

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

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

OSSE
Student Hearing Office
May 28, 2013

Date Issued: May 26, 2013

Student,¹ by and through the
Petitioner,

Hearing Officer: Michael Lazan

Petitioner,

v.

District of Columbia Public Schools,

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION

This matter comes before the undersigned Hearing Officer on Petitioner's Notice of Due Process Complaint ("Complaint") received by Respondent on March 12, 2013. This IHO was appointed to hear this matter on April 19, 2013. Respondent filed a Response to the Complaint on March 21, 2013. An amended Response was filed on April 17, 2013, and a second amended Response was filed on May 7, 2013.

A resolution meeting was held in this case on April 11, 2013. This meeting was not timely pursuant to the regulations. The parties did not agree in writing to waive the resolution period or resolve the Complaint. The parties did not agree to shorten the resolution period, which ended on April 11, 2013. The HOD was due on May 26, 2013.

¹ Personal identification information is provided in Appendix A.

A Prehearing Conference was held on April 12, 2013. Appearing were Jocelyn Franklin, counsel for Petitioner, William Jaffe, counsel for Respondent, and IHO Frances Raskin, the hearing officer previously appointed to hear this matter. A Prehearing Conference Summary and Order was issued by IHO Raskin on April 20, 2013.

A hearing date was held on May 10, 2013. This was a closed proceeding.

Petitioner entered into evidence exhibits 1-19; Respondent entered into evidence exhibits 1-4. Petitioner presented as witnesses: Mia Long, Educational Advocate; Dr. Sharon Lennon, Newlen Educational Services, LLC (expert: IEP implementation and compensatory education proposals); Petitioner; Bernadette John, case manager. Respondent presented as witnesses: Joshua Parkey, special education teacher, Malaika Defoe, Compliance Case Manager at the end of the hearing day, the parties presented oral arguments.

JURISDICTION

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

BACKGROUND

The Student is female, _____ years old, and eligible for services as a student with a speech and language impairment. The Complaint involves claims implicating 34 CFR 300.507(a). The Complaint indicates that DCPS failed to provide the Student with extended

school year services for summer, 2012 and did not provide the Student with a restrictive enough setting in the January 5, 2012 IEP.

ISSUE

As identified in the Prehearing Conference Summary and Order, the issue to be determined are as follows, as certified by IHO Raskin:

1. Whether DCPS denied the Student a FAPE between July 12, 2012 and August 13, 2012 by failing to implement the Student's July 12, 2012 IEP, i.e., by failing to provide the extended school year services required by her IEP?

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. The Student is a 7 year old girl who is eligible for services as a student with a speech and language impairment.

2. The Student has been attending School A since the age of 4. (Testimony of Petitioner; P-7-1)

3. The Student is currently in first grade at School A. (Testimony of Petitioner; P-12-1)

4. The Student has issues with regard to speech delays, memory. (Testimony of Petitioner)

5. The Student becomes uneasy and frustrated during instruction and requires breaks from work. (Testimony of Petitioner)

6. The Student works hard in math but needs constant reminders to attend to group instruction. The Student struggles in math, scoring in the low range in broad math, applied problems and calculation. (P-7-1; P-12-2)
7. The Student has difficulty with expressive and receptive language. The Student has severe deficits in articulation functioning and intelligibility. The Student has moderate delays in receptive and expressive language. (P- 8-3, 10; P-7-7)
8. The Student has difficulty with reading. The Student has been tested as having poor reading skills and cannot read a sentence. (P-7-7; Testimony of Parkey)
9. The Student has difficulty with writing. The Student has scored in the low range in broad writing. (Testimony of Parkey; P-12-4)
10. WPPSI-III testing conducted on December 7, 2010 indicated that the Student demonstrated average cognitive ability, with a Full Scale IQ of 99. (P-8-1)
11. In January, 2011, the Student was deemed eligible for special education services. Her initial IEP provided for 2 hours per week of specialized instruction, with 1 hour per week of speech and language therapy. (P-7-1)
12. The Student did not receive Extended School Year (ESY) academic services over the summer, 2011. (Testimony of Petitioner)
13. For the 2011-2012 school year, in kindergarten, the Student attended School A. (Testimony of Petitioner)
14. An IEP meeting was held on October, 7, 2011. The Student's special education services were increased to 4 hours of specialized instruction per week, with 1.5 hours of speech and language therapy per week. (P-7-3)

15. During fall, 2011, the Student was assessed for a psychological evaluation by Irene Opuka of DCPS. (P-7)
16. The assessment was conducted due to concerns about the Student not retaining information, making inconsistent academic growth, speech articulation issues. (P-7--1)
17. Testing was conducted on the RIAS test. The Student scored a 94 in the RIAS Nonverbal Intelligence Index. The Student scored a 92 in the RIAS Composite Memory Index. (P-7-5)
18. Testing was conducted on the TONI-3 and the VMI tests, which measure intellectual ability without the use of words and visual motor integration respectively. In both tests, the Student scored in the average range. (P-7-7)
19. Testing was conducted on the Y-CAT, which measures a Student's current levels of functioning. The Student scored a 72 in reading, placing her in the third percentile with the qualitative description of "poor." (P-7-7)
20. Also on the Y-CAT, the Student scored a 70 in spoken language, placing her in the third percentile with the qualitative description of "poor." (P-7-7)
21. At this time, the Student could not consistently write her name correctly and would think that her name begins with the letter N, I or another letter. (P-7-1)
22. Also at this time, the Student would frequently become distracted by her peers in the classroom. (P-7-2)
23. Also at this time, the Student had behavior struggles in school, including difficulty with transitions. (P-7-2)
24. As a result of the foregoing and related facts, the examiner indicated that the Student may require extensive academic support. (P-7-1)

25. A speech and language assessment dated December 12, 2011 by Delisa Green of DCPS found that the Student had delays in expressive language and receptive language. The assessment determined that the Student had a severe articulation disorder that would prevent her from gaining benefit from the general education curriculum. She received a total language score of 74 on the Preschool Language Scale 4. Low scores were found in the Clinical Assessment of Articulation and Phonology, with a standard score of below 55 on consonant inventory, school age sentences and phonological process scores. (P- 8-2, 10)

26. A new IEP was created for the Student on October 7, 2011. (P- 9-1)

27. The IEP recommends direct instruction in phonemic awareness. (P- 9-2)

28. The IEP recommends 2 hours per week of specialized instruction outside general education, 30 minutes per week of specialized instruction in general education, and 1.5 hours per week of speech and language pathology. (P- 9-9)

29. The IEP for the Student did not recommend Extended School Year services. Petitioner did not agree with this recommendation. (Testimony of Petitioner; P- 9-10)

30. The IEP goals in math call for the Student to consistently count 10 objects, to identify numbers 1-10, to identify the numbers 1 and 2, and to identify the colors red, blue, green, yellow, and orange. (P- 9-2)

31. The IEP goals in reading call for the Student to be able to identify 2 letters, and match letter sounds to the corresponding letter. (P- 9-3)

32. The IEP goals in speech and language call for the Student to produce plosive /p/ in initial, medial and final position of words, produce back sounds /k/ and /g/ in isolation, initial, medial, and final position of singleton words, produce fricative sounds /f/, /v/, and /s/ in initial, medial and final position of words without stopping them and producing the liquid /l/ in initial,

medial and final position of words, and produce final consonants through contrastive analysis.

(P- 9-5-6)

33. An IEP meeting was held on January 5, 2012. Issues relating to ESY were not determined at that time. Services were increased to 3.5 hours of specialized instruction, with 30 minutes per week of behavioral support services in addition to 1.5 hours per week of speech-language pathology. (Testimony of Petitioner; P-10-9, 10)

34. The Student progressed on 2 of her math goals, and mastered 2 other math goals by March 30, 2012. The Student could not identify numbers to 10 without visual cues during the period January 17, 2012 through March 30, 2012. (P-13-1)

35. The Student progressed on the reading goal relating to identifying letters of the alphabet through March 30, 2012. The Student could roughly recognize and/or label 50 percent of the letters of the alphabet. The Student identified roughly 50 percent of the letters of the alphabet during this time, verbally identifying 11 letters and pointing to 5 additional letters when asked. (P-13-2)

36. The reading goal relating to matching letter sounds to the corresponding letter had not been introduced by March 30, 2012. (P-13-2)

37. The Student progressed on her speech goals through March 30, 2012. (P- 13-3, 4)

38. Overall, the Student's performance during the 2011-2012 kindergarten year was weak. The Student experienced difficulty with memory and was not retaining information that she was being taught. (Testimony of Petitioner)

39. The Student's speech was almost unintelligible during 2011-2012. (Testimony of Defoe)

40. Prior to the start of the summer, 2012, the District agreed to provide the Student with ESY services. (Testimony of Petitioner)

41. Petitioner was told by Nicole Aberra from DCPS that she would get a letter indicating the name of the school setting that the Student would be getting ESY services at. (Testimony of Petitioner)

42. No such letter was provided to the Petitioner by DCPS. (Testimony of Petitioner)

43. ESY services started at DCPS schools on July 9, 2012. (Testimony of Defoe)

44. On July 12, 2012, the Student's IEP was amended to add ESY services. Services were to be 5 hours a week of specialized instruction outside the general education classroom, 2 hours per week of specialized instruction within the general education classroom, 1.5 hours per week of speech and language therapy, 30 minutes per week of behavioral support services. (P-11-6)

45. An ESY goal called for the Student to identify the numerals 1-10 and to be able to respond using verbal and non-verbal cues in 80 percent accuracy. P-11-6)

46. Another ESY goal called for the Student to be able to identify the letters of the alphabet through pointing and or stating with 100 percent accuracy. (P-11-6)

47. Another ESY goal called for the Student to be able to produce plosive /p/ in initial, medial and final position of words, produce back sounds /k/ and /g/ in isolation, initial, medial, and final position of singleton words, and produce fricative sounds /f/, /v/, and /s/ in initial, medial and final position of words. All these goals were to be accomplished with 80 percent accuracy over three consecutive trials. (P-11-6)

48. Another ESY goal called for the Student to positively respond to peer interactions by sharing classroom materials and using words to ask for what she wants/needs in 3/5 opportunities. (P-11-6)

49. ESY services were to run from July 9, 2012 through August 17, 2012. (P-11-6)

50. After ESY services were supposed to start, Petitioner called Ms. Aberra. Ms. Aberra's phone sent her a text back. Petitioner then communicated to Ms. Aberra that the Student did not receive her ESY services. (Testimony of Petitioner)

51. The Student did not receive any ESY services as a result of this inquiry. (Testimony of Petitioner)

52. Petitioner then called staff at DCPS to follow up, but was referred back to Ms. Aberra. (Testimony of Petitioner)

53. Three days before ESY services were to end, a school bus came by to pick up the Student. (R-1-1; Testimony of Petitioner)

54. The Student did not receive services for the last three days because the Petitioner was told by staff at DCPS that the services would not benefit the Student since there were only 2 and one half days left of the program. (Testimony of Petitioner)

55. The Student regressed in terms of speech and language issues over the summer, 2012. In particular, the Student's articulation issues became worse. (Testimony of Petitioner)

56. On the first day of first grade at School A in August, 2012, Petitioner brought up the subject of the missed ESY services to DCPS staff. (Testimony of Petitioner)

57. DCPS did not make any offers to Petitioner to provide make-up services at this time, when Petitioner was unrepresented by counsel. (Testimony of Petitioner)

58. The Student is in a general education classroom for 2012-2013. (Testimony of Parkey)

59. Mr. Parkey provides the Student with special education services for one hour a day with another student. He will also provide her with small group instruction or 1-1 help on letter sounds, letter recognition, math games. (Testimony of Parkey)

60. At the start of the 2012-2013 school year, the Student recognized under 12 letters. (Testimony of Parkey)

61. At the start of the 2012-2013 school year, the Student could not identify numbers 1-10. (Testimony of Parkey)

62. For the 2012-2013 school year, the Student has made slow progress in reading, adding some sight words, identifying letters. The Student cannot currently read a sentence except for a pretty basic sentence. She recognized about 21 letters at the time of testimony. (Testimony of Parkey)

63. For the 2012-2013 school year, the Student has made progress in counting with 1:1 correspondence. (Testimony of Parkey)

64. The Student can write her name, and can write a few short words. (Testimony of Parkey)

65. Testing by Educational Advocate Mia Long indicated that the Student recognized 16 upper and lower case letters as of April 2, 2013. (P-18-1)

66. The Student has continued difficulty with speech. Mr. Parkey can understand 95% to 99% of her speech. Adults who do not see her every day may understand about 75% of her speech. Many of the children in her classroom do not understand her. (Testimony of Parkey)

67. Woodcock Johnson III testing conducted on October 23, 2012 indicated that the Student scored in the low range in reading with a standard score of 52. The Student's score in spelling (45), passage comprehension (59), and reading fluency (75) were all in the low range. The writing score was 47, in the low range. (P-12-3, 4)

68. Woodcock Johnson III testing on October 23, 2012 indicated that the Student scored in the low range in broad math (62), and was in the low range for applied problems (63) and calculation (76). (P-12-2)

69. The IEP dated October 24, 2012 has seven speech goals. Three of the goals are identical to the speech goals in the amended IEP for ESY Services. (P-11-6; 12-6)

70. DCPS offered the Student 10 hours of tutoring, 10 hours of speech and language therapy, and 5 hours of counseling to settle this matter on April 11, 2013. DCPS then offered the Student 17.5 hours of tutoring, 10 hours of speech and language therapy, and 5 hours of counseling to settle this matter on April 14, 2013. (R-1-2; R-4-2)

71. I found all the witnesses credible in this proceeding.

CONCLUSIONS OF LAW

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

The burden of proof in a special education due process hearing lies with the party seeking relief. 5 DCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005).

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

300.320; Shaffer v. Weast, 546 U.S. 49, 51 (2005). Pursuant to the Supreme Court's decision in Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176, (1982), the IEP must, at a minimum, “provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005). The standard set out by the Supreme Court in determining whether a child is receiving a FAPE, or the “basic floor of opportunity,” is whether the child has “access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” Rowley, 458 U.S. at 201. The IDEA, according to Rowley, imposes “no additional requirement that the services so provided be sufficient to maximize each child's potential commensurate with the opportunity provided other children.” Id. at 198; A.I. ex rel. Iapalucci v. Dist. of Columbia, 402 F. Supp. 2d 152, 167 (D.D.C. 2005)

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies: (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit. 34 CFR Sect. 300.513(a).

1. FAPE Denial.

This case involves contentions that DCPS denied the Student a FAPE when it failed to provide the Student with ESY services for summer, 2012.

The record establishes that the IEP of July 12, 2012 recommended ESY services of 5 hours a week of specialized instruction outside the general education classroom, 2 hours per week of specialized instruction within the general education classroom, 1.5 hours of speech and

language therapy, 30 minutes of behavioral support services. These services were to run from July 9, 2012 through August 17, 2012 according to the IEP. Petitioner's credible testimony establishes that DCPS did not provide the Student with ESY services after promising it to the Petitioner and then incorporating that promise in an IEP. Though Petitioner tried to contact DCPS multiple times to then arrange for such services, the Student did not gain access to the services until two and one half days were left in the summer program. Since the services were provided so late in the summer term, the Student was told that the services would not be beneficial and was advised to go home by DCPS staff.

Districts may be held liable on a "failure to implement" theory. "Failure to implement" claims are actionable if the school district does not materially implement an IEP. A party alleging such a claim must show more than a de minimis failure, and must indicate that substantial or significant portions of the IEP could not be implemented. Savoy v. District of Columbia, 2012 WL 548173 (D.D.C. 2012)(holding no failure to implement where District's school setting provided ten minutes less of specialized instruction per day that was on the IEP); see also Van Duyn ex rel Van Duyn v. Baker School Dist. 5J, 502 F.3d 811 (9th Cir. 2007).

The record here shows that the Student's IEP was not implemented at all in regard to ESY services. DCPS did not provide the Student with transportation until there were only two and one half days left of the summer term. As a result, the Student did not progress at all on the ESY goals that were developed for the Student.

An ESY goal called for the Student to identify the numerals 1-10 and to be able to respond using verbal and non-verbal cues in 80 percent accuracy. Since no math instruction was provided to the Student in summer, 2012, the Student could not meet this goal. As indicated, by Mr. Parkey, the Student could not identify the numerals 1-10 by the start of school, 2012-2013.

Another ESY goal called for the Student to be able to identify the letters of the alphabet through pointing and or stating with 100 percent accuracy. Since no English language arts instruction was provided to the Student, the Student could not meet this goal. Mr. Parkey indicated that the Student could identify less than 12 numbers when she started school, 2012-2013. This shows regression from the Student's performance earlier in 2012, when the Student could roughly recognize and/or label 50 percent of the letters of the alphabet.

ESY speech and language goals called for the Student to be able to produce plosive /p/ in initial, medial and final position of words, produce back sounds /k/ and /g/ in isolation, initial, medial, and final position of singleton words, and produce fricative sounds /f/, /v/, and /s/ in initial, medial and final position of words. All these goals were to be accomplished with 80 percent accuracy over three consecutive trials. Since no speech and language instruction was provided to the Student in the summer, the Student could not meet this goal. In fact, the very same goals were repeated in the Student's October 7, 2012 IEP. Moreover, Petitioner credibly testified that the Student's articulation issues became more severe after a summer with no services.

Finally, another ESY goal called for the Student to positively respond to peer interactions by sharing classroom materials and using words to ask for what she wants/needs in 3/5 opportunities. Since there were no behavioral support services provided to the Student over the summer, the Student could not meet this goal. Goals in the October 7, 2012 IEP are similar; the social skills goal calls for the student to demonstrate social skills within peer relationships, including sharing skills and turn taking skills.

Cases within the District of Columbia have found that a complete failure to implement ESY services per an IEP can constitute FAPE denial. In Wilson v. District of Columbia, 770

F.Supp.2d 270 (D.D.C. 2011), a student did not receive his ESY services because no bus was called to pick him up. The parent then called DCPS, but transportation was still not provided for the Student until the last week of the ESY program. Judge Kennedy noted that IEP provided for 15 ESY goals, suggesting that the Student did not meet any of them. Judge Kennedy accordingly found FAPE denial, holding that the failure to provide the ESY services represented a material discrepancy between the services provided and the services required by the IEP. Id. at 275; see also S.S. ex rel. Shank v. Howard Road Academy, 585 F. Supp.2d 56 (D.D.C. 2008)(FAPE denial found where no ESY services provided for Student who required individualized instruction in reading, math, written instructions).

The facts here are much like in Wilson. As in Wilson, the Student did not receive any ESY services during the summer and did not receive transportation until the very end of the term. Just as in Wilson, the IEP set specific ESY goals for the Student. Just as in Wilson, the Student could not achieve or make progress on any of these goals because of the complete lack of services provided.

As in Wilson, DCPS argues that there was no harm to the Student even though she missed an entire summer of services. However, to this IHO, Petitioner has established harm because the Student did not progress on any of her goals and regressed in two areas during the summer. The Student could identify less than 12 letters at the start of the 2012-2013 school year, whereas she could identify roughly half the letters in March, 2012. There is testimony in the record that the Student's articulation issues became worse over the summer and are still so severe that the other students in her current class cannot understand her. It is noted that, in Wilson, Judge Kennedy indicated that harm is not a necessary element in cases involving this fact pattern, indicating that "the materiality standard does *not require that the child suffer*

demonstrable educational harm in order to prevail.” 770 F. Supp.2d at 275 (citing to Van Duyn, 502 F.2d at 822 (emphasis added)).

Under the circumstances, I find that the District denied the Student a FAPE when it failed to provide the Student with ESY services for the summer, 2012.

2. Mootness.

DCPS also argues that, even if FAPE was denied, it offered Petitioner a reasonable settlement proposal which should result in a finding that this case is moot.

Mootness arises when issues are no longer live and where the parties lack a cognizable interest in the outcome. United States Parole Comm. v. Geraghty, 445 U.S. 388, 395 (1980) If events outrun the controversy such that the court can grant no meaningful relief, the case must be dismissed as moot. McBryde v. Committee to Review Circuit Counsel Conduct and Disability Orders of the Judicial Conference of the U.S., 264 F.3d 52, 55 (D.C. Cir. 2001).

Here, Petitioner is seeking compensatory education for the time period during which that DCPS failed to provide ESY to the Student. The D.C. Circuit has been clear in establishing that where compensatory education is being requested, a special education case should ordinarily not be deemed moot. Lesesne ex rel. B.F. v. District of Columbia, 447 F.3d 828, 833 (D.C. Cir. 2006); see also Flores v. District of Columbia, 437 F. Supp.2d 22, 29 (D.D.C. 2006).

Respondent contends that it offered Petitioner compensatory education, and that such an offer moots out the case. However, Respondent has presented no authority to support the proposition that formulation of a compensatory education award by a school district can moot out a claim of FAPE denial. In fact, it is the responsibility of the IHO to determine an appropriate compensatory award for “educational services...to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23

(D.C. Cir. 2005). The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F. 3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "qualitative, fact-intensive inquiry used to craft an award tailored to the unique needs of the disabled student").

It is noted that, here, DCPS did not explain how it calculated the hours of tutoring, speech and language therapy, and behavioral support services or how these services correspond to the Reid standards. Accordingly, this IHO cannot find this matter to be moot.

3. Compensatory Education.

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

A Petitioner need not "have a perfect case" to be entitled to a compensatory education award." Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011). Under the IDEA, if a Student is denied a FAPE, a hearing officer may not "simply refuse" to grant one. Henry v. District of Columbia, 55 IDELR 187 (D.D.C. 2010). Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524. Progress made after the period of FAPE denial is not a basis for denying compensatory education. D.W. v. District of Columbia, 561 F. Supp.2d 56 (D.D.C. 2008).

Dr. Lennon testified as an expert in IEP implementation and compensatory education proposals. Dr. Lennon indicated that she tried to account for the deficits caused by the Student's failure to receive ESY services in summer, 2012. (P-14-5-6) She recommended 30 hours of specialized tutoring in math, reading and writing. The tutor would work on the goals that were not accomplished during the summer. In math, the tutor would work on assisting the Student in identifying numbers, which is one of the ESY goals that should have been worked on in the summer. In reading and writing, the tutor would work on "letter-sound correspondence" for all the letters in the alphabet. This is a skill that is sufficiently connected to the ESY goals relating to letter identification. The tutor would also work on high frequency sight words, assisting the Student in recognizing and distinguishing features of a sentence. I agree with the parent that the 30 hours of tutoring is an appropriate compensatory education award for the Student.

Dr. Lennon also recommended 2.5 hours of behavioral support services. However, Dr. Lennon's compensatory education plan does not clearly connect this amount of services up with the behavioral support services that were missed over the summer. Moreover, Dr. Lennon's CV does not establish that she has any particular credentials in regard to behavioral support services. Finally, the proposal for behavioral support services is vague to this IHO. There is no mention

of what kind of provider would be used. I am not convinced that the request for behavioral support services meets the Reid standard, and I will not award compensatory education in this connection.

Finally, Dr. Lennon recommended 10 hours of speech and language therapy services to make up for the missed speech and language therapy over the summer. Here, Dr. Lennon specifies that a speech and language pathologist should be used. Dr. Lennon also connects the request for speech and language therapy to the goals in the ESY IEP, namely for the Student to be able to produce plosive /p/ in initial, medial and final position of words, produce back sounds /k/ and /g/, and fricative sounds /f/, /v/, and /s/ in initial, medial and final position of words. It is noted that Petitioner testified to a particular regression in the Student's speech articulation issues over the summer. I agree with Petitioner that 10 hours of speech and language therapy services is an appropriate award per the standards in Reid.

ORDER

As a result of the foregoing, I hereby order:

1. DCPS shall provide the Student with funding for 30 hours of specialized tutoring as a compensatory education award. This tutoring may be provided by an instructor of Petitioner's choosing, provided that the provider's rate is usual and customary for providers of specialized tutoring instruction in the District of Columbia metropolitan area. This tutoring must be completed by December 31, 2013;

2. DCPS shall provide the Student with funding for 10 hours of speech and language therapy as a compensatory education award. This therapy shall be provided by a speech and language pathologist of Petitioner's choosing, provided that the pathologist's rate is usual and customary for the District of Columbia metropolitan area. This therapy must be completed by December 31, 2013.

Dated: May 26, 2013

Michael Lazan
Impartial 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 USC §1415(i).

Date: May 26, 2013

Michael Lazan
Impartial Hearing Officer