

**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
December 10, 2014

STUDENT, ¹)	Date Issued: 12/9/14
through his Parent,)	
Petitioner,)	
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	
("DCPS"),)	
Respondent.)	
)	
)	
)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, father of Student, filed a due process complaint on 10/24/14, alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") because DCPS did not find Student's behavior resulting in suspension from school to be a manifestation of his disability and did not provide an alternate placement; Student was not placed in a nonpublic school with an amended IEP; and Student's speech/language services were reduced. DCPS responded that Student's behavior was not a manifestation of his disability, Student was given a work packet while suspended, a nonpublic school was not necessary for Student, and the reduction in speech-language services was appropriate.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; Title V, Chapter E-30,

¹ Personally identifiable information is provided in Appendix A.

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of the District of Columbia Municipal Regulations (“D.C.M.R.”) and 38 D.C. Code 2561.02.

Procedural History

Following the filing of the due process complaint on 10/24/14, this Hearing Officer was assigned to the case on 10/28/14. DCPS filed a late response to the complaint on 10/28/14 and made no challenge to jurisdiction.

A portion of this case is expedited because the complaint contains disciplinary allegations that warrant an expedited hearing pursuant to 34 C.F.R. 300.532(c). By agreement of the parties, the non-expedited issues in the case were addressed on the same timeline as the expedited issues. A resolution meeting took place on 11/6/14, at which time the parties did not resolve the case, and the 15-day expedited resolution period ended on 11/8/14. The due process hearing in an expedited case must occur within 20 school days after the filing of the complaint, or in this case by 11/25/14, and a final decision on the expedited issues must be reached no later than 10 school days following the hearing, which, based on the hearing dates below, required the issuance of this Hearing Officer Determination (“HOD”) by 12/9/14. A prehearing conference was held on 11/7/14 and 11/10/14 and a Prehearing Order issued on 11/10/14.

The due process hearing, which was closed to the public, took place with a second and ultimately unneeded hearing day scheduled

Counsel declined to discuss settlement at the beginning of the hearing. Petitioner had an emergency situation requiring his presence at the courthouse to be with another child, but participated by telephone for virtually the entire hearing.

Neither party objected to the testimony of witnesses by telephone. The parties made no admissions and agreed on no stipulations.

Petitioner’s Disclosure statement, filed on 11/7/14, consisted of a witness list of 10 witnesses and documents P-1 through P-38. Petitioner’s Disclosure statement and documents were admitted into evidence, except for P-7 and P-8. Objections to P-7 and P-8 were sustained (regarding events occurring after the filing of the due process complaint). All objections to Petitioner’s other documents were overruled; those objections were based on relevance and opposing counsel’s emails (P-1-1,2, P-2, P-9, P-15), documents relating to previous settlements or HODs (P-20, P-21, P-24, P-26, P-29, P-30), and relevance (P-22, P-36).

Respondent’s Disclosure statement, filed after business hours on 11/10/14, consisted of a witness list of 7 witnesses and documents R-1 through R-14. Respondent’s Disclosure statement and documents admitted into evidence without objection, as the only objections raised were to expert witness designations.

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Petitioner's counsel presented 4 witnesses in Petitioner's case-in-chief (*see* Appendix A):

1. Psychologist – qualified over objection as an expert in Clinical and School Psychology
2. Principal of Nonpublic School (“Principal”)
3. Guardian ad Litem (“GAL”)
4. Foster Mother

Respondent's counsel presented 2 witnesses in its case (*see* Appendix A):

1. Special Education Teacher at Public School (“Teacher”) – offered, but not qualified, as an expert
2. Special Education Coordinator at Public School (“SEC”)

Petitioner's counsel did not present any rebuttal witnesses.

The issues to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to determine that Student's behaviors that resulted in a suspension of 10 days on 9/26/14 were a manifestation of his disability.

Issue 2: Whether DCPS denied Student a FAPE by failing to provide an alternate educational setting and/or services when his suspensions in the 2014/15 School Year exceeded 10 days, as Student had 3 suspensions in September 2014 totaling 17 days.

Issue 3: Whether DCPS denied Student a FAPE by failing to develop an appropriate IEP for Student on or about 10/7/14 since (a) Student has multiple disabilities and needs a full-time, therapeutic, separate day school that can address both his Intellectual Disability (“ID”) and Emotional Disturbance (“ED”) concerns, and (b) Student's related services of speech and language were inappropriately reduced.

Issue 4: Whether Respondent denied Student a FAPE by failing to provide an appropriate educational placement and/or location of services for the 2014/15 SY, in light of Student's Functional Behavioral Assessment (“FBA”), the recommendations of his counselor and his inability to be successful at Public School.

Petitioner seeks the following relief:

1. A finding that DCPS denied Student a FAPE.

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2. DCPS shall fund private placement for Student and provide necessary transportation services.
3. DCPS shall amend Student's IEP to provide at least 1 hour of speech and language services per week.
4. DCPS shall fund compensatory education² for any denial of FAPE.

Oral closing arguments were given by counsel for both parties at the end of the due process hearing.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact³ are as follows:

1. Student is a resident of the District of Columbia. Petitioner is Student's father ("Father"); Student lives with Foster Mother.⁴
2. Student is now living with his second foster family since becoming involved with Child and Family Services in April 2014.⁵ Being removed from his home has been upsetting and impacted Student's behaviors.⁶

² With regard to the request for compensatory education, Petitioner's counsel was put on notice during the Prehearing Conference that Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was similarly put on notice that it should be prepared to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

³ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁴ Foster Mother.

⁵ Psychologist; R-2-9.

⁶ GAL; Teacher; R-2-9.

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3. Student is classified as having an Intellectual Disability (“ID”) and is in the ID program at Public School.⁷ Student is not classified as ED and there was no discussion about classifying Student as ED at the 10/7/14 IEP meeting.⁸

4. A Comprehensive Psychological Evaluation completed on 7/25/13 by Psychologist diagnosed Student as having a Social (Pragmatic) Communication Disorder in addition to severe Intellectual Disability.⁹ Student’s behavioral ratings did not indicate any sign of Emotional Disturbance as a pervasive handicapping condition to his behavior in all situations, but Student did appear to have specific emotional disruption to his learning of academic subjects in school settings.¹⁰

5. Public School is working with Student in a small ID program at Public School in which there are 5-10 students with 2 teachers in the class.¹¹ Student is one of the highest performing students in his ID program and can accomplish what he is asked to do, but often chooses not to do it.¹²

6. Student received three off-site suspensions in September 2014, which are the focus of this case. He was suspended for 4 days for causing disruption on 9/8/14 and 3 days for use of marijuana or a related infraction on 9/15/14; Student received an additional suspension for fighting on 9/25/14.¹³ The fight, which led to Student’s third suspension, took place in the classroom, not when Student was wandering a hallway.¹⁴

7. Foster Mother did not receive paperwork from Public School for the third suspension and was told on 9/25/14 by Public School that Student was suspended for 10 days, even though DCPS now asserts and has records showing that the suspension was only for 3 days.¹⁵ However, Public School’s documents also refer to a 10-day suspension, stating that Student “will be getting a 10 day suspension”¹⁶ and that Student’s absence on 9/26/14 was “due to a 10 day off-stie [sic] suspension.”¹⁷ DCPS stated at the multidisciplinary team (“MDT”) meeting on 10/7/14 that Student should return to school

⁷ R-2-9.

⁸ R-3; GAL; Teacher; SEC.

⁹ P-16-12; Psychologist.

¹⁰ P-16-10; Psychologist.

¹¹ SEC.

¹² Teacher.

¹³ P-6-1; P-1-3; P-3-1; P-4-1.

¹⁴ SEC.

¹⁵ Foster Mother; R-1; P-6-1.

¹⁶ P-6-1.

¹⁷ P-5-2.

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the next day, so he was effectively suspended for 8 days, increasing his total suspensions to 15 days.¹⁸

8. After Foster Mother was called about Student's third suspension on 9/25/14, which Public School told her would be for 10 days, Foster Mother waited at school that day to obtain documentation about the suspension, but it was not available; Foster Mother left her email address but did not receive anything.¹⁹ Foster Mother later called the school to ask for the package of work for Student, but thought she had not received any work for Student.²⁰

9. After Student's suspension on 9/25/14, Teacher provided a packet of work for Student, which she gave to the assistant principal at Public School to give to Foster Mother.²¹ The packet was received by Foster Mother; work from the packet was completed and returned to Teacher.²²

10. DCPS did conduct a Manifestation Determination Review ("MDR") on 10/7/14.²³ The MDR concluded that Student's behavior resulting in the third suspension was not a manifestation of Student's disability or the result of not implementing his IEP.²⁴ The determination was a team decision, but opposed by Student's supporters.²⁵

11. Student has indicated to Teacher that he doesn't need to listen and can do what he wants because he is "going to transfer."²⁶ Student has indicated to the assistant principal of Public School that he won't get suspended because he has an attorney and that he is on his way to Nonpublic School.²⁷

12. Psychologist and GAL are very concerned about whether Public School is making the efforts that it should to meet the needs of Student, as he often roams the halls and is not in his classes to be able to access his education or services. Student is embarrassed about being in the ID program and often tries to get away from his program in order to spend time with non-disabled students. Student is very vulnerable to peer influences and Public School is too large to be able to provide the 1-on-1 support that would benefit

¹⁸ P-15-1; R-1-2.

¹⁹ Foster Mother.

²⁰ *Id.*

²¹ Teacher.

²² *Id.*

²³ R-4.

²⁴ *Id.*

²⁵ SEC.

²⁶ Teacher.

²⁷ SEC.

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Student.²⁸ Foster Mother is also concerned that Public School is not adequate for Student, as he never has any assignments and has been suspended frequently.²⁹

13. While Student is undeniably having problems, his behavior may not change even with a more restrictive setting because Student is having a “tough time” and has a lot going on outside the school environment.³⁰ Student has had huge behavioral changes related to being removed from his home, so it may make no difference whether he is put in a new school.³¹ Student’s behaviors are impacting his education because he is failing to avail himself of the classes that are offered to him.³² Student needs more stability in his family life.³³

14. Despite Student’s problems, Psychologist, who has been working with Student, notes that Student is “doing better,” is improved in some ways, and is “more successful in some classes.”³⁴

15. An independent Speech-Language Assessment concluded on 7/19/13 that Student should receive 2-1/2 hours per week of speech-language services from a speech-language pathologist.³⁵ An HOD issued on 11/19/13 required 240 minutes per month of speech-language services. This was reduced to 120 minutes per month in the 10/7/14 IEP, based on unspecified data, which was said not to support Student needing the same level of services as before.³⁶ DCPS stated that the speech-language hours needed to be reduced “due to the student’s underlying behaviors and level of skills,”³⁷ even though Student had demonstrated a “progression of skills” and had not demonstrated a “plateau of skills.”³⁸ Student’s counsel, GAL and Community Social Worker disagreed with the reduction in service hours.³⁹

16. Student generally received 240 minutes per month of speech language services as required by his IEP from the beginning of the 2014/15 SY through September 2014.⁴⁰

²⁸ Psychologist; GAL.

²⁹ Foster Mother.

³⁰ Teacher.

³¹ SEC.

³² *Id.*

³³ *Id.*

³⁴ Psychologist.

³⁵ P-32-9.

³⁶ P-13-13; R-3-2; R-5.

³⁷ R-3-2.

³⁸ R-5-2.

³⁹ R-3-3.

⁴⁰ P-5.

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When Student received his speech language services, he was noted as “Progressing.”⁴¹

Conclusions of Law

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

The overall purpose of the IDEA is to ensure that “all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A).

“The IEP is the ‘centerpiece’ of the IDEA’s system for delivering education to disabled children,” *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (3d Cir. 2010), quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and is the primary vehicle for providing a FAPE. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203, 102 S. Ct. 3034, 73 L.Ed.2d 690 (1982). The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential commensurate with the opportunity provided other children. *Rowley*, 458 U.S. at 198. Congress, however, “did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial.” *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985).

In addition, DCPS must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. 300.114.

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. 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

⁴¹ *Id.*

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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 C.F.R. 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights.

“Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5-E D.C.M.R. § 3030.3. The burden of proof is normally on the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005). Under District of Columbia regulations, in reviewing a decision with respect to a manifestation determination, the Hearing Officer must determine whether DCPS has demonstrated that the child's behavior was not a manifestation of his disability. *See* 5-B D.C.M.R. § 2510.16.

Issue 1: *Whether DCPS denied Student a FAPE by failing to determine that Student's behaviors that resulted in a suspension of 10 days on 9/26/14 were a manifestation of his disability.*

Under the IDEA, a disciplinary change of placement occurs if a student is subjected to a series of removals that total more than 10 school days in a school year. *See* 34 C.F.R. 300.536. In such cases, the local education agency (“LEA”) must conduct an MDR to determine if the conduct in question was caused by or had a direct relationship to the student's disability. 34 C.F.R. 300.530(e).

A threshold issue here is how many days Student was actually suspended during the 3 suspensions at issue in September 2014. There is no question that Student's first 2 suspensions were for 4 and 3 days. As to the third, DCPS argues and has documents showing that Student was suspended on 9/25/14 for 3 days, making exactly 10 days (R-1), which would not trigger an MDR. However, Foster Mother credibly testified that she was told by Public School on the day of his suspension that Student was suspended for 10 days, and that is supported by references to 10 days in Public School's documents.⁴² Prior to the end of the 10 days, however, DCPS stated at an MDT meeting on 10/7/14 that Student should return to school the next day, so he was effectively suspended for 8 days, resulting in total suspensions of 15 days in September 2014. Indeed, DCPS conducted an MDR on 10/7/14, which was required only if the suspensions exceeded 10 days, pursuant to 34 C.F.R. 300.530(e) and 300.536(a).

In the MDR on 10/7/14, Public School appears to have rather summarily concluded that Student's suspension on 9/25/14 was not a manifestation of his disability, although the MDR determination came as a part of the meeting in which a range of issues

⁴² *See* P-6-1 (Student “will be getting a 10 day suspension”) and P-5-2 (Service Tracker notes absence on 9/26/14 “due to a 10 day off-stie [sic] suspension”).

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and information was considered for Student, including his IEP, suitability of location of services, Audiological Assessment, FBA, and development of a Behavioral Intervention Plan (“BIP”). DCPS’s conclusion that the 9/25/14 suspension was not a manifestation of Student’s disability was bolstered by testimony from Teacher and SEC, both of whom participated in the MDR.

The determination was a team decision, albeit a team unable to reach consensus on this point. GAL testified that Student’s incident began with him wandering the halls, which he does because he is embarrassed about being in the ID program and seeks to “escape” to the general education areas, where he got into a fight with another student. Contradictory testimony from SEC, which this Hearing Officer finds more credible, confirmed that Student’s fight was in his classroom and not the hallway. In any case, this Hearing Officer is not convinced that merely wanting to avoid class is a manifestation of Student’s disability. Accordingly, this Hearing Officer finds that there was a sufficient demonstration by DCPS that Student’s conduct was not a manifestation of his disability, as required by 5-B DCMR § 2510.16.

It is also noteworthy that there would have been little or no practical difference if Student’s behavior had been a manifestation of his disability, as Student had just received an FBA (R-2-7) on 9/23/14 and a BIP (P-14) on 9/24/14, and both were reviewed at the 10/7/14 meeting by Student’s MDT team (R-3-3). Further, on 10/7/14, DCPS made clear that Student should return to school, which he did the following day.

Issue 2: *Whether DCPS denied Student a FAPE by failing to provide an alternate educational setting and/or services when his suspensions in the 2014/15 School Year exceeded 10 days, as Student had 3 suspensions in September 2014 totaling 17 days.*

As discussed above, Student was suspended for 15 days during September 2014, triggering additional protections beyond an MDR. A child with a disability, who is removed from his current placement for disciplinary reasons, must continue to receive educational services, so as to enable him to continue to participate in the curriculum, although in another setting, and progress toward meeting the goals in his IEP. *See* 34 C.F.R. 300.530(d).

Foster Mother was called by Public School about Student’s third suspension on 9/25/14, and was told the suspension would be for 10 days. Foster Mother credibly explained that she waited at school on that day to get the documentation about Student’s suspension, but it was not available; Foster Mother left her email address but did not receive anything. Her testimony about not receiving paperwork, which presumably would have shown the shorter length of the suspension, was un rebutted. However, this Hearing Officer finds Teacher’s testimony about sending a package of work home for the Student to be more credible than Foster Mother’s assertion that she did not receive any work for Student, since Teacher noted that completed work from the packet was returned to her. Accordingly, this Hearing Officer concludes that Student did continue to receive

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some educational services and Petitioner failed to prove a violation of 300.530(d) and denial of FAPE.

Issue 3: *Whether DCPS denied Student a FAPE by failing to develop an appropriate IEP for Student on or about 10/7/14 since (a) Student has multiple disabilities and needs a full-time, therapeutic, separate day school that can address both his ID and ED concerns, and (b) Student's related services of speech and language were inappropriately reduced.*

Issue 4: *Whether Respondent denied Student a FAPE by failing to provide an appropriate educational placement and/or location of services for the 2014/15 SY, in light of Student's FBA, the recommendations of his counselor and his inability to be successful at Public School.*

The next issue to be addressed is whether Student should be placed in Nonpublic School due to having multiple disabilities, or due to other challenges at Public School, as alleged by Petitioner.

Considering first the assertion that Student has multiple disabilities, Petitioner argued that Student suffers from ED as well as ID. Psychologist testified that Student's 2013 Comprehensive Psychological Evaluation should have diagnosed ED. However, Psychologist clearly stated in that Evaluation that Student's behavioral ratings did not indicate any sign of ED as a pervasive handicapping condition to his behavior in all situations, although Student did appear to have specific emotional disruption to his learning of academic subjects in school settings. Psychologist participated in the 10/7/14 meeting and asserted generally that Public School was not sufficient to address Student's needs. However, multiple participants confirm that ED was not discussed at the meeting, much less confirmed as a disability suffered by Student.

Petitioner's second argument is no stronger. While Student is not doing well in Public School, that alone is not a denial of FAPE and a basis for sending him to Nonpublic School. Indeed, Psychologist, while concerned about Public School and asserting at the MDT meeting on 10/7/14 that Student may need another school, also testified that Student is "doing better," is "more successful in some classes," and is improved in some ways, despite Student's ongoing problems.

Moreover, Student apparently has been through many changes and even trauma in his personal life, and he may be lacking stability that would be desirable for his education. *See Garcia v. Board of Educ. of Albuquerque*, 2007 WL 5023652, (D.N.M. 2007) (IDEA does not provide a remedy where access to a free and appropriate public education is wide open, but the student refuses the numerous and extensive educational opportunities afforded). Further, credible testimony suggested that Student might do no better in a more restrictive setting. *See* 300 C.F.R. 300.114(a) (to the "maximum extent appropriate," children with disabilities are to be educated with nondisabled children). In cases such as this DCPS should do as much as it can to assist Student, but cannot be

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liable if unable to achieve a successful outcome for every student at each point throughout their schooling.

For these reasons, this Hearing Officer concludes that Petitioner has not met his burden of proving that DCPS failed to provide a FAPE to Student by not placing Student in Nonpublic School or not modifying his IEP to require Nonpublic School. *See Smith*, 846 F. Supp. 2d at 202 (FAPE requirement is satisfied when a school district provides the disabled child with “personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction.” *quoting Rowley*, 458 U.S. at 203, 102 S. Ct. 3034).

On Issue 3(b), Petitioner did meet his burden of proving that Student’s related speech and language services were reduced without sufficient cause and should be restored. An independent Speech-Language Assessment concluded on 7/19/13 that Student should receive 2-1/2 hours of speech-language services per week from a speech-language pathologist. The HOD issued on 11/9/13 carefully weighed the evidence and concluded that 2-1/2 hours per week were not needed, but that DCPS’s proposal of only 2 hours per month was “not likely to produce progress” and noted that DCPS had previously removed Student from speech-language services (P-28-11). The Hearing Officer struck a reasoned middle path, providing 240 minutes per month of speech-language services.

Here, DCPS has again sought to cut back Student’s speech-language services, reducing them by half to 120 minutes per month in Student’s 10/7/14 IEP, the exact level found not to be sufficient by the Hearing Officer a year earlier. DCPS might have demonstrated through new assessments or in other ways that Student’s needs have changed, but it did not. Instead, DCPS merely relied on unspecified data which were said not to support Student needing the same level of services as before, even though Student was demonstrating “progression of skills,” and had not hit a “plateau of skills.” Given the objection of Student’s counsel, GAL and the Community Social Worker to the reduction in service hours at the IEP meeting on 10/7/14, and in the absence of additional assessments or other sufficient information, this issue was legitimately challenged pursuant to 34 C.F.R. 300.503(a)(1) and this Hearing Officer concludes that it was a violation of IDEA to reduce Student’s level of speech-language services by half without adequate justification, so they must be restored to 240 minutes per month.

Compensatory Education Request

In cases in which a compensatory education award is sought, “the hearing officer first determines whether there is sufficient evidence of an IDEA violation that entitles the student to a compensatory education.” *Banks ex rel. D.B. v. Dist. of Columbia*, 720 F. Supp. 2d 83, 90 (D.D.C. 2010) (citation omitted). “If the hearing officer determines there was such a violation, then the hearing officer applies the *Reid* [*ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516 (D.C. Cir. 2005)] standard to craft an award.” *Id.* Here,

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Petitioner has established that there has been an IDEA violation that entitles Student to compensatory education relating to speech-language services.

Compensatory education is designed to place disabled children in the same position they would have occupied but for the violation of IDEA. The proper amount of compensatory education depends on 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 LEA's violations of the IDEA. *See Walker v. Dist. of Columbia*, 786 F. Supp. 2d 232, 238-239 (D.D.C. 2011), *citing Reid*, 401 F.3d 516.

The compensatory education plan submitted in this case (P-34) was focused on much more than missing hours of speech-language services, but the principles in the plan can be extrapolated to provide an appropriate award. Student generally received 240 minutes per month of speech-language services as required by his IEP from late August through September 2014. This was cut back to 120 minutes per month on 10/7/14, so Student would have missed about 120 minutes for each of the two months from that time to date. Accordingly, this Hearing Officer determines that Student's speech-language services shall be increased by 60 minutes per month for a total of 300 minutes per month for the first 4 months of calendar year 2015, which is calculated to provide the benefits that likely would have accrued from the services that DCPS should have supplied Student in the first place. *See Henry v. Dist. of Columbia*, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse); *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (a student is not required "to have a perfect case to be entitled to compensatory education" (citations omitted)).

ORDER

Petitioner has met his burden of proof on the issue of speech-language services, as set forth above. Accordingly, **it is hereby ordered that:**

(1) DCPS shall modify Student's IEP within 10 school days to restore his speech-language services to 240 minutes per month. In addition, DCPS shall provide an additional 60 minutes per month of speech-language services for four months, from January through April 2015.

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(2) Any and all other claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ *Keith Seat*

Keith L. Seat, Esq.
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).