn Houck, Esq.
William Jaffe, Esq.
OSSE Division of Specialized Education
Contact.resolution@dc.gov
Chief Hearing Officer

X. Notice of Appeal Rights

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 USC §1415(i).

Date: October 22, 2015

Michael Lazan
Impartial Hearing Officer