

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Student Hearing Office
April 14, 2014

STUDENT, ¹)	
through the Parent,)	
)	Date Issued: April 11, 2014
Petitioner,)	
)	Hearing Officer: Virginia Dietrich
v.)	
)	Case No: 2014-0036
District of Columbia Public Schools)	
)	
Respondent.)	

HEARING OFFICER DETERMINATION

Background

Petitioner, the mother of Student, filed a due process complaint notice on January 22, 2014, alleging that Student had been denied a free appropriate public education (“FAPE”) by the District of Columbia Public Schools (“DCPS”) in violation of the Individuals with Disabilities Education Act (“IDEA”).

Petitioner alleged that Student was denied a FAPE by DCPS’ failure to provide Student with a self-contained autism classroom during the 2011/12 school year (“SY”) and the 2012/13 SY. Petitioner posited that before these two years, Student was in a self-contained classroom and he benefitted academically from the program. However, during the 2011/12 SY and 2012/13 SY, when Student received specialized instruction primarily inside the general education classroom with some additional pull-out services,² Student’s Individualized Education Program (“IEP”) was inappropriate because Student failed to make as much progress as he would have made if he had remained in a self-contained classroom with all services provided outside of general education.

Petitioner also alleged that Student’s January 14, 2014 IEP was inappropriate because (1) the quantity of speech-language services had been reduced, and (2) the IEP did not include Written Expression as an area of concern.

¹ Personal identification information is provided in Appendix A.

² Pull-out services are services provided outside of the general education setting.

DCPS argued that it is not required to maximize the educational benefit that that a child with a disability receives; it is only required to provide Student with an IEP that allows him to access the curriculum and receive some educational benefit. DCPS asserted that it had provided Student with a FAPE; that the IEPs provided allowed Student access to the curriculum; that Student had made progress and received educational benefit from the IEPs provided; that Petitioner's expectation that Student's progress would align with typically developing peers was not reasonable based on the extent of Student's disabilities; that the reduction in speech-language services was appropriate and based on available data; and that the Written Expression goals sought by Petitioner were already on the IEP, but embedded in other areas of concern.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R."); and 38 D.C. Code 2561.02.

Procedural History

The due process complaint was filed on 01/22/14. This Hearing Officer was assigned to the case on 01/24/14. DCPS timely filed a response to the complaint on 01/28/14 and made no challenges to jurisdiction.

Neither Petitioner nor Respondent waived the resolution meeting. A resolution meeting took place on 02/04/14, at which time parties agreed to keep the resolution period open. The 30-day resolution period ended on 02/21/14, the 45-day timeline to issue a final decision began on 02/22/14 and the final decision was initially due on 04/07/14.

A prehearing conference took place on 02/21/14. A Prehearing Order was issued on 02/26/14. Parties were advised via the Prehearing Order that any issues or defenses not memorialized in the Prehearing Order would not be allowed to be presented at the due process hearing and that parties had three (3) business days to note objections and exceptions and request modifications to the Prehearing Order. DCPS noted exceptions and objections to the Prehearing Order via email dated 02/26/14. Petitioner did not assert any objections or requested modifications to the Prehearing Order. An Amended Prehearing Order was issued on 02/28/14.

The due process hearing was scheduled for two days, March 24 and March 26, 2014. Due to the length of time it took for Petitioner to present her case in chief and DCPS' election not to proceed with its case until Petitioner had concluded her case in chief, DCPS did not begin its case until the afternoon of March 26, 2014. At the close of the day on March 26, 2014, DCPS still had one remaining witness to present. The outstanding witness was Student's current special education teacher and deemed an essential witness on behalf of DCPS. Parties jointly agreed to continue the hearing until March 28, 2014. On the eve of March 28, 2014, DCPS' witness became unavailable due to a family emergency. By mutual agreement of the parties, the

hearing was continued to April 3, 2014 and the final decision due date was extended to April 12, 2014. On the morning of April 3, 2014, DCPS' Attorney unexpectedly became unavailable due to illness. The hearing was rescheduled to April 4, 2014. The hearing resumed and concluded on April 4, 2014. The final decision due date remained as April 12, 2014.

Petitioner was represented by Adry Polo, Esq. DCPS was represented by Tanya Chor, Esq. and Steven Rubenstein, Esq. Neither party objected to the testimony of witnesses by telephone. Petitioner participated in the hearing in person.

The due date for disclosures to be filed, per the Amended Prehearing Order, was March 17, 2014. Due to inclement weather that shut down the city on March 17, 2014, parties agreed via email to submit disclosures no later than March 18, 2014.

On March 21, 2014, DCPS filed written objections to Petitioner's disclosures. DCPS' objections were addressed at the due process hearing.

Petitioner's Disclosure Statement, dated 03/28/14, consisted of a witness list of seven (7) witnesses and documents P-1 through P-30. DCPS did not object to any of the witnesses listed by Petitioner. P-21, P-24-3 through P-24-16, P-24-19 through P-24-20, and P-25-1 through P-25-2, were all admitted into evidence over objection. The remainder of Petitioner's documents were admitted into evidence without objection.

DCPS' Disclosure Statement, dated 03/17/14, consisted of a witness list of ten (10) witnesses and documents R-01 through R-18. Petitioner's disclosures were admitted into evidence without objection.

DCPS' Supplemental Disclosure Statement, dated and filed on 03/21/14, was not timely filed. It contained an additional witness that DCPS wanted to present at the hearing. Petitioner objected to the testimony of that additional witness. Pursuant to 34 C.F.R. 300.512(a)(3), Petitioner had the statutory right to exclude any evidence that had not been disclosed by DCPS by the disclosure deadline of 03/18/14. DCPS' Supplemental Disclosures was not admitted into evidence.

At the due process hearing, Petitioner requested to amend Issue #2 to the allegation that DCPS had denied Student a FAPE by reducing Student's speech-language services since the beginning of the 2013/14 school year vice 01/14/14. This requested revision to Issue #2 had not been previously requested as a modification to the Prehearing Order. The Hearing Officer ruled that the requested revision constituted an amendment to the complaint and could only be made with DCPS' consent. DCPS opposed. The Hearing Officer did not have the statutory authority to grant an amendment. See 34 C.F.R. 300.508(d)(3). Petitioner's request to amend the issue was denied.

Parties agreed to the following stipulation of fact: On 03/07/14, DCPS added Written Expression as an area of concern on Student's IEP.

Petitioner presented the following five (5) witnesses in her case in chief: (1) Petitioner; (2) Pediatric speech-language pathologist at Georgetown University Hospital who qualified as an expert in speech-language pathology (“SLP Expert”); (3) Assistant Director and Director of Admissions at School C (“School C Director”); (4) Educational advocate (“advocate”); and (5) Occupational therapist at Georgetown University Hospital who qualified as an expert in occupational therapy (“OT Expert”). Petitioner did not present any rebuttal evidence due to time constraints.

DCPS presented five (5) witnesses: (1) Student’s special education teacher at School A during the 2012/13 SY (“School A 2012/13 SY special education teacher”); (2) Principal at School B (“School B Principal”); (3) Student’s speech-language pathologist during the 2012/13 school year at School A (“School A SLP”); (4) Student’s special education teacher at School A during the 2011/12 school year (“School A 2011/12 SY special education teacher”); and (5) Student’s current special education teacher at School B during the 2013/14 SY (“School B 2013/14 special education teacher”).

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

Issue #1 – Whether DCPS denied Student a FAPE by failing to provide Student with an Individualized Education Program (“IEP”) reasonably calculated to enable Student to be involved in and access the general education curriculum and meet Student’s needs that resulted from his disability; specifically, the IEPs developed on or about 04/12/12 and 01/28/13 inappropriately changed Student’s least restrictive environment from a full-time self contained Autism classroom to an inclusion setting despite data supporting a more restrictive setting.

Issue #2 – Whether DCPS denied Student a FAPE by failing to provide Student with an IEP reasonably calculated to enable Student to be involved in and make progress in the general education curriculum and meet Student’s needs that resulted from his disability; specifically, (1) the IEP developed on or about 01/14/14 inappropriately reduced Student’s speech and language services from 360 minutes/month to 240 minutes/month without any objective data to support the reduction in services, and (2) Student’s IEP failed to include Written Expression as an area of concern from 01/14/14 through 03/07/14, despite Student’s documented lack of progress in that area.

The relief requested by Petitioner is as follows:³

- (1) A finding of a denial of a FAPE on the issues presented;
- (2) DCPS to fund nonpublic placement of Student with transportation;
- (3) DCPS to revise Student’s IEP to include a minimum of 90 minutes/week of direct speech and language therapy services in the school setting to address Student’s significant language deficits; and

³ Petitioner’s request that DCPS revise Student’s IEP to include Written Expression as an area of concern and develop age appropriate goals in that area, was withdrawn. Parties stipulated that on 03/07/14, DCPS added Written Expression as an area of concern on Student’s IEP.

- (4) An award of compensatory education consisting of (a) placement at nonpublic School C, and (b) direct 1:1 Applied Behavioral Analysis (“ABA”) therapy services at home and independent speech-language services.⁴

Findings of Fact

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

#1. Student is a _____ resident of the District of Columbia. Petitioner is Student’s mother.⁵ At all relevant times, Student was a child with a disability under the IDEA.⁶

#2. Student’s initial IEP, dated 01/14/10, prescribed 27 hours/week of specialized instruction outside of general education, and related services consisting of occupational therapy, speech-language pathology and physical therapy.⁷ The IEP had goals in the areas of Adaptive/Daily Living Skills, Communication/Speech and Language, Emotional/Social/Behavioral Development, Health/Physical, and Motor Skills/Physical Development. Developmentally, Student presented with delays in all areas of development, with significant delays in attention and communication.⁸ Student’s parents were especially concerned about Student’s limited ability to communicate.⁹ At the time the IEP was developed, Student had a limited verbal output that primarily consisted of several one-letter consonants coupled with vowels and he used sign language for a few words with prompts, visual signs and verbal modeling.¹⁰

#3. The 01/14/10 IEP was implemented from February – June 2010, in a small, self-contained setting at School A. Student performed well in the self-contained environment. Petitioner was very, very pleased with the services provided and with Student’s progress.¹¹ From April-June 2010, Student mastered three IEP goals and made progress towards achieving the rest of his IEP goals.¹² Although Student was still non-verbal, Student had learned social skills that included taking turns, following and walking with the group.¹³

#4. During the 2010/2011 school year while in pre-school, Student participated in an inclusion setting with a general education teacher and a special education teacher, in a classroom

⁴ Although the Amended Prehearing Order stated that the compensatory award requested consisted of placement at a nonpublic school or ABA 1:1 therapy and independent speech-language services, the Hearing Officer allowed Petitioner to modify the relief to placement at a nonpublic school *and* ABA 1:1 therapy at home and independent speech-language services, per Petitioner’s request. The Hearing Officer ruled that there would be no surprise or prejudice to DCPS; DCPS had been on notice that Petitioner was requesting ABA 1:1 services for Student and the proof and defense presented would not be any different.

⁵ Petitioner.

⁶ P-1, P-4, P-5, P-8, P-10, Petitioner.

⁷ P-1-10.

⁸ P-2-4.

⁹ P-2-8.

¹⁰ P-2-5, P-2-24.

¹¹ Petitioner.

¹² P-3-1.

¹³ Petitioner

of 18 children, 9 of whom had IEPs.¹⁴ Student made progress towards or mastered all but one of his many IEP goals.¹⁵

#5. When Student began the 2011/12 SY in pre-Kindergarten at School A, Petitioner's primary concern was Student's lack of vocalization.¹⁶ Petitioner and educators believed that integrating Student into a general education environment would afford him the opportunity to model typically developing speech, which would help Student learn to talk.¹⁷ From August 2011 through October 2011, Student mastered many of his IEP goals and made progress towards achieving the rest of his IEP goals.¹⁸

#6. On 11/15/11, an IEP was developed that prescribed 5 hours/week of specialized instruction outside of general education, 19.5 hours/week of specialized instruction inside of general education, and related services consisting of 240 minutes/month of occupational therapy, 360 minutes/month of speech-language pathology services, and 120 minutes/month of physical therapy services, with all related services to be provided outside of general education.¹⁹ Petitioner participated in the development of this IEP²⁰ and never expressed any dissatisfaction with the IEP or the services that Student had been receiving at School A.²¹

#7. Towards the end of the 2011/12 SY, another IEP was developed for Student. This IEP, developed on 04/12/12, increased specialized instruction outside of general education from 5 hours/week to 10 hours/week and decreased specialized instruction inside of general education from 19.5 hours/week to 14.5 hours/week. Related services remained the same at 240 minutes/month of occupational therapy, 360 minutes/month of speech-language pathology services, and 120 minutes/month of physical therapy services, with all related services to be provided outside of general education.²² Petitioner's main concerns at that time were Student's ability to hold a pen, write his name, and expressive language.²³

#8. Based on Student's skill level, social skills and language, Student received benefit from being in the inclusion environment during the 2011/12 SY. Student could navigate pre-Kindergarten with verbal prompts.²⁴ Student had mastered most of his IEP goals and was progressing on the others that had been introduced, before new goals were developed for the 04/12/12 IEP.²⁵ By the end of the year, Student required less prompts to complete tasks. At the end of the 2011/12 SY, the team was very anxious for Student to continue with the social relationships that he had created in the general education environment.²⁶

¹⁴ Petitioner.

¹⁵ P-3-25.

¹⁶ Petitioner.

¹⁷ Petitioner, School A 2011/12 special education teacher.

¹⁸ P-3-38.

¹⁹ P-4-1, P-4-7.

²⁰ P-4-1.

²¹ School A 2011/12 special education teacher.

²² P-5-12.

²³ Petitioner.

²⁴ School A 2011/12 special education teacher.

²⁵ P-3-38.

²⁶ School A 2011/12 special education teacher.

#9. Student began the 2012/13 SY in Kindergarten at School A with the 04/12/12 IEP. The class was comprised of a general education teacher, a special education teacher, 18 children and 2 classroom aides. About half of the children had IEPs.²⁷ The focus of Kindergarten was socialization and to that end, there was a lot of play activity where Student could practice social skills interactions with typically developing peers. Student was unable to work on the typical Kindergarten skills of reading simple sentences, performing simple addition and subtraction, writing simple sentences of one topic with several details, and responding to who, what and where questions.²⁸ Student had a lot of difficulty focusing and attending to tasks. Apart from autism, Student presented with significant delays in expressive and receptive communication. Considering Student's profound communication delays, expressive and receptive communications was the most that could be addressed during the 2012/13 SY.²⁹

#10. The focus of Student's education during Kindergarten was to build socialization and vocalization skills in a primarily play environment through the use of special education in the general education setting plus modeling of typically developing peers. Peer modeling took place; Student watched others and repeated what they said and did. In comparison to students in the self-contained classroom who pushed into the general education setting for morning meeting, Student demonstrated more engagement and academic benefit from being in the general education setting. By the end of the 2012/13 SY, Student showed consistent progress in math and reading. He could count objects and he had vocalized 20+ sentences, which were significant achievements for Student.³⁰

#11. Student's IEP, dated 01/28/13, prescribed 10 hours/week of specialized instruction outside of general education, 14.5 hours/week of specialized instruction inside of general education, 240 minutes/month of occupational therapy, 360 minutes/month of speech-language pathology services, and 120 minutes/month of physical therapy.³¹

#12. Petitioner never expressed any dissatisfaction with the school staff or with the special education services that Student received during the 2011/12 SY and 2012/13 SY nor did Petitioner ever request that Student be placed in a self contained setting until the IEP meeting on 05/24/13.³²

#13. At the 05/24/13 IEP meeting, Petitioner was extremely concerned about the type and quantity of academic instruction that Student would receive in the upcoming 1st grade. Petitioner shifted her main educational focus away from socialization and modeling behavior with typically developing peers to academic instruction in a more restrictive setting.³³

#14. On 05/24/13, Petitioner elected and the DCPS autism department agreed to place Student in a self-contained ABA autism classroom at School B for the upcoming 2013/14 SY.³⁴

²⁷ Petitioner.

²⁸ School A 2012/13 special education teacher.

²⁹ School A 2012/13 special education teacher.

³⁰ School A 2012/13 special education teacher, R-18-209.

³¹ P-8-19.

³² School A 2011/12 special education teacher, School A 2012/13 special education teacher, R-10-1.

³³ Petitioner.

³⁴ R-12-1.

The hours on Student's IEP were adjusted to fit the self-contained classroom requirements and reflected 20.1 hours/week outside of general education and 1 hour/week of specialized instruction inside of general education.³⁵

#15. On 05/24/13, Student's direct speech language services were reduced from 360 minutes/month to 240 minutes/month³⁶. The reduction in services was based on the fact that Student was making progress with his speech-language goals and the fact that speech-language services were embedded into academics throughout the day in the self-contained autism classroom at School B.³⁷ In the self-contained setting, Student's special education goals would be constantly worked on throughout the day. To account for the difference in programming and the different delivery of services model, more consultation and collaboration with teachers in the classroom was added. The reduction in speech-language services was appropriate based on the difference in the type of educational programming that Student would receive during the 2013/14 school year.³⁸

#16. The IEP Team that included Petitioner met again on 01/14/14.³⁹ Student's specialized instruction outside of general education was increased from 20.5 hours/week to 24.5 hours/week, specialized instruction inside of general education was removed, and behavioral support services of 30 minutes/week outside of general education was added to the IEP. Direct speech-language services remained at 240 minutes/month.⁴⁰

#17. Student could barely put pen to paper to write, and when the paper and pencil connected, Student's writing consisted of scribbles and loops and marks that weren't within a boundary. The main focus for Student with respect to writing was for Student to be able to grasp the writing instrument independently and make controlled marks on the paper.⁴¹ A motor coordination goal that addressed handwriting was found in the Motor Skills/Physical Development section of Student's 04/12/12 IEP and 01/28/13 IEP.⁴² Handwriting goals were also included in the Reading section and the Motor Skills/Physical Development section of the 01/14/14 IEP.⁴³

#18. Written Expression goals were added to Student's IEP on 03/07/14,⁴⁴ at the insistence of Petitioner who felt that Student should be working on writing skills with the same intensity as her friend's typically developing same age child.⁴⁵ The goals in the newly created Written Expression section of the IEP were essentially the same goals that were contained in the

³⁵ R-10-9, R-12-1, R-16-1.

³⁶ R-10-19, School A SLP.

³⁷ School A SLP, School B 2013/14 special education teacher.

³⁸ School A SLP.

³⁹ P-10.

⁴⁰ P-10-15.

⁴¹ School A 2012/13 special education coordinator.

⁴² P-5-10, P-5-11, P-8-15.

⁴³ P-10-6, P-10-13.

⁴⁴ Stipulated fact.

⁴⁵ Petitioner.

Motor Skills/Physical Development and/or Reading sections in Student's 04/12/12 IEP, 01/28/13 IEP, and 01/14/14 IEP.⁴⁶

#19. During the 2013/14 SY, Student participated in a full-time autism classroom at School B.⁴⁷ Student is currently making progress in this program, per teacher reports and data collection.⁴⁸ Student was able to interact well with typically developing peers when his class mingled with the general education students.⁴⁹

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:

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 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).

"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 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

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. 34 C.F.R. 300.1.

The first issue to be determined is whether DCPS denied Student a FAPE by failing to provide Student with an Individualized Education Program ("IEP") reasonably calculated to enable Student to be involved in and access the general education curriculum and meet Student's needs that resulted from his disability; specifically, the IEPs developed on or about 04/12/12 and 01/28/13 inappropriately changed Student's least restrictive environment from a full-time self contained Autism classroom to an inclusion setting despite data supporting a more restrictive setting.

The Hearing Officer must first determine whether the procedural requirements of the IDEA have been followed. Second, the Hearing Officer must determine whether the IEP

⁴⁶ P-5-10, P-5-11, P-8-16, P-10-6, P-10-13, P-12-6.

⁴⁷ School B 2013/14 special education teacher.

⁴⁸ Petitioner, School B Principal, School B 2013/14 special education teacher.

⁴⁹ School B 2013/14 special education teacher.

developed under those procedures is “reasonably calculated to enable the child to receive educational benefits.” *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982). If the Hearing Officer finds that both requirements are satisfied, then the government “has complied with the obligations imposed by Congress and the courts can require no more.” *Id.* The IDEA’s requirement of a “free appropriate public education” is satisfied when the State provides personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from that instruction. *Id.*

An IEP is a written statement for each child with a disability that is developed, reviewed and revised by the IEP Team. The IEP must contain a statement of the special education and related services and supplementary aids and services, and a statement of the program modifications or supports for school personnel that will be provided to enable the child (1) to advance appropriately toward attaining the annual goals, (2) to be involved in and make progress in the general education curriculum, and (3) to be educated and participate with other children with disabilities and nondisabled children. 34 C.F.R. 300.320, 300.324.

Special education means specially designed instruction, to meet the unique needs of the child with a disability. Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability, and ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 C.F.R. 300.39.

The IDEA requires each public agency to ensure that: (1) to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (2) 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.

Petitioner participated in all IEP meetings and she was not hesitant about convening a meeting to discuss her child’s education. Petitioner was integrally involved on a continuing basis in the day-to-day educational activities of Student.⁵⁰ Petitioner never expressed disagreement with the nature of the services provided or with the staff members providing the services during the 2011/12 SY and the 2012/13 SY.

Student was autistic with significant delays, especially in the areas of communication and attention. Petitioner, as Student’s mother, wanted what was best for him. At age 3, Student had virtually no expressive communication skills. He spoke only using one letter consonants coupled with vowels.

At the start of the 2011/12 SY, Petitioner’s primary concern for Student was his speech. Petitioner agreed that the best possible place for Student to learn to vocalize was to be in an

⁵⁰ Petitioner, R-8.

inclusion setting where he could verbally model after typically developing peers. Petitioner believed that the inclusion environment would also allow Student to learn to socialize with his peers.

During the 2011/12 SY, Student received the bulk of his specialized instruction within the general education setting. Socialization and play were the themes for pre-Kindergarten. The 04/12/12 that Student had during the 2011/12 SY was not inappropriate for Student. He received educational benefit from its implementation. The 2011/12 SY was successful for Student. He was able to navigate the pre-Kindergarten curriculum with prompts. He mastered many of his IEP goals and made progress towards many others. He formed social relationships with his classmates that merited cultivation in the succeeding school year.

Towards the end of the 2011/12 SY, Petitioner, the concerned and involved parent that she was, anticipated that in Kindergarten, Student would need more assistance with academics. Specialized instruction outside of general education was increased so that Student would have more academic assistance in Kindergarten. The 2012/13 Kindergarten school year was also successful for Student. He mastered or made progress on his IEP goals. By the end of the school year, Student had 20+ sentence vocalizations under his belt, which was quite an achievement for Student. Student's 01/28/13 IEP allowed him to receive educational benefit.

Petitioner, concerned about the increasing academic demands of 1st grade, weighed the situation, anticipated Student's needs and opted to place Student in a full-time autism program for the 2013/14 SY. Student is currently receiving benefit from the full-time autism program. Although the full-time autism program appears to meeting Student's needs at this time, there was nothing inappropriate about the IEPs or the inclusions settings wherein Student received his education during the 2011/12 and 2012/13 school years. Student learned to socialize with typically developing peers. Student's vocalization increased as a result of being educated with typically developing peers. He received educational benefit through the implementation of those IEPs.

Petitioner felt that Student might have made more gains in academics if he had participated in a self-contained classroom in pre-Kindergarten and Kindergarten. Hindsight is 20/20 and speculative at best. By the end of the 2012/13 SY, Student showed consistent progress in math and reading; he could count objects and could vocalize several words instead of pointing. In comparison to students in the self-contained classroom who pushed into the general education setting for morning meeting during Kindergarten, Student demonstrated more engagement and academic benefit from being in the general education setting. Some proof of that may be found in the 2013/14 school year. When Student, now in a self-contained autism classroom, pushes into the general education setting on a limited basis, Student has no problems interacting with his typically developing peers.

And, isn't that the entire point of the IDEA? To educate the child in the least restrictive environment with supports and accommodations that will enable the child to derive benefit from the curriculum?

Petitioner was at the helm and steering the services that were to be provided to Student. Petitioner did not present as misinformed or unable to navigate school issues. She appeared to be adept at getting what she wanted for Student. What she wanted for Student was an inclusion setting during the 2011/12 and 2012/13 school years. Petitioner wanted Student to be around typically developing peers so that he could model talking behavior. Student was able to grow, learn and achieve in the inclusion setting, but not at the same rate as his typically developing peers. Student's rate of growth and learning was commensurate with his abilities.

The Hearing Officer determines that Petitioner failed to meet her burden of proof that the 04/12/12 IEP and 01/28/13 IEP were not reasonably calculated to provide Student with educational benefit or a FAPE. The Hearing Officer also determines that the IEPs in question were developed and implemented with the full cooperation and consent of Petitioner. Petitioner never once mentioned the need for a full-time self-contained autism class for her child until 05/24/13. Petitioner was not credible that she didn't know what a self-contained class was or that she could ask for it. Her testimony that she just went along with what the school offered was not believable. Petitioner was very articulate, vocal with educators, spoke with educators on a daily basis, was in Student's classroom on a daily basis, and by her own testimony, "would breathe down someone's neck until she got the information she wanted." Without a doubt, Petitioner knew what a self-contained classroom was. After all, Student had been in a self-contained classroom before and one existed right next door to Student's Kindergarten classroom.

The second issue to be determined is whether DCPS denied Student a FAPE by failing to provide Student with an IEP reasonably calculated to enable Student to be involved in and make progress in the general education curriculum and meet Student's needs that resulted from his disability; specifically, (1) the IEP developed on or about 01/14/14 inappropriately reduced Student's speech and language services from 360 minutes/month to 240 minutes/month without any objective data to support the reduction in services, and (2) Student's IEP failed to include Written Expression as an area of concern from 01/14/14 through 03/07/14, despite Student's documented lack of progress in that area.

Each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress towards annual goals and in the general education curriculum, if appropriate, and the child's anticipated needs. 34 C.F.R. 300.324(b).

On 05/24/13, Student's speech-language services were reduced from 360 minutes/month to 240 minutes/month in anticipation of Student participating in a full-time self-contained autism class where speech-language was embedded into the curriculum. School A SLP, who provided speech-language services to Student and was knowledgeable about Student and knowledgeable about the curriculum at School B, testified that the reduction in services was appropriate. Her testimony was credible and given the most weight. There was no evidence in the record that Student had been adversely impacted during any part of the 2013/14 SY due to the reduction in speech-language services. In fact, both Petitioner and the School B 2013/14 special education teacher agreed that Student was making progress in the self-contained autism classroom setting.

The Hearing Officer determines that Petitioner failed to meet her burden of proof that DCPS denied Student a FAPE by reducing speech language services for the 2013/14 school year. The reduction was appropriate for programming. The IEPs in existence from the beginning of the 2013/14 SY that contained the provision of 240 minutes/month of speech-language services were all reasonably calculated to provide Student with a FAPE.

The Hearing Officer also determines that Student was not denied a FAPE by DCPS' failure to include Written Expression as an area of concern in Student's IEP from 01/14/14 through 03/07/14.

Student could barely hold a pencil unassisted. His difficulties with handwriting were appropriately addressed by handwriting goals in the Motor Skills/Physical Development section of the 01/14/14 IEP. Written Expression was added to the IEP as an area of concern on 03/07/14, at the insistence of Petitioner. Written Expression goals were not necessary to provide Student with a FAPE. The Written Expression goals added to the IEP on 03/07/14 were essentially the same goals that had been in prior IEPs. Petitioner's argument of form over substance had no merit. Until Student had the motor skills ability to hold the pencil and make deliberate and discernible marks on the paper, any Written Expression goals beyond holding the pencil were lofty and unattainable by Student.

ORDER

Petitioner failed to meet her burden of proof on all of the issues presented.

The complaint is **DISMISSED** with prejudice.

All requested relief is denied.

IT IS SO ORDERED.

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).

Date: April 11, 2014

/s/ Virginia A. Dietrich
Hearing Officer

Copies to:

Petitioner: (U.S. mail)

Petitioner's Attorney: Adry Polo, Esq. (electronically)

Respondent's Attorneys: Tanya Chor, Esq., Steven Rubenstein, Esq. (electronically)

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