

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
1050 First Street, NE, 3<sup>rd</sup> Floor  
Washington, DC 20002

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GRANDMOTHER,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: April 15, 2021

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2021–0007

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Online Video Conference Hearing

Hearing Dates: March 30-31 and April 1-2, 2021

Respondent.

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**HEARING OFFICER DETERMINATION**  
(Corrected)<sup>2</sup>  
**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (Petitioner or GRANDMOTHER) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In her due process complaint, Petitioner alleges that Student has been denied a free appropriate public education (FAPE) by Respondent District of Columbia Public Schools’ (DCPS) failure to comprehensively reevaluate Student for special education needs, failure to develop appropriate Individualized Education Programs (IEPs), failure to fully implement Student’s IEPs and failure to provide the Grandparent access to Student’s complete education records.

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<sup>1</sup> Personal identification information is provided in Appendix A.

<sup>2</sup> This decision was corrected solely to correct the Hearing Dates in the caption on page 1.

Petitioner's Due Process Complaint, filed on January 19, 2021, named DCPS as Respondent.<sup>3</sup> The undersigned hearing officer was appointed on January 21, 2021. On February 3, 2021, the parties met for a resolution session and were unable to resolve the issues in dispute. On February 5, 2021, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. The first dates, mutually available to the parties for the four-day due process hearing requested by counsel, were March 30 through April 2, 2021. On February 17, 2021, in order to accommodate these hearing dates, I granted Petitioner's unopposed request to extend the final decision due date from April 4, 2021 to April 16, 2021.

Due to the closing of the hearing rooms at the Office of Dispute Resolution in the wake of the COVID-19 virus outbreak, the due process hearing was held on line and recorded, using the Microsoft Teams video conference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on March 30, March 31, April 1 and April 2, 2021. Grandmother appeared on line for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

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<sup>3</sup> Petitioner filed a prior due process complaint on behalf of Student on September 1, 2020 (Case No. 2020-0157). A due process hearing in that case, originally scheduled for December 1-4, 2020, was continued to January 14, 2021 due to the unavailability of a witness for the Petitioner. On January 14, 2021, Petitioner was not ready to proceed, again due to the unavailability of a witness. That day, I granted Petitioner's unopposed request to dismiss the prior complaint without prejudice.

Counsel for Petitioner made an opening statement. Grandmother testified and called as additional witnesses INDEPENDENT SPEECH-LANGUAGE PATHOLOGIST (SLP-1), INDEPENDENT PHYSICAL THERAPIST (PT-1), INDEPENDENT OCCUPATIONAL THERAPIST (OT-1), INDEPENDENT ASSISTIVE TECHNOLOGY PROFESSIONAL (AT-1), EDUCATIONAL ADVOCATE 1 and EDUCATIONAL ADVOCATE 2. DCPS called as witnesses SCHOOL PSYCHOLOGIST, SPECIALIZED INSTRUCTION MANAGER CITY SCHOOL 1 (LEA REP. 1), SPECIAL EDUCATION TEACHER CITY SCHOOL 1 (TEACHER 1), SPECIAL EDUCATION TEACHER CITY SCHOOL 2 ELA (TEACHER 2), SPECIALIZED INSTRUCTION MANAGER CITY SCHOOL 2 (LEA REP. 2), DCPS SPEECH-LANGUAGE PATHOLOGIST (SLP-2), DCPS PHYSICAL THERAPIST (PT-2), AND SPECIAL EDUCATION TEACHER CITY SCHOOL 2 MATH-SCIENCE (TEACHER 3). Petitioner's Exhibits P-1 through P-101 were all admitted into evidence, except for Exhibits P-38, P-67 and P-68, which were withdrawn. Exhibits P-39 through P-41, P-62 through P-66 and P-90 were admitted over DCPS' objections. DCPS' Exhibits R-8 through R-10, R-15, R-16, R-19 through R-22, R-24, R-26 through R-30, R-33, R-34, R-36, R-42, R-43, R-46 through R-48, R-51, R-52, R-56 through R-58, R-61, R-66, R-67, R-72 through R-74, R-81 and R-82 were admitted into evidence, including Exhibits R-52, R-61 and R-72 through R-74 which were admitted over Petitioner's objections. DCPS did not introduce the remaining exhibits from its prehearing disclosure.

At the conclusion of Petitioner's case in chief, DCPS' Counsel made a motion for

directed findings in its favor on Petitioner's failure to implement IEPs claim, which I denied, and on Petitioner's access to education records claim, which I granted. DCPS waived making an opening statement.

After the taking of the evidence, counsel for the respective parties made oral closing arguments. Petitioner's Counsel initially requested leave to file a written closing statement, but did not object to making an oral argument in lieu filing a written closing.

### **JURISDICTION**

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

### **ISSUES AND RELIEF SOUGHT**

The issues for determination in this case, as certified in the February 5, 2021 Prehearing Order, are:

A. Whether DCPS denied Student a FAPE by failing to conduct a comprehensive reevaluation of Student in 2019 when DCPS failed to conduct a 1) a Neuropsychological Evaluation or in the alternative a Comprehensive Psychological in the following areas of need: Memory Functioning, Autism Spectrum Disorder and Emotional and Behavioral, specifically issues related to trauma (PTSD diagnosis) and psychosis; 2) an Occupational Therapy evaluation, 3) a Physical Therapy evaluation and 4) an Assistive Technology evaluation. (In her complaint, Petitioner had also alleged that the 2019 reevaluation was inadequate for want of an Orientation and Mobility evaluation. At the due process hearing, Petitioner's Counsel withdrew the claim concerning an Orientation and Mobility evaluation.);

B. Whether DCPS failed to provide Student with an appropriate IEP for the 2018-2019 school year by failing to furnish Student with Extended School Year (ESY) services for the 2019 summer;

C. Whether DCPS denied Student a FAPE by failing to appropriately implement

Student's IEPs for the 2018-2019, 2019-2020 and 2020-2021 school years by failing to provide all of Student's speech and language services;

D. Whether DCPS failed to provide Student with appropriate IEPs for the 2018-2019 and 2019-2020 school years in that speech and language goals, baselines and present levels of performance were repeated in Student's IEPs and were not based on sufficient data and because the IEPs did not provide sufficient speech and language related services and

E. Whether DCPS failed to provide the parent with access to Student's educational records beginning with requests made in March 2020.

Following the presentation of Petitioner's case-in-chief, I granted DCPS' oral motion for a directed finding on the last issue on the grounds that Petitioner did not make a *prima facie* showing that DCPS failed to provide Grandmother with access to Student's education records.

For relief, Petitioner initially requested that DCPS be ordered to complete, or issue Independent Educational Evaluation (IEE) funding authorizations for the following assessments: Neuropsychological Evaluation or in the alternative a Comprehensive Psychological in the following areas of need: Memory Functioning, Autism Spectrum Disorder, and Emotional and Behavioral, specifically issues related to trauma (PTSD diagnosis) and psychosis, and an Orientation and Mobility evaluation. Petitioner requested to reserve the right to request additional compensatory education for Student following completion of the requested evaluations. Petitioner also requested that DCPS be ordered a) to increase Student's IEP speech and language services to 240 minutes per month; b) to hold an IEP meeting to update Student's IEP with the data from the additional assessments and IEEs within 30 days of the completion of the

evaluations; c) to provide Student with compensatory education for the alleged denials of FAPE (or reserve compensatory education pending completion of the additional assessments) and d) to provide Grandparent access to Student's education records.

Prior to the due process hearing, DCPS issued funding authorization for the Petitioner to obtain IEE Occupational Therapy, Physical Therapy, Assistive Technology and Comprehensive Psychological assessments of Student. At the due process hearing, Petitioner, by counsel, withdrew her request that DCPS be ordered to conduct or fund additional evaluations of Student. The remaining relief still sought by Petitioner are an order for DCPS to revise and update Student's IEP, including increasing Student's Speech-Language Pathology services, and a compensatory education award to compensate Student for the denials of FAPE established at the hearing.

### **FINDINGS OF FACT**

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE child, resides in the District of Columbia with Grandmother. Testimony of Grandmother. Student is eligible for special education under the disability classification Intellectual Disability (ID), also known as Mental Retardation. Exhibit P-43.

2. Student has attended DCPS public schools since pre-kindergarten. Since the start of the 2019-2020 school year, Student has been enrolled in CITY SCHOOL 2

where Student is currently in GRADE. Prior to attending City School 2, Student attended CITY SCHOOL 1 beginning in Kindergarten. Testimony of LEA Rep. 1.

3. In 2013, Student was evaluated through DCPS' Early Stages evaluation center and identified as a student with a Developmental Delay (DD) disability. Student was described as having delays in reasoning, problem solving, recalling, and responding. In a DCPS preschool, Student received specialized instruction and speech and physical therapy services. Exhibit R-13.

4. In December 2016, City School 1 staff conducted a special education reevaluation of Student. At that time, it was reported, *inter alia*, that Student scored slightly below grade level on the iReady math assessment and at a level below in "Reading Behaviors" and reading comprehension. Student's lack of focus was reported to impede various academic tasks and basic living skills. Cognitively, Student was assumed to be well below average. Exhibit R-2.

5. Student's December 5, 2017 IEP, developed at City School 1, identified Adaptive/Daily Living Skills, Cognitive, Communication/Speech and Language and Health/Physical as areas of concern. The December 5, 2017 IEP provided for Student to receive 26.5 hours per week of Specialized Instruction in a self-contained setting. The IEP also provided for Student to receive 120 minutes per month of Speech-Language Pathology services and 15 minutes per month of Physical Therapy (PT) consultation. At that time, Student had not attended a general education setting. Exhibit P-6.

6. Student has a condition, Duane Syndrome, which affects Student's peripheral vision. Testimony of PT-2. Duane Syndrome is a congenital and nonprogressive type of strabismus due to abnormal development of the 6th cranial nerve. Exhibit P-89.

7. Student's mother passed away from illness in September 2018. Before and after the death of Student's mother, Student lived with Grandmother. Testimony of Grandmother, Exhibit P-6.

8. In the 2018-2019 school year, Student was intelligible in class. Student had to be reminded to not use "baby talk." Student was a little wobbly and looked other ways – not straight ahead – when walking. Student was able to navigate the school and classroom fine and did really well in the Early Learning Support (ELS) classroom. Testimony of Teacher 1.

9. On December 20, 2018, the City School 1 physical therapy (PT) provider reported that there were no concerns regarding Student's gross motor skills or safety. The PT provider recommended that Student be exited out of PT services. Exhibit R-51.

10. In December 2018, Student was referred for a comprehensive psychological reevaluation by the multidisciplinary team (MDT) at City School 1 because Student was aging out of the Developmental Delay (DD) disability category and current data was requested regarding Student's cognitive, academic and social-emotional functioning. At the time, Student was reported to be reading at the kindergarten level and also performing at the kindergarten level in math. Student could write Student's



first name but had difficulty writing the last name. Student could not formulate a sentence independently. Student was described as distractible and required reminders and one-to-one instruction to stay on task. It was reported that since the death of Student's mother that fall, Student had begun to talk to self in third person. School Psychologist conducted a battery of tests including the Reynolds Intellectual Assessment Scales – Second Edition (RIAS-2); Comprehensive Test of Nonverbal Intelligence – Second Edition (CTONI-2); Woodcock-Johnson IV Tests of Achievement (WJ IV ACH); Adaptive Behavior Assessment System – Third Edition (ABAS-3) Parent and Teacher Form; and Behavior Assessment System for Children – Third Edition (BASC-3) Parent and Teacher Rating Scales. School Psychologist also conducted clinical interviews with Grandmother, Student's aunt, a teacher and Student and made classroom and testing observations. Exhibit R-13.

11. At City School 1, Student was placed in the ELS self-contained classroom. Testimony of Teacher 1. Teacher 1 reported to School Psychologist that Student was a bright and bubbly student. Student's strengths included that Student grasped the phonics concepts taught in the Foundations curriculum very easily. Teacher 1 reported that although Student struggled with focus during small group and whole class, Student did do well on the computer. Student's affect was lower in the fall quarter of the 2018-2019 school year due to the mother's recent death but in the new year, Student's bright demeanor had returned. Teacher 1 reported that Student had a great attitude toward learning and peers. Teacher 1 reported that Student's weaknesses included

mathematical concepts, a hard time focusing when in whole group or small group and doing independent work, and a tendency to look around while walking in the hallways at school. However, Student had not tripped or fallen, even when not watching where Student was walking. Teacher 1 reported that Student did not display any serious behavioral problems and had very good relationships with peers and staff members. Teacher 1 believed that Student's tendency to lose focus affected functioning in the classroom, because Student required constant prompting and redirecting to pay attention to direct instruction or independent work. In her classroom observation, School Psychologist observed that Student experienced significant difficulty with reading/reading comprehension and with completing basic tasks without teacher support. Additionally, Student did not always pay attention to information being given or the steps of the task. Exhibit R-13.

12. From the testing she conducted and analysis of rating scales responses, School Psychologist found that Student's cognitive performance showed significant weaknesses on both the RIAS- 2 and CTONI-3. Student's scores placed Student's cognitive ability within the Significantly Below Average to Very Poor range. Student performed within the Significantly Below Average range on verbal skills, nonverbal skills, working memory and processing speed. Nonverbal skills as measured by the CTONI-2 fell within the Very Poor to Poor range. Results from the WJ IV ACH suggested that Student performed commensurate with cognitive abilities for Broad Reading, Broad Mathematics and Broad Written Language. Social-emotional

functioning results, as measured by the BASC-3 report, indicated that Student's profile was remarkable for problems with attention, functional communication, depression and atypicality, which warranted follow-up, monitoring, and interventions. On the behavioral rating scales neither Student's teacher nor the Grandmother endorsed clinically significant problems associated with attention. School Psychologist reported that Student's problems with self-talk appeared to be related to a possible coping mechanism and Student's sadness seemed to be related to the death of Student's mother. More adaptive concerns were noted at home than at school. Student's adaptive functioning at home and school, as measured by the ABAS-3 General Adaptive Composite fell within the Low to Average ranges. School Psychologist reported that her cumulative evaluation findings suggested that Student met IDEA criteria as a student with an Intellectual Disability (ID), but not for a Specific Learning Disability (SLD) or an Other Health Impairment (OHI). Exhibit R-13.

13. In January 2019, a DCPS speech-language pathologist conducted a speech and language reevaluation of Student. The speech-language pathologist conducted in-person evaluations, a classroom observation and administered the Receptive One Word Picture Vocabulary Test Fourth Edition (ROWPVT-4), the Expressive One Word Picture Vocabulary Test Fourth Edition (EOWPVT-4), the Clinical Evaluation of Language Fundamentals 5th Edition (CELF-5) and Pragmatic Language Assessments. In her January 18, 2019 reevaluation report, the evaluator reported that results revealed that Student presented with articulation, voice, and fluency skills within normal limits.

Student's receptive and expressive vocabulary and overall language skills were in the very low range indicating severely delayed receptive and expressive language skills.

Exhibit R-14.

14. At an MDT team meeting on January 29, 2019, the City School 1 team determined that Student was eligible for special education under the IDEA criteria for ID. Exhibit R-16. There was no discussion of Autism Spectrum Disorder (ASD) being an area of concern for Student. Testimony of Teacher 1.

15. Student's January 29, 2019 City School 1 IEP identified Mathematics, Reading, Written Expression, Adaptive/Daily Living Skills, Communication/Speech and Language and Health/Physical as areas of concern. The January 29, 2019 IEP continued Student's prior special education and related services, including 26.5 hours per week of Specialized Instruction in a self-contained setting. The IEP also provided for Student to receive 120 minutes per month of speech-language pathology services and 15 minutes per month of PT consultation. Extended School Year (ESY) services were determined not required for Student. Exhibit P-9. Student's placement remained the City School 1 self-contained ELS classroom. Testimony of Teacher 1.

16. At the end of the 2018-2019 school year, Student was reported to be progressing on – or to have mastered – all January 29, 2019 IEP goals, except for a measuring activity goal for mathematics which had not yet been introduced. Exhibit P-25.

17. On norm-referenced testing, Student's beginning of school year (BOY)

middle of school year (MOY) and end of school year (EOY) scores on the iReady (math), iReady (reading) and Test Reading and Comprehension (TRC) (reading comprehension) assessments for the 2017-2018, 2018-2019, 2019-2020 and 2020-2021 school years were as follows:

2017-2018

	BOY	MOY	EOY
iReady Math	310	325	343
TRC	PC	RB	B

2018-2019

	BOY	MOY	EOY
iReady Math	360	329	496
TRC	A	B	E

2019-2020

	BOY	MOY	EOY
iReady Math	355	315	350
iReady Reading	386	389	412
TRC	A	E	

2020-2021

	BOY	MOY	EOY
iReady Math	426	452	
iReady Reading		553	
TRC	A	B	E

Exhibits R-29, R-30, P-96, Testimony of Educational Advocate 1. All of Student's TRC reading comprehension scores were years below proficiency expected for Student's grade level. Hearing Officer Notice, Exhibit P-96.

18. On June 25, 2019, DCPS provided written notice to Grandmother that City School 2 had been identified as the location of services for Student for the 2019-2020 school year. Exhibit R-95. At City School 2, Student was placed in an Independence and Learning Support (ILS) self-contained classroom. Testimony of Teacher 2. At City School 2, Student was functional and able to ambulate and maneuver in all parts of the school building for school activities. Testimony of PT-2.

19. On December 17, 2019, the City School 2 IEP team met for Student's annual IEP review. Grandmother attended the meeting by telephone. The December 17, 2019 IEP identified Mathematics, Reading, Written Expression, Adaptive/Daily Living Skills, Communication/Speech and Language and Health/Physical as areas of concern for Student. The December 17, 2019 IEP provided for Student to receive 25 hours per week of Specialized Instruction in a self-contained setting. The IEP also provided for Student to receive 120 minutes per month of Speech-language Pathology services and 15 minutes per month of PT consultation. Exhibits P-11, R-24, P-70. The IEP team recommended an Occupational Therapy (OT) screening for handwriting concerns. Exhibit P-70.

20. In early March 2020, LAW FIRM contacted City School 2 to request copies

of Student's education records. Exhibit P-101.

21. In spring 2020, Law Firm requested an IEP review for Student. An IEP team meeting was convened, by telephone on June 3, 2020. Grandmother told the IEP team that she had issues with some of Student's behavior and academic progress since Student began attending City School 2, concern about including work beyond Student's academic reach, and concern about Student's gait and tripping over things.

Grandmother stated that she had seen a lot of progress since Student started at City School 2 for the 2019-2020 school year. PT -2 and Teacher 3 reported that at school, there were no concerns about Student's tripping and bumping into things. School staff stated that an OT screening would be done for Student but that the screening had been delayed because of the school closings due to the COVID-19 virus. Petitioner's Counsel requested that Student's IEP baselines be updated and made measurable. Exhibits P-69, P-70.

22. The June 3, 2020 IEP identified Mathematics, Reading, Written Expression, Adaptive/Daily Living Skills, Communication/Speech and Language and Health/Physical as areas of concern for Student. The June 3, 2020 IEP continued to provide for Student to receive 25 hours per week of Specialized Instruction in a self-contained setting. The IEP also provided for Student to receive 120 minutes per month of Speech-Language Pathology services and 15 minutes per month of PT consultation. Exhibit P-14.

23. On July 17, 2020, Educational Advocate 2 sent a "dissent" to City School 2

outlining Grandmother's disagreement with the June 3, 2020 IEP. She requested that IEP present levels of performance for all the areas of concern include the respective accommodations and 2019-2020 school year progress monitoring, and that all baselines provide data specific to the goal with trials/opportunities data (percentages) along with specific level of prompting and fading and verbal cues. Educational Advocate 2 also requested a Neuropsychological Evaluation of Student for ASD, Memory Functioning, Cognitive Assessments and Emotional and Behavior; an OT assessment; a PT evaluation; an Orientation and Mobility evaluation and an AT evaluation. Exhibit P-93.

24. Student's DCPS IEPs from December 2017 forward provided for Student to receive 120 minutes per month of Speech-Language Pathology related services. This amounted to a total of approximately 1,700 minutes of Speech Language Pathology services due from January 2019 through September 2020. Exhibits P-8 through P-14. I find that DCPS failed to provide the following Speech-Language Pathology services to Student from January 2019 through September 2020, which were not excused due to Student's absences or because of school activities such as field trips or holiday events:

<u>Month</u>	<u>Minutes not provided</u>
January 2019	90 minutes
February 2019	30 minutes
April 2019	60 minutes
May 2019	30 minutes
June 2019	30 minutes
February 2020	30 minutes



March 2020	60 minutes
April 2020	80 minutes
May 2020	120 minutes
September 2020	30 minutes

Exhibits P-21, P-22, P-23. I find that from January 2019 through September 2020, in total, DCPS failed to provide Student approximately 560 minutes of IEP Speech Language Pathology services which, which were unexcused pursuant to DCPS' guidelines. *See Missed Related Services and Untimely Assessment Guidelines*, (DCPS August 2019). Exhibit P-90.

25. On December 2, 2020, DCPS issued funding authorization for Grandmother to obtain an Independent Educational Evaluation (IEE) Comprehensive Psychological Reevaluation and IEE OT, AT and PT evaluations of Student. Exhibit R-75. The IEE OT, AT and PT evaluations were completed in December 2020. As of the due process hearing date, the IEE psychological reevaluation was in process. Exhibits R-78, R-79 and R-80; Representation of Counsel.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and argument of counsel, as well as this hearing officer's own legal research, my Conclusions of Law are as follows:

#### **Burden of Proof**

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of

production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by the local education agency, in this case DCPS, the agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the agency. The burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

#### Analysis

- A. Did DCPS deny Student a FAPE by failing to conduct a sufficiently comprehensive special education reevaluation in 2019, when DCPS' reevaluation did not include 1) a Neuropsychological Evaluation or in the alternative a Comprehensive Psychological in the following areas of need: Memory Functioning, Autism Spectrum Disorder and Emotional and Behavioral, specifically issues related to trauma (PTSD diagnosis), and psychosis; 2) an OT evaluation; 3) a PT evaluation or 4) an AT evaluation?

Student was evaluated in 2013 at DCPS' Early Stages evaluation center and identified as a child with a Developmental Delay (DD) disability. DCPS conducted triennial reevaluations of Student in December 2016 and January 2019. Petitioner alleges that the January 29, 2019 reevaluation was inadequate because the psychological reevaluation was insufficiently comprehensive and because DCPS did not conduct occupational therapy (OT), physical therapy (PT) or assistive technology (AT) assessments. DCPS maintains that its January 29, 2019 reevaluation of Student was

appropriate based on Student's suspected needs at the time. Petitioner has the burden of persuasion on this issue.

U.S. Department of Education regulations require that, as part of a special education reevaluation, the local education agency must administer such assessments as may be needed to produce the data needed to determine (i) whether a child is a child with a disability and (ii) what are the educational needs of the child. See 34 C.F.R. § 300.305(a), (c). The LEA must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, communicative status and motor abilities. 34 C.F.R. § 300.304(c)(4). Decisions regarding the areas to be assessed are determined by the suspected needs of the child. U.S. Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46540, 46643 (August 14, 2006). The decisions of the student's educators as to what areas to assess are entitled to some deference. See *R.B., ex rel. F.B. v. Napa Valley Unified School Dist.*, 496 F.3d 932, 937 (9<sup>th</sup> Cir.2007) (Fact-intensive nature of a special education eligibility determination coupled with considerations of judicial economy render more deferential approach appropriate.) Cf. *T.T. v. District of Columbia*, 2007 WL 2111032, 9 (D.D.C. 2007) (DCPS personnel had special education expertise requiring deference.) Deciding what areas needed to be assessed should be based on what was known about the child's needs at the time of the evaluation, not on later developments. Cf. *L.J. by & through Hudson v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1004 (9th Cir. 2017)

(Appropriateness of a student’s eligibility should be assessed in terms of its appropriateness at the time of the child’s evaluation and not from the perspective of a later time with the benefit of hindsight.)

On December 7, 2018, the City School 1 MDT team convened for an Analysis of Existing Data (AED) meeting for Student. This was only several months after the death of Student’s mother. Grandmother participated in the meeting and reported that since the mother’s death Student had regressed. Grandmother also expressed concern that Student talked to Student’s self in the third person and possibly to an “invisible” character. Grandmother also indicated that she believed Student had dyslexia.

The MDT team decided that Student needed formal psychological and speech and language reevaluations for the triennial reevaluation. The hearing evidence does not show that at the time of the AED meeting, or when the triennial reevaluation was conducted, there was any disagreement about the areas to be assessed.

School Psychologist completed the Comprehensive Psychological Reevaluation in January 2019. She utilized a battery of tests and behavior rating scales, including the Reynolds Intellectual Assessment Scales – Second Edition; Comprehensive Test of Nonverbal Intelligence – Second Edition; Woodcock-Johnson IV Tests of Achievement; Adaptive Behavior Assessment System – Third Edition and Behavior Assessment System for Children – Third Edition. School Psychologist also made a classroom observation and conducted clinical interviews with Student, Grandmother, Student’s aunt, a teacher.

Petitioner's expert Educational Advocate 1, a neuropsychologist employed by Law Firm, opined in her testimony that based on Student's presentation in December 2018 with grief over the loss of the child's mother and reported hallucinations about imaginary persons, the psychological reevaluation should have been broadened to assess for Autism Spectrum Disorder (ASD), post-traumatic stress disorder (PTSD), psychosis, bereavement disorder and grief issues. In her testimony, School Psychologist maintained that the scope of the 2019 psychological reevaluation was appropriate. She explained that based on Grandmother's concern about possible dyslexia, Student was evaluated for a Specific Learning Disability as a referral question. However autism had never been raised as a concern for Student. Neither were psychosis or PTSD considered as referral questions because, although Grandmother and Student's teacher had seen some changes in Student following the recent death of the child's mother, this was attributed to the child's grieving process.

With respect to the appropriateness of the scope of the January 2019 psychological reevaluation, I found School Psychologist to be the more credible witness. In light of the death of Student's mother in September 2018, I find that School Psychologist's decisions several months later on the weight to be given to Student's grieving and the reported conversation with imaginary people is entitled to deference.

Moreover, there was no evidence that ASD or PTSD were areas of suspected disability for Student at the time of the January 2019 reevaluation. The earliest discussion of Student's being on the autism spectrum and having PTSD appear to be in

records from THERAPY CENTER beginning around July 2019. (It is not clear from the hearing evidence that Student has ever been medically diagnosed with either ASD or PTSD.) I found Educational Advocate 1's opinions less credible because she was not involved when Student was reevaluated in 2019 and she has never formally evaluated Student. Educational Advocate 1 also conceded in her testimony that psychosis was not a likely diagnosis for a child of Student's age. I conclude that Petitioner has not established that School Psychologist's January 2019 psychological reevaluation of Student was not sufficiently comprehensive.

Petitioner also contends that DCPS' January 2019 triennial reevaluation was not comprehensive because it did not include OT, PT or AT assessments. Petitioner's expert, OT-1, completed an IEE OT evaluation of Student in December 2020. She found, *inter alia*, that Student has deficits in visual-motor and visual-processing and fine motor coordination skills which would impact Student's ability to perform school-age and school-based tasks. OT-1 opined that Student should have received an OT evaluation as early as December 2016, because, when a DCPS occupational therapist screened Student in December 2016, it was clear from teacher data that Student had visual processing difficulties and also because Student has a peripheral vision impairment, Duane Syndrome, which affects visual processing. This opinion was not rebutted by DCPS. Based on OT-1's opinion, I find that Petitioner has met her burden of persuasion that at the time of the January 2019 reevaluation, occupational therapy was a suspected need for Student and that the triennial reevaluation should have included

an OT evaluation.

Petitioner's physical therapy expert, PT-1, conducted an IEE physical therapy evaluation of Student in December 2020. She found that Student presented with decreased lower extremity strength, decreased trunk strength, decreased dynamic standing balance, low muscle tone and poor standing and ambulation posture which limits Student's ability to perform higher-level balance activities. Student also scored low on gross motor skills and was at risk of developing a movement problem. PT-1 opined that based on Grandmother's concerns about Student's walking and school staff's concerns, DCPS should have conducted a PT evaluation by the time of the January 2019 triennial reevaluation.

DCPS' physical therapy expert, PT-2, observed Student on multiple occasions at City School 2, including in the classroom, the cafeteria, hallways, physical education class, and recess. She observed that Student was functional, able to maneuver in all settings and was able to access the school environment safely and participate in the educational setting. PT-2 had recommended in December 2018 that Student be exited from PT consultation services. However that recommendation was not acted on because of the Coronavirus school closures.

As to Student's need for a PT assessment at the time of the January 2019 triennial reevaluation, I found PT-2's opinion more credible than that of PT-1. PT-2 observed Student in all settings at school. By contrast, PT-1 did not have the opportunity to observe Student at school or to speak with Student's teachers. Moreover, PT-2's opinion

was supported by the testimony of Teacher 1, who taught Student at City School 1 for the 2017-2018 and 2018-2019 school years. Teacher 1 testified that while Student was a little wobbly when walking, Student was able to navigate the classroom and school fine and did not need a lot of support to sit at the class table and write. I conclude that Petitioner has not met her burden of persuasion that Student's suspected PT needs at the time of the January 2019 triennial warranted a formal PT evaluation.

I likewise find that Petitioner has not established that Student required an AT evaluation at the time of the January 2019 triennial reevaluation. Petitioner's expert, AT-1, who evaluated Student in December 2020, testified that he would probably have recommended an AT evaluation at the time of Student's triennial reevaluation because a DCPS speech-language pathologist, who evaluated Student in January 2019, recommended accommodations for Student. However, in her January 2019 speech-language reevaluation report, this DCPS speech-language pathologist recommended that school staff consider the use of multiple modalities (*e.g.* auditory, visual, tactile, etc.) when presenting directions, explanations and instructional content to Student. *See* Exhibit P-54. The DCPS speech-language pathologist did not propose that Student needed an AT evaluation or that Student would benefit from assistive technology. Moreover, Student's IEP team determined in January 2019 that Student did not have AT needs at that time. I find that Petitioner has not met her burden of persuasion that Student's suspected needs at the time of the January 2019 reevaluation warranted a formal AT evaluation.



In sum, I find that Petitioner has met her burden of persuasion that the January 2019 triennial reevaluation was insufficiently comprehensive because DCPS did not conduct a formal OT evaluation, but Petitioner did not show that the January 2019 psychological reevaluation was not sufficiently comprehensive or that, at the time of the triennial, Student's suspected needs warranted formal PT or AT assessments.

An LEA's failure to conduct a comprehensive and appropriate triennial reevaluation of a student is a procedural violation of the IDEA. *See, e.g., I.T. ex rel. Renee T. v. Department of Educ.*, 2012 WL 3985686, 16 (D.Haw., Sept. 11, 2012). *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012). Procedural violations may only be deemed a denial of FAPE 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)(2).

In her January 2021 Occupational Therapy Evaluation Report, OT-1 recommended, *inter alia*, that Student receive 60 minutes per week of OT services to address self-care skills, therapeutic exercise, therapeutic activities, neuromuscular reeducation for sensory processing, fine motor coordination, visual motor skills, activity tolerance and executive function. I find it likely that if the January 2019 IEP team would have had the benefit of an OT evaluation of Student, the IEP team would have

provided OT related services in Student's IEP to assist Student to benefit from special education. *See* 34 C.F.R. § 300.34(a). I find, therefore, that DCPS' failure to conduct an OT evaluation caused Student a deprivation of educational benefit. This was a denial of FAPE.

- B. Did DCPS fail to provide Student with an appropriate IEP for the 2018-2019 school year by failing to furnish Student with Extended School Year (ESY) services for the 2019 summer?

In the June 3, 2020 IEP, the City School 2 IEP team determined that Extended School Year (ESY) services were required for the provision of FAPE to Student. However, in Student's January 29, 2019 IEP, the City School 1 IEP team determined that ESY services were not required. Student did not receive ESY services in summer 2019. Petitioner contends this was a denial of FAPE. DCPS has the burden of persuasion as to the appropriateness of the City School 1 IEP team's decision not to provide for ESY services in the January 29, 2019 IEP.

Under the D.C. Regs., in determining whether ESY services are necessary for the provision of FAPE, the IEP team must consider and document each of the following:

- (a) The impact of break in service on previously attained or emerging critical skills;
- (b) The likelihood and degree of regression related to previously attained or emerging critical skills; and
- (c) The time required for recoupment of previously attained or emerging critical skills.

5E DCMR § 3017.2 (2018). "ESY Services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly

jeopardized if he is not provided with an educational program during the summer months.” *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 68-69 (D.D.C. 2008), adopting standard from *MM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 537–38 (4th Cir.2002)). See, also *Johnson v. District of Columbia*, 873 F. Supp. 2d 382, 386 (D.D.C. 2012) (“[A]ll students, disabled or not, may regress to some extent during lengthy breaks from school. ESY Services are required under the IDEA only when such regression will substantially thwart the goal of ‘meaningful progress.’”)

Petitioner’s expert, Educational Advocate 2, opined in her testimony that Student needed ESY services for summer 2019 because at City School 1, Student’s norm-referenced iReady math scores declined from 360 at the beginning of the 2018-2019 school year to 329 at the middle of the year. Educational Advocate 2 testified that the decline in iReady math scores could be indicative of some regression over the DCPS winter break. However, over the same period, Student’s TRC reading comprehension score increased one level. More strikingly, Student’s iReady math score actually increased after the 2018 summer break from 343 at the end of the 2017-2018 school year to 360 at the beginning of the 2018-2019 school year. Student’s TRC reading comprehension score dropped a single level, from B to A over the same period. Based on these data, I find that Student’s City School 1 IEP team was justified in determining that regression over the summer of 2019 was not likely to “substantially thwart the goal of ‘meaningful progress’” for Student. See *Johnson, supra*. I find that based upon the information available to the January 29, 2019 IEP team, DCPS did not deny Student a

FAPE by determining that ESY services were not required for Student for summer 2019.

- C. Did DCPS deny Student a FAPE by failing to appropriately implement Student's IEPs for the 2018-2019, 2019-2020 and 2020-2021 school years by failing to provide all of Student's Speech and Language Services?

Petitioner alleges that DCPS failed to fully implement the provisions for speech and language services in Student's DCPS IEPs. Student's IEPs from December 3, 2018 forward provided for Student to receive 120 minutes per month of Speech-Language Pathology related services. Based on her review of DCPS' speech-language service trackers, Petitioner's expert, SLP-1, calculated that from January 2019 through September 2020, Student was supposed to receive 1,800 hours of IEP speech and language services and DCPS failed to provide 850 minutes of those services. Petitioner has the burden of persuasion on this claim.

U.S. District Judge Rudolph Contreras explained in *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 (D.D.C. 2018), that a material failure to implement substantial or significant provisions of a child's IEP may constitute a denial of FAPE.

A school district "must ensure that . . . special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2). A material failure to implement a student's IEP constitutes a denial of a FAPE. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268–69 (D.D.C. 2013). To meet its burden, the moving party "must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Beckwith v. District of Columbia*, 208 F.Supp.3d 34, 49 (D.D.C. 2016) (quoting *Hous. Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) ). "Generally, in analyzing whether a student was deprived of an educational benefit, 'courts . . . have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.' " *Id.* (quoting *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C.

2011)).

*Middleton* at 144.

Based on my review of the DCPS school calendar, Student should have been provided a total of approximately 1,700 minutes of Speech-Language Pathology services from January 2019 through September 2020. DCPS' speech and language expert, SLP-2 testified that Student was on her caseload at City School 2 from the beginning of the 2019-2020 school year and that she provided speech and language services consistent with Student's IEP. However, SLP-2 acknowledged that Student may have been "shorted" services during the period that DCPS schools have been closed during the Coronavirus pandemic. Student's speech and language provider at City School 1 did not testify. From my review of the DCPS service trackers, I find that DCPS failed to provide some 560 minutes, or about 30 percent, of Speech-Language Pathology services due Student from January 2019 through September 2020, not including services excused due to Student's absences or because of school activities such as field trips or holiday events. While some leeway is warranted due to the Coronavirus school closings, DCPS' not providing some 30 percent of Student's speech and language services over the approximately 15 school month period constitutes a failure to implement substantial provisions of Student's IEPs. This was a denial of FAPE.

- D. Did DCPS fail to provide Student with appropriate IEPs for the 2018-2019 and 2019-2020 school years in that speech and language goals, baselines and PLOPs were repeated in Student's IEPs and were not based on sufficient data and the IEP did not provide sufficient speech and language related services?

Petitioner contends that Student's DCPS IEPs, beginning January 29, 2019, have been inappropriate because for the Communication/Speech and Language area of concern, the IEP annual goals, baselines and present levels of performance (PLOPs) were repeated in Student's IEPs and were not based on sufficient data, and because the IEPs did not provide sufficient speech and language related services. In *Moradnejad v. District of Columbia*, 177 F. Supp. 3d 260 (D.D.C. 2016), the Court adopted the Report and Recommendation of U.S. Magistrate Judge G. Michael Harvey, which explained how a hearing officer must assess an IEP:

The Supreme Court explained in [*Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)] that a court's assessment of an IEP involves two inquiries:

First, has the State complied with the procedures set forth in the [IDEA]? And second, is the [IEP] developed through the [IDEA's] procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

*Moradnejad* at 274-75.

In this case, Petitioner has not alleged that DCPS failed to comply with the IDEA's procedural requirements in developing Student's IEPs. Therefore, I turn to the second, substantive, prong of the *Rowley* inquiry: Were the Communication/Speech and Language provisions in DCPS' January 29, 2019 and subsequent IEPs appropriate for Student? I find that through her expert witness, SLP-1, Petitioner has made a *prima facie* showing that for speech and language needs, these IEPs were not appropriate for

Student. Therefore, the burden of persuasion as to the appropriateness of the IEPs falls on DCPS.

In *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, *supra*, the U.S. Supreme Court elaborated on the standard, first enunciated in *Rowley*, *supra*, for what constitutes an appropriate IEP under the IDEA:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F.*, 137 S.Ct. at 999. . . . The 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.* . . . Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. *Id.* (emphasis in original.) . . . The IEP must aim to enable the child to make progress. . . . [T]he essential function of an IEP is to set out a plan for pursuing academic and functional advancement. *Id.* . . . A focus on the particular child is at the core of the IDEA. The instruction offered must be "*pecially designed*" to meet a child's "*unique needs*" through an "*individualized* education program." An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability and potential for growth. *Id.* (emphasis in original.) . . . A reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances. *Id.*, 137 S.Ct. at 1002.

*See, also, Z. B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018).

The IDEA requires that the IEP team be provided sufficient information from the student's evaluation and other sources to determine the nature and extent of the special education and related services that the child needs." *See* 34 C.F.R. § 300.15. Here the evidence establishes that for the Communication/Speech and Language area of concern, Student's IEP teams had sufficient information, including the formal speech and

language reevaluation report completed in January 2019, and the input from Student's speech-language providers and classroom teachers and other IEP team school staff.

As to the appropriateness of the speech and language goals, baselines and PLOPs in Student's IEPs, I have found that the annual goals were repeated, substantially unchanged, in Student's December 3, 2018, January 29, 2019, December 17, 2019, February 25, 2020 IEPs. The PLOPs and baselines were updated in the June 3, 2020 IEP.

Petitioner's speech and language expert, SLP-1, opined that it was inappropriate to repeat Student's speech and language goals from year to year and if, there were not sufficient progress in speech and language, Student's annual goals should have been reworked to make them achievable. I agree. Of course, not every child with disability progresses as anticipated. However, if annual goals have not been met and the present levels must be repeated, the IEP team may be required to address the lack of progress in the revised IEP. *See Schroll v. Bd. of Educ. Champaign Cmty. Unit. Sch. Dist. #4*, No. 06-2200, 2007 WL 2681207, at 4-5, 2007 (C.D.Ill. Aug. 10, 2007). *See, also*, 34 CFR § 300.324(b) (Child's IEP team must review IEP periodically to determine whether the annual goals for the child are being achieved.) I conclude that DCPS has not offered "a cogent and responsive explanation" for its IEP teams' decisions not to revise Student's annual goals for speech and language at least by the time of the December 17, 2019 IEP annual review. This was a denial of FAPE.



Remedy

At the due process hearing in this case, Petitioner's Counsel withdrew Petitioner's previous request for additional special education evaluations because DCPS has already issued funding authorization for IEE assessments. DCPS is required to promptly convene an IEP team meeting to review and revise Student's IEP as appropriate, upon completion of the IEE assessments. *See* 34 C.F.R. §§ 300.324(b)(ii), 300.305(a). Petitioner also requested that DCPS be ordered to provide the parent access to the Student's education records. However, I have granted DCPS' motion for a directed finding on Petitioner's education records claims. Petitioner continues to seek an increase in Student's IEP Speech-Language Pathology related services from 120 to 240 minutes per month and an award of compensatory education for the denials of FAPE established in this case.

With regard to increasing Student's Speech-Language Pathology services, Petitioner's expert, SLP-1, testified that, based on the January 2019 speech and language reevaluation, she would have given Student 240 minutes per month of speech and language services. However, SLP-1 has not formally evaluated Student and she only had limited interaction with the child shortly before the due process hearing. I do not find this is a sufficient basis for doubling Student's Speech/Language Pathology services. Therefore, I will deny Petitioner's request without prejudice and will require DCPS to conduct a full speech and language reevaluation of Student to enable Student's IEP team to make an informed decision as to Student's current need for Speech-Language

Pathology services. *See* 34 C.F.R. § 300.34(a).

The Petitioner also seeks compensatory education for Student. The D.C. Circuit Court of Appeals explained the compensatory education remedy in *B.D. v. District of Columbia*, 817 F.3d 792 (D.C. Cir. 2016):

When a hearing officer or district court concludes that a school district has failed to provide a student with a FAPE, it has “ broad discretion to fashion an appropriate remedy,” which can go beyond prospectively providing a FAPE, and can include compensatory education. *Boose v. District of Columbia*, 786 F.3d 1054, 1056 (D.C.Cir.2015) (internal quotation marks omitted). As we held in *Reid ex rel. Reid v. District of Columbia*, an award of compensatory education “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.” 401 F.3d at 524. In other words, compensatory education aims to put a student like B.D. in the position he would be in absent the FAPE denial.

An appropriate compensatory education award must “rely on individualized assessments,” and the equitable and flexible nature of the remedy “will produce different results in different cases depending on the child’s needs.” *Id.* In some cases, the award may consist of “only short, intensive compensatory programs targeted at specific problems or deficiencies,” while in others the student may require “extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.” *Id.* To fully compensate a student, the award must seek not only to undo the FAPE denial’s affirmative harm, but also to compensate for lost progress that the student would have made.

In this decision, I have found that DCPS failed to provide Student a FAPE (1) by not conducting an occupational therapy evaluation as part of Student’s 2019 triennial reevaluation and, as a result, developing Student’s IEPs without sufficient information as to Student’s OT needs; (2) by not revising Student’s annual IEP present levels of performance and annual goals for Communication/Speech and Language beginning with the December 17, 2019 annual IEP review and (3) by failing to provide Student

some 560 minutes of IEP Speech-Language Pathology services between January 2019 and September 2020. Student is entitled to an award of compensatory education for these FAPE denials.

Petitioner's witnesses, Educational Advocate 1 and Educational Advocate 2, proposed a compensatory education plan for Student. *See Exhibit P-99.* With respect to the alleged denials of FAPE which I have found in this decision, Educational Advocate 1 and Educational Advocate 2 proposed the following compensatory education remedies:

- Failure to conduct occupational therapy (OT) evaluation and failure to offer OT related services – 24 hours of OT services
- Failure to implement Speech-Language Pathology services – 15 hours of speech and language services
- Failure to update Student's Speech and Language goals and services – 2 hours of tutoring for every week the speech and language goals were inappropriate (approximately 160 hours of tutoring based on 80 weeks).

DCPS did not offer any evidence on what would be an appropriate compensatory education remedy for Student.

I find that Petitioner's proposed remedy of 24 hours of OT services is reasonable and equitable as a compensatory education award for DCPS' not conducting an occupational therapy evaluation as part of Student's 2019 triennial reevaluation and not ensuring that Student's IEP teams had sufficient information to determine Student's occupational therapy needs.

For the failure to implement speech and language services claim, the educational advocates proposed 15 hours of compensatory speech and language services, based on

Petitioner's claim that DCPS did not provide some 850 minutes of IEP Speech-Language Pathology services due Student between January 2019 and September 2020. However, in this decision, I have found that Petitioner established that DCPS failed to implement some 560 minutes of unexcused Speech-Language Pathology services due to Student. Adjusting for this difference, I will order DCPS to provide Student 10 hours of compensatory education Speech-Language Pathology services.

As the remedy for DCPS' failure to ensure that the Communication/Speech and Language goals and services were updated on Student's IEP from December 2019 forward, Petitioner's experts proposed an award of 160 hours of tutoring. That proposal does not correlate to the opinion of Petitioner's speech and language expert, SLP-1, that Student should have been provided 240 minutes per month of IEP Speech-Language Pathology services. Assuming, *arguendo*, that Student's speech and language services had been increased to 240 minutes per month in December 2019, Student would have been due roughly 42 additional hours of Speech-Language Pathology services through the date of the due process hearing (120 additional minutes per month multiplied by 21 school months). Therefore, as compensatory education for DCPS' failure to ensure that the Communication/Speech and Language areas of concern in Student's IEPs were appropriately updated beginning in December 2019, I will order DCPS to provide Student an additional 42 hours of compensatory education services. These hours may be used for additional speech and language services or, as recommended by Petitioner's experts, for tutoring services.

**ORDER**

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

**ORDERED:**

1. Within 21 school days of the date of this decision, subject to obtaining written consent of Grandmother, DCPS is ordered to conduct a full speech and language reevaluation of Student;
2. DCPS shall ensure that promptly upon receipt of the Independent Educational Evaluation assessments of Student and of the speech and language reevaluation report ordered herein, Student's IEP team, including Grandmother and her representatives, is convened to review and revise, as appropriate, Student's IEP;
3. As compensatory education for the denials of FAPE found in this decision, DCPS shall promptly issue funding authorization to Grandmother for Student to receive 24 hours of independent Occupational Therapy services, 10 hours of independent Speech-Language Pathology services and 42 additional hours of independent speech and language or tutoring services. Petitioner shall promptly inform DCPS whether she prefers that these hours be for additional Speech-Language Pathology services or for academic tutoring;
4. Petitioner's request that DCPS be ordered to increase Student's speech and language pathology services to 240 minutes per month is denied without prejudice, pending completion of the speech and language reevaluation of Student and
5. All other relief requested by the Petitioner herein is denied, without prejudice to Petitioner's right to seek further relief for the IEP revision decisions made hereafter by Student's IEP team, as ordered in this hearing officer determination.

Date: April 15, 2021

s/ Peter B. Vaden  
Peter B. Vaden, Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

cc: Counsel of Record  
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