

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

on behalf of

Petitioner,

Hearing Officer: Kimm Massey, Esq.

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

2011 DEC 23 AM 9:35
SSSC
STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

**BACKGROUND AND
PROCEDURAL HISTORY**

Student is an _____ year-old male, who has attended his current DCPS school since SY 2008/09.

On October 11, 2011, Petitioner filed a Complaint against Respondent DCPS, alleging that DCPS denied Student access to a free appropriate public education ("FAPE") by failing to develop appropriate individualized education programs ("IEP") on May 5, 2009 and October 4, 2010; denied Student access to a FAPE by failing to develop an appropriate IEP on August 31, 2011; denied Student access to a FAPE by failing to conduct a comprehensive psychological evaluation; and owed Student compensatory education as a result. As relief for these alleged denials of FAPE, Petitioner requested findings in its favor; funding for an independent psychoeducational evaluation; a meeting within 10 days to revise the IEP and determine any additional compensatory education that may be warranted; and funding for parent's compensatory education, or in the alternative, that the hearing officer fashion an appropriate compensatory award for Student.

On October 27, 2011, DCPS filed its Response to the Complaint. In its Response, DCPS denied that it failed to provide a FAPE to Student, asserted the two-year statute of limitations as a bar to any claims exceeding the two-year limitations period, asserted that Student's IEPs have been appropriate and timely reviewed and revised, asserted that Student has made academic progress, contended that Student was exited from occupational therapy when it was determined he no longer required the service, noted that assistive technology was included in Student's IEP based on the recommendations of an occupational therapy reevaluation and with the consent of

Petitioner, and noted its offer to authorize an independent psychological evaluation. DCPS also denied that there have been procedural or substantive violations of IDEA or harm to Student, asserted that compensatory education is not warranted, and objected to all relief sought by Petitioner.

The parties concluded the Resolution Meeting process by participating in a resolution session on October 24, 2011. No agreement was reached, and the parties did not agree to shorten the resolution session. Hence, the 45-day timeline will begin on November 11, 2011 and will end on December 25, 2011, which is the HOD deadline.

On November 2, 2011, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. Petitioner withdrew its claim for failure to conduct a comprehensive psychological evaluation in light of DCPS's issuance of an IEE letter for that assessment. The hearing officer issued the Prehearing Order on November 7, 2011.

By their respective disclosure letters dated December 6, 2011, Petitioner disclosed thirty-two documents (Petitioner's Exhibits 1 – 32) and DCPS disclosed eighteen documents (Respondent's Exhibits 1 - 18).

The hearing officer convened the due process hearing on December 13, 2011.¹ Petitioner's Exhibits 7-13 and 16-32, and DCPS's Exhibits 1-11 and 13-18, were admitted into the record without objection. Petitioner's documents 5-6 and 15, and DCPS's Exhibit 12, were admitted into the record over objection. Petitioner withdrew its Exhibit 14 upon DCPS's relevance objection. Thereafter, the hearing officer received opening statements, testimonial evidence, and closing statements prior to concluding the hearing.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., the implementing regulations for IDEA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUE(S)

The issues to be determined are as follows:

1. Did DCPS fail to develop an appropriate IEP on May 10, 2010 because occupational therapy ("OT") services were removed without an assessment, without mastery of the OT goals, and without Parent's consent?
2. Did DCPS fail to develop an appropriate IEP on October 4, 2010 because the goals and baseline data were not changed, which means the IEP was not revised pursuant to 34 C.F.R. § 300.320(A)(2) to address the lack of expected progress toward annual goals,

¹ Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

and OT services continued to be left off the IEP although there was no assessment, no mastery of the OT goals, and no parental consent.

3. Did DCPS fail to develop an appropriate IEP on August 31, 2011 because the appropriate team members were not present at the meeting in that only the parents and the SEC were present at the meeting, the IEP was not revised pursuant to 34 C.F.R. § 300.320(A)(2) to address the lack of expected progress toward annual goals, and OT services continued to be left off the IEP although there was no assessment, no mastery of the OT goals, and no parental consent.
4. Is Student entitled to compensatory education due to the alleged denials of FAPE?

FINDINGS OF FACT²

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 an _____ year-old male, who is in _____ grade and has attended his current DCPS school since SY 2008/09.³
2. Student's primary disability is specific learning disability ("SLD").⁴
3. Student's current IEP, dated August 31, 2011, requires Student to receive 27.5 hours per week of specialized instruction outside general education in the academic areas of reading, math and written language, as well as Assistive Technology ("AT") in the form of the use of a keyboard to complete written work assignments. The IEP also provides for Student to receive various that includes goals in several academic areas and in the areas of vision and motor skills/physical development, but the begin and end date for the ESY special education and related services are June 28-29, 2010 through July 23-24, 2010.

The present levels of performance in the current IEP in the area of math are based on an October 6, 2010 administration of the Woodcock-Johnson III Test of Academic Achievement ("WJ-III") and indicate the following performance levels for Student: 3.7 grade equivalency ("GE") in math fluency, 3.4 GE in math calculation skills, 3.7 GE in broad math. The IEP states that Student can adequately perform basic addition and subtraction operations at the 3rd grade level, but his specific areas of needs are associated with applied problems and multi-step operations. His five annual goals in math are as follows: be able to identify, count, read, and write whole numbers to one hundred and relate them to the quantities they represent; tell the time to the quarter hour and give

² 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, then 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.

³ Testimony of Parent.

⁴ See Petitioner's Exhibits 6-8.

elapses times; correctly measure and compare the length of common objects using metric and U.S. customary units to the nearest centimeter or inch; know and identify various meanings of addition and subtraction, such as addition as combination, subtraction as comparison, and separation; and estimate, calculate, and solve problems involving addition and subtraction of two digit numbers, and describe differences between estimates and actual calculation.

The present levels of performance in the current IEP in the area of reading are also based on an October 6, 2010 administration of the WJ-III and indicate the following performance levels: 3.7 GE in passage comprehension, 1.9 GE in reading fluency, 2.3 GE in broad reading, and 2.6 GE in letter-word recognition. The IEP states that Student's needs in the area of reading include decoding skills for phonetically regular multisyllable words and vocabulary. His five annual reading goals are as follows: increase reading skills by demonstrating six to nine months growth; apply knowledge of basic syllabication rules when reading two- or three- syllable written words; apply the most common letter-sound correspondences including the sounds represented by single letters, consonant blends, consonant digraphs, vowel digraphs and diphthongs; read a text fluently and answer comprehension questions; and identify the purpose and restate important facts from a text heard or read.

The present levels of performance in the current IEP in the area of written expression are based on a September 9, 2008 administration of the WJ-III and indicate the following performance levels: 2.0 GE in broad written language and 1.0 GE in written expression. The IEP also indicates Student performed at the 2.1 GE level in written language on the October 6, 2010 administration of the WJII, and it states that Student is unable to write a complete paragraph or write about a given topic in a grammatically correct manner. His five annual goals for written expression are as follows: demonstrate six to nine months growth in written expression; with the aide of technology, write short accounts of personal experiences in a logical order; with the aide of technology, identify and use correct punctuation, including capitalizing the first word of a sentence and names of people; on a computer, spell/type high-frequency words correctly; and on a computer, spell words with basic short vowels, long vowels, "r"-controlled, and consonant blend patterns.⁵

4. Student's previous IEP, dated October 4, 2010, also requires Student to receive 27.5 hours per week of specialized instruction outside general education. Although it does not include the AT services listed on the current IEP, it does include same the classroom and statewide test accommodations, and the same "Extended School Year" page, as the current IEP. The present levels of performance in the IEP are based on a September 5 and/or 9, 2008 administration of the WJ-III and include the following performance levels: 2.0 GE in broad math, 2.1 GE in math calculations, and 1.0 GE in solving word problems and multi-step operations; 2.0 GE in reading comprehension and 2.5 GE in listening comprehension; and 2.0 GE in broad writing and 1.0 GE in written expression.

This IEP also indicates that Student needs to develop skills in the area of multi-step operations in math, and it contains the same five annual math goals as the current IEP. The IEP also includes decoding skills for phonetically regular multisyllable words and vocabulary among Student's needs in the area of reading, and it contains the same

⁵ Petitioner's Exhibit 8.

five annual reading goals as the current IEP. Finally, the IEP also indicates that Student is unable to write a complete paragraph or write about a given topic in a grammatically correct manner, and it contains the same five annual written expression goals as the current IEP, except that it does not incorporate the AT contained in the written expression goals in the current IEP.⁶

5. On September 8, 2010, prior to the development of Student's October 4, 2010 IEP, DCPS convened an MDT meeting to determine Student's eligibility. The participants at the meeting were Student's full-time special education teacher, the school psychologist, and Parent. Student's full-time special education teacher stated that Student was progressing and making adequate progress, and Student was working well in cooperative groups and participating well in class. The team psychologist noted that Student had the ability to learn. Ultimately, the team agreed that Student would continue to receive special education services as a student with SLD.⁷
6. Student's May 5, 2010 IEP is exactly the same as his October 4, 2010 IEP in all respects, except that it includes sections for Vision and Motor Skills/Physical Development. However, both of those areas indicate that Student did not require intervention at the time. The IEP lists 05/05/2009 as the IEP date, but the signatures and all other information, such as the anticipated dates of achievement, indicates the IEP was created in May 2010.⁸
7. Preferably, a student's IEP goals should not stay the same from year to year, as IEP goals should be updated annually. Although IEP goals may be retained from one year to the next when no progress has been made, the IEP team should determine whether the goals are attainable, why the student did not make the expected progress, and whether the goals need to be rewritten, revised or taken in another direction. There should be some explanation of why the goals will remain exactly the same.⁹
8. The math goals on Student's IEPs address skills that Student can already perform. They do not address Student's areas of need, which are math fluency, math conceptual issues, and reading comprehension for math problems.¹⁰
9. In general, the reading goals on Student's IEPs seem appropriate. However, the goals should emphasize Student's acquisition of decoding skills and phonetic skills, which are the major areas of need for Student so that he can improve his reading fluency and comprehension.¹¹
10. The written expression goals on Student's IEPs generally capture what Student needs to be able to do, and Student has not yet mastered these goals. In particular, Student's

⁶ Respondent's Exhibit 8.

⁷ Respondent's Exhibit 7.

⁸ Petitioner's Exhibit 6.

⁹ Testimony of psychologist; testimony of advocate.

¹⁰ Testimony of psychologist.

¹¹ Testimony of psychologist.

spelling skills are so poor that he cannot spell enough words to write what he wants to say, which affects his handwriting because he has a tendency to doodle and trace when he cannot figure out how to spell the words he wishes to use. Hence, the mechanics of handwriting may become less of an issue for Student as he begins to master skills such as spelling and punctuation.¹²

11. By the end of SY 2009/10 and the end of 2010/11, Student had not mastered any of his IEP goals in the areas of mathematics, reading, and written expression, as he was "Progressing" on all such goals according to his IEP Progress Reports.¹³
12. During SY 2009/10, between September 9, 2009 and April 29, 2010, Student was "Progressing" in his occupational therapy sessions and was successfully completing tasks such as the following: followed 2D pictorial guide to complete 36 piece Lego puzzle with only one cue required; engaged in visual perceptual discrimination, spatial relations, figure-ground, form constancy, closure tasks of moderate difficulty with 100% accuracy; completed parquetry design of moderate difficulty without assistance; completed a 70-piece puzzle of moderate complexity with minimum cues; copied 2 paragraphs of approximately 70 words with 100% letter/word legibility; completed a parquetry puzzle of maximum difficulty with moderate assistance; generated 3 lines of writing with 100% legibility and moderate assistance for spelling; and engaged in a competitive activity incorporating visual discrimination, visual memory, visual figure-ground, scanning and saccadic eye movement with 100% success in 2 of 2 trials.¹⁴
13. In February 2011, DCPS administered an occupational therapy reevaluation to Student. The evaluator determined that, when compared to his same age peers, Student presents with above average upper limb coordination and average range fine motor precision, visual perception and motor coordination skills. However, his test results revealed delays in visual-motor integration (fine motor integration), manual dexterity and handwriting. Although the evaluator acknowledged that these delays are known to impact academic performance in the areas of written language, she did not recommend OT services for Student because his assessment scores were too high to qualify for the services under DCPS's standards. Instead, the evaluator recommended, *inter alia*, a review of the letters and number Student forms incorrectly, use of a keyboard to complete written work assignments so as to benefit from features such as spell check, and verbal reminders to space words in written sentences. In making these recommendations, the evaluator intended for the occupational therapist at Student's DCPS school to provide handouts and assistance to Student's teacher so that the teacher could implement the recommendations. However, the evaluator stopped serving as the occupational therapist for Student's school in February 2011, the same month the evaluation was conducted, and has no knowledge regarding implementation of the recommendations. The evaluator is aware, however, that the occupational therapist who briefly replaced her at Student's school and the current occupational therapist at Student's school both conducted screenings of Student and determined that he does not require occupational therapy services. These screenings

¹²Testimony of psychologist; Petitioner's Exhibit 13 at 7-9.

¹³ Respondent's Exhibit 12.

¹⁴ Respondent's Exhibit 16.

help inform the evaluator's opinion that Student does not require occupational therapy services, although the evaluator continues to believe the occupational therapist at Student's school should work with Student's teacher to implement the recommendations in the evaluation.¹⁵

14. There is no evidence in the record tending to suggest that the recommendations from Student's February 2011 OT evaluation have been implemented.
15. Parent disagreed with the removal and ongoing absence of OT services from Student's IEPs. Parent continues to be concerned about the lack of improvement in Student's handwriting, as Student still writes letters and numbers backward and his letters tend to be jumbled together.¹⁶
16. On August 31, 2011, DCPS convened an amendment meeting with Student's special education teacher, Parent and Student's stepfather for the sole purpose of amending Student's IEP to include the use of an assistive technology device pursuant to the recommendation in Student's February 2011 OT evaluation. Student's IEP was revised to include a laptop as an assistive technology device for use with written work in the classroom.¹⁷
17. On August 31, 2011, Parent signed a form agreeing to participate in an amendment meeting on August 31, 2011 at 1:30 pm for the sole purpose of amending Student's IEP to include assistive technology on the IEP.¹⁸
18. Student's use of his AT device, which is a computer, is problematic in class because Student does not have strong typing skills, which makes him unable to participate in class in real time because he falls behind while trying to type. Student has not been trained on the AT device, and in some instances the teacher's aide has to help Student catch up by typing notes for him.¹⁹
19. Petitioner has requested funding for the following forms and amounts of compensatory education: 10 hours of independent OT services; 5 hours of independent math tutoring; 5 hours of independent reading tutoring; and 5 hours of independent writing tutoring. Alternatively, Petitioner has requested that the hearing officer fashion an appropriate compensatory education award for Student.²⁰

¹⁵ Testimony of DCPS occupational therapist; Petitioner's Exhibit 12.

¹⁶ Testimony of Parent; *see* Respondent's Exhibit 7.

¹⁷ Petitioner's Exhibits 9, 24, 25.

¹⁸ Petitioner's Exhibit 25.

¹⁹ Testimony of advocate; *see* Petitioner's Exhibit 10.

²⁰ Testimony of advocate; Petitioner's Exhibit 32; Complaint at 12.

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:

1. Alleged Failure to Develop an Appropriate IEP on May 5, 2010

IDEA defines a free appropriate public education to mean special education and related services that, *inter alia*, are provided in conformity with an IEP. 34 C.F.R. § 300.17(d). In this context, "related services" means, *inter alia*, such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, including occupational therapy. 34 C.F.R. § 300.34(a). Insofar as a state is required to provide a disabled child with a FAPE, it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. *Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley*, 458 U.S. 176 (1982) ("*Rowley*").

An IEP is a written statement for each child with a disability that is developed, reviewed, and revised in a meeting, and that must include, *inter alia*, a statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; and a statement of the special education and related services and supplementary aids and services to be provided to the child or on behalf of the child. See 34 C.F.R. § 300.320(a). In developing a child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation, and the academic, developmental, and functional needs of the child. 34 C.F.R. § 300.324(a)(1). Ultimately, "a student's IEP must be 'reasonably calculated to enable the child to receive educational benefits.'" *Hinson v. Merritt Educational Ctr.*, 579 F.Supp.2d 89 (D.D.C. 2008) (quoting *Rowley*, 458 U.S. at 206-7).

In the instant case, Petitioner alleges that DCPS failed to develop an appropriate IEP on May 10, 2010 because occupational therapy ("OT") services were removed from the IEP without an assessment, without mastery of the OT goals, and without Parent's consent. On the other hand, DCPS contends that there has been no denial of FAPE and Student has suffered no harm as a result of the removal of OT services from Student's IEP on May 5, 2010, and DCPS points to the subsequent OT reevaluation and two OT provider screenings, which all indicate that Student does not require OT services.

After reviewing the evidence in this case, the hearing officer concludes that Petitioner has failed to meet its burden of proving a denial of FAPE as a result of DCPS's removal of OT services from Student's May 5, 2010 IEP. The evidence reveals that Student had made significant strides during his occupational therapy sessions prior to the removal of those sessions from Student's May 5, 2010 IEP. See Finding of Fact 11. Moreover, although Parent disagreed with the removal of the OT services from Student's IEP, Parent's concerns are but one of several factors to be considered in developing an IEP. See 34 C.F.R. § 300.324(a)(1), *supra*. In addition, Petitioner contends that DCPS should have assessed Student prior to removing the services, but Petitioner provides no support for that assertion. Cf. 34 C.F.R. § 300.305(e) (public agency must

evaluate child prior to determining the child is no longer a child with a disability). Finally, the facts that Student's February 2011 occupational therapy reevaluation revealed that Student did not qualify for formal OT services under DCPS standards, and two subsequent OT providers at Student's school conducted screenings and also determined that Student does not require formal OT services, tends to suggest that the removal of OT services from Student's IEP was not inappropriate and certainly negates Petitioner's claim that Student was harmed by the removal of such services from his IEP. Under these circumstances, the hearing concludes that Petitioner has failed to meet its burden of proof on this claim.

On the other hand, the hearing officer notes that Student's February 2011 OT reevaluation report revealed that Student was in need of a review of the letters and number he forms incorrectly, the use of a keyboard to complete written work assignments, and verbal reminders to space words in written sentences. Although DCPS provided Student with the recommended keyboard, it failed to ensure that Student's teacher, with the assistance of the OT provider at the school, provided Student with the other recommended services. Student has been harmed by this failure on DCPS's part, and therefore denied a FAPE, because he continues to write certain letters and one or more numbers incorrectly and without proper spacing. To remedy this harm, the hearing officer will order DCPS to (1) revise Student's IEP to include 1 hour per month of OT consultation services for Student, (2) reassess Student's handwriting skills in February 2012 to determine whether or not Student continues to require the consultation services, and (3) provide Student with 30 minutes per week of after-school tutoring that focuses on handwriting skills for the remainder of SY 2011/12. At DCPS's option, the tutoring may be provided by either a DCPS provider or an independent provider.

2. Alleged Failure to Develop an Appropriate IEP on October 4, 2010

IDEA requires each public agency to ensure that a disabled child's 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 child's IEP, as appropriate, to address, *inter alia*, any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate; the results of any reevaluation; information about the child provided to or by the parents; the child's anticipated needs; or other matters. 34 C.F.R. § 300.324(b).

Petitioner has further alleged that DCPS failed to develop an appropriate IEP on October 4, 2010 because (i) the goals and baseline data were not changed, which means the IEP was not revised pursuant to 34 C.F.R. § 300.320(A)(2) to address the lack of expected progress toward annual goals, and (ii) OT services continued to be left off the IEP although there was no assessment, no mastery of the OT goals, and no parental consent. 34 C.F.R. § 300.324(b).

The hearing officer has already determined in section 1, above, that DCPS did not deny Student a FAPE by removing OT services from his IEP. Moreover, the hearing officer notes that 34 C.F.R. § 300.320(A)(2), the regulation cited by Petitioner, merely explains that measurable annual goals are a required component of an IEP.

Turning to Petitioner's claim that Student's October 4, 2010 IEP is inappropriate because DCPS failed to revise the goals and baseline data, the hearing officer notes as an initial matter that this

IEP was developed a mere five months after the development of Student's previous IEP on May 5, 2010. No reevaluations had been conducted during that five-month period. Moreover, DCPS convened an IEP meeting on September 8, 2010, prior to the development of the October 4, 2010 IEP, and the IEP team determined that Student was making adequate progress and should continue to receive special education services as an LD student. Under these circumstances, the hearing concludes that Petitioner has failed to meet its burden of proving that DCPS denied Student a FAPE by failing to develop an appropriate IEP on October 4, 2010. *Cf.* 34 C.F.R. § 300.324(b) (IEP must be revised to address, *inter alia*, lack of expected progress or results of reevaluations).

3. Alleged Failure to Develop an Appropriate IEP on August 31, 2011

As noted above, IDEA requires each public agency to ensure that a disabled child's 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 child's IEP, as appropriate, to address, *inter alia*, any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate; the results of any reevaluation; information about the child provided to or by the parents; the child's anticipated needs; or other matters. 34 C.F.R. § 300.324(b). In this connection, the IEP team for a disabled child must include, *inter alia*, the child's parents; not less than one of the child's regular education teachers if the child is, or may be, participating in the regular education environment; at least one of the child's special education teachers, or where appropriate, at least one of the child's special education providers, and a representative of the public agency. 34 C.F.R. § 300.321(a).

In the instant case, Petitioner has asserted that DCPS failed to develop an appropriate IEP on August 31, 2011 because (i) the appropriate team members were not present at the IEP meeting in that only the parents and the SEC were present at the meeting, (ii) the IEP was not revised pursuant to 34 C.F.R. § 300.320(A)(2) to address the lack of expected progress toward annual goals, and (iii) OT services continued to be left off the IEP although there was no assessment, no mastery of the OT goals, and no parental consent.

The hearing officer has already rejected Petitioner's contention that DCPS denied Student a FAPE by removing OT services from his IEP. *See* section 1, *supra*. With respect to Petitioner's remaining assertions, a review of the evidence in this case reveals that Student's goals had not been changed since May 5, 2010, more than a year earlier; and according to Student's IEP Progress Reports from the end of the previous school year, Student had not mastered any of his IEP goals. Nevertheless, DCPS chose to convene a limited IEP amendment meeting for the sole purpose of adding AT to Student's IEP, instead of convening a full IEP team meeting to determine why Student's annual goals were not being achieved and to review and revise the IEP to address Student's lack of expected progress towards his annual goals, Student's anticipated needs, and any other relevant matters.²¹ Moreover, although DCPS added AT to Student's IEP, DCPS failed to provide Student with any training on the AT device, with the result that the device has actually interfered with Student's ability to participate in class in real time. Under

²¹ DCPS points out that Parent signed a form authorizing it to conduct an amendment meeting. However, the fact that Parent signed the form did not relieve DCPS of its statutory obligation to review Student's IEP periodically, but not less than annually, and revise the IEP, as appropriate.

these circumstances, the hearing officer has determined that Petitioner has met its burden of proving that DCPS denied Student a FAPE by failing to develop an appropriate IEP on August 31, 2011.

To remedy this denial of FAPE, the hearing officer will order DCPS to convene an IEP meeting to review Student's IEP, determine whether the existing goals are attainable for Student and why he did not make the expected progress, and revise Student's IEP to include (1) annual math goals that address math fluency, math conceptual issues, and reading comprehension for math problems; (2) reading goals that emphasize Student's acquisition of decoding skills and phonetic skills, as well as fluency and comprehension; and (3) additional written expression goals that emphasize spelling skills and other mechanics of writing, such as punctuation and grammar. The hearing officer will also order DCPS to provide Student with 1 hour per week of training after school on his assistive technology device for the remainder of SY 2010/11. At DCPS's option, the AT training may be provided by either a DCPS provider or an independent provider.

4. 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, 522 (D.C. 2005) ("*Reid*"). 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. *Reid*, 401 F.3d at 524.

In the instant case, the hearing officer has carefully analyzed each claim alleged and determined the precise nature of the denials of FAPE prior to awarding Student OT consultation services, an occupational therapy reassessment in February 2012, thirty minutes per week of after-school tutoring that focuses on handwriting skills for the remainder of SY 2011/12, an IEP meeting to review and revise Student's current IEP, and 1 hour per week of AT training for the remainder of SY 2010/11. As a result, the hearing officer concludes that Student has been awarded sufficient and appropriate compensatory education for the denials of FAPE in this case.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. Within 10 calendar days of January 2, 2012, which represents the last day of Winter Break for DCPS, DCPS shall convene a full IEP team meeting to review Student's IEP, determine whether the existing goals are attainable for Student and why he did not make the expected progress toward those goals, and revise Student's IEP to include (1) annual math goals that address math fluency, math conceptual issues, and reading comprehension for math problems; (2) reading goals that emphasize Student's acquisition of decoding skills and phonetic skills, as well as fluency and comprehension; (3) additional written expression goals that emphasize spelling skills and other mechanics of

writing, such as punctuation and grammar; and (4) one hour per month of OT consultation services for Student.

2. DCPS shall reassess Student's handwriting skills in February 2012 to determine whether or not Student continues to require the consultation services ordered in Paragraph 1, above.
3. Beginning the week of January 9, 2012 and continuing through the end of SY 2011/12, DCPS shall provide Student with 30 minutes per week of after-school tutoring that focuses on handwriting skills. At DCPS's option, the tutoring may be provided by either a DCPS provider or an independent provider.
4. Beginning the week of January 9, 2012 and continuing through the end of SY 2011/12, DCPS shall provide Student with 1 hour per week of training after school on his assistive technology device. At DCPS's option, the AT training may be provided by either a DCPS provider or an independent provider.
5. All other requests for relief in Petitioner's October 11, 2011 Complaint are **DENIED** and **DISMISSED**.

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: 12/22/2011

/s/ Kimm Massey

Kimm Massey, Esq.
Hearing Officer