

District of Columbia
Office of the State Superintendent of Education

Office of Dispute Resolution
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Parent, on behalf of Student,¹)	
Petitioner,)	
)	Hearing Dates: 3/20/24, 3/21/24
v.)	Hearing Officer: Michael Lazan
)	Case No. 2024-0007
District of Columbia Public Schools,)	
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student (the “Student”) who is currently eligible for services as a student with Developmental Delay. A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on January 5, 2024. The Complaint was filed by the Student’s parent (“Petitioner”). DCPS filed a response on January 12, 2024. A resolution meeting was held on January 17, 2024, which did not result in a settlement. The resolution period expired on February 4, 2024.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R.

¹ Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-A, Chapter 30.

III. Procedural History

A prehearing conference was held on February 16, 2024. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on February 27, 2024, summarizing the rules to be applied in the hearing and identifying the issues in the case.

The hearings were conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioner was again represented by Attorney A, Esq. Respondent was again represented by Attorney B, Esq. This was a closed proceeding.

After a series of emails, the parties agreed to set hearing dates for March 20, 2024, and March 21, 2024. Hearings proceeded on those dates. Closing arguments were presented at the close of testimony on March 21, 2024. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-53, except for exhibits P-42, P-45, and P-46. Objections were filed with respect to exhibits P-1 through P-4; P-9; P-13 through P-49; and P-53. These objections were overruled. Exhibits P-1 through P-53 were admitted. DCPS moved into evidence exhibits R-1 through R-34, without objection.

Petitioner presented as witnesses, in the following order: Witness A, a speech language pathologist (expert in speech and language pathology as it relates to evaluation and speech and language needs); Witness B, a psychologist (expert in psychology); herself; and Witness C, a special education advocate (expert in special education and Individualized Educational Program (“IEP”) programming, process, and procedure). Respondent presented as witnesses: Witness D, a social worker (expert in social work);

Witness E, a speech-language pathologist (expert in school-based speech and language pathology); Witness F, a school psychologist (expert in school-based psychology); and Witness G, a special education teacher and Local Educational Agency (“LEA”) representative (expert in special education and occupational therapy).

IV. Issues

As identified in the Prehearing Order and in the Complaint, the issues to be determined in this case are as follows:

1. Did DCPS fail to conduct a reevaluation of the Student from July 3, 2023, to the present? If so, did DCPS deny the Student a Free Appropriate Public Education (“FAPE”)?

Petitioner contended that the Student was denied a FAPE as result of DCPS’s failure to conduct a timely comprehensive psychological evaluation that includes cognitive, academic, adaptive, and social emotional testing, as well as a Functional Behavioral Assessment (“FBA”).

2. Did DCPS fail to timely review the assessments provided by Petitioner in the areas of speech and language and occupational therapy in spring 2023? If so, did DCPS deny the Student a FAPE?

3. Did DCPS fail to make changes to the Student’s IEP and/or order additional assessments after reviewing the assessments provided by Petitioner in the areas of speech and language and occupational therapy in spring 2023? If so, did DCPS deny the Student a FAPE?

4. Did DCPS deny the Student a FAPE by failing to provide him/her with an appropriate IEP from April 27, 2023, to the present?

Petitioner contended that the IEPs did not recommend sufficient or any: 1) speech language pathology services; 2) occupational therapy services; 3) a Behavior Intervention Plan (“BIP”); 4) access to a social skills group; 5) present levels of performance

information or goals; 6) specialized instruction; and 7) related service hours. Petitioner also contended that the IEPs were not based on comprehensive evaluations.

As relief, Petitioner seeks: a comprehensive psychological evaluation, which includes cognitive, academic, adaptive, and social emotional testing, and an FBA; that DCPS shall timely review the Student's Independent Educational Evaluation ("IEE") in speech and language and occupational therapy and fund an IEE for speech and language; that DCPS shall amend the Student's IEP to include speech and language therapy and occupational therapy; a BIP; a social skills group; an increase in specialized instruction hours; and that, upon completion of the referenced evaluations, DCPS shall convene a multidisciplinary team ("MDT") meeting to review the evaluations and revise the Student's IEP as appropriate. Petitioner also seeks compensatory education, including the Student's right to additional compensatory education upon the completion of additional evaluations, and related relief.

V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a student with Developmental Delay. The Student has been diagnosed with Autism Spectrum Disorder ("ASD") and Mixed Receptive/Expressive Language Disorder. P-37. The Student makes good eye contact and responds well to cues. Testimony of Witness E. A speech and language evaluation was administered to the Student on or about August 20, 2021. P-12-1. The Student's family moved to the District of Columbia in late 2021. The Student attended PCS School starting in January 2022. The Student was found to be eligible for special education services by an IEP team at PCS School. Testimony of Petitioner.

2. PCS School wrote an IEP for the Student on September 28, 2021. The child was recommended for 1740 minutes of special education and related services per week. P-14.

3. The Student participated in “MAP” testing in September 2022. The Student scored below level in English language arts (“ELA”) but on grade level in math. The Student’s scores in vocabulary were low. In listening comprehension, the Student was well below grade level in identifying oral vocabulary sight words. P-16.

4. PCS School held another IEP meeting for the Student on September 15, 2022. The ensuing IEP significantly reduced the Student’s specialized instruction mandate to thirty minutes per week outside general education, in light of the Student’s development and progress. The IEP also recommended thirty minutes of behavior support services per week. P-14.

5. Hospital A issued a speech and language evaluation report on behalf of the Student in October 2022. The speech and language evaluation indicated that the Student had issues with auditory attention, sound discrimination, short-term/working memory, recall, and the ability to manipulate sounds. The Student’s expressive language was “verbose” and tangential, with poor sentence cohesion. The Student’s pragmatic language ability was considered compromised, due to his/her limited auditory attention to the speaker, “listener awareness,” and social-conversational skills. Few developmental speech sound errors were present. The report indicated that the Student had severe expressive language delays, mild to moderate receptive language delays, social-pragmatic deficits, and attention deficits. Speech therapy was recommended for a minimum of two

sessions per week, for thirty minutes per session. A social skills group was also recommended for services at school and in the community. R-1.

6. The Student's IEP was amended by PCS School on October 20, 2022. This IEP recommended ninety minutes of specialized instruction outside general education, and thirty minutes per week of behavioral support services outside general education. The IEP indicated that the child's behavior impeded the child's learning or that of other children, and that the Student needed "first/then" strategies such as calming, breathing, and visual schedules. The IEP said that the Student could use words to communicate his/her needs and wants, and that his/her language skills were adequate. The IEP indicated that the Student could respond appropriately to questions and that no extra assistive technology device was needed. The IEP stated that the Student had underdeveloped on-the-spot reasoning skills and struggled to non-verbally solve problems with multiple components. The IEP indicated that the Student was often inattentive, causing him/her to use coping resources to quickly alleviate uncomfortable feelings. The IEP reported that the Student had a challenging time keeping a calm body and had stated that s/he "wants to go home." The IEP noted that, when triggered, the Student had issues controlling emotions and could be destructive toward him/herself and others. The IEP indicated that the Student needed help with multistep directions and required behavioral support services. The IEP also said that the Student disregarded rules and was impulsive, which left him/her vulnerable to conflict with peers and reprimand by teachers. P-17. Though the IEP team was aware of the Student's speech and language evaluation, this IEP did not add speech and language services. Testimony of Petitioner.

7. The Student enrolled at School A on or about January 31, 2023. The Student's first day of school at School A was on February 1, 2023. Petitioner provided the school with the Student's IEP from PCS School and told school staff about the Student's issues with ASD. Petitioner also provided School A with the Student's speech and language evaluation from Hospital A. Testimony of Witness G; Testimony of Petitioner.

8. The Student performed well at School A during the 2022-2023 school year. In the third reporting period for the 2022-2023 school year, the Student mastered four of six academic goals. The Student's IEP progress report for the final reporting period of the 2022-2023 school year determined that the Student made progress in all goals and mastered the goal for developing a self-calming strategy. The report said that the Student maintained a very calm demeanor during the school day, demonstrated on-task behavior in the classroom, followed classroom rules, complied with adult directions and requests, managed frustrations appropriately, and cooperated with classmates. The report said that the Student had demonstrated, with 95% accuracy, the ability to utilize self-calming strategies in moments of upset/frustration. The report also indicated that the Student was easily directed, answered before other children, needed to work on writing, and got distracted by peers, similar to others in the class. Preferential seating, extended time, and breaks were used to help the Student. The Student transitioned well in the school. The Student stood in line appropriately and made friends. The Student and the clinical social worker used Zones of Regulation, a program that assists students in learning to utilize coping skills to support self-regulation. Testimony of Witness G; P-18; P-19; P-22.

9. An Analysis of Existing Data (“AED”) meeting was held for the Student in April 2023. Petitioner expressed concerns about the Student’s needs in occupational therapy and speech and language, but the team was not concerned because no issues came up from observations or teacher input via checklists. Testimony of Witness G.

10. On April 26, 2023, an observation of the Student was conducted by Witness E during ELA class. The Student was able to follow instruction and answer questions in class. The Student used intelligent speech, attended to the lesson, was able to express his/her wants and needs, asked “wh” questions, and engaged with the teacher and peers. Testimony of Witness E; R-7.

11. An IEP meeting was held for the Student on April 27, 2023. Petitioner asked for the specialized instruction services to be delivered inside general education. The team agreed to change the October 2022 IEP and, to add flexibility, did not divide the ninety minutes of specialized instruction into sixty minutes for general instruction and thirty minutes for math instruction. Behavioral support services remained the same. Other classroom aids and services were listed as preferential seating, extended time, and breaks as needed. Some sections of the IEP repeated the prior IEP. Adjustments were then made based on new data, including grades and test scores. Math goals were changed. Portions of the “Cognitive” and “Emotional, Social and Behavioral” sections of the IEP came from PCS School and the prior IEP. Witness G felt that she did not have enough data to change the “present levels of performance” in the “Emotional, Social and Developmental” section of the IEP from the PCS School IEP. P-20; Testimony of Petitioner; Testimony of Witness G.

12. Like the October 2022 IEP, the April 2023 IEP stated that the Student had underdeveloped on-the-spot reasoning skills and struggled to non-verbally solve problems with multiple components. The IEP also indicated that the Student was often inattentive, causing him/her to use coping resources. The IEP indicated that the Student could have a challenging time keeping a calm body, often stated that s/he “wants to go home,” and when triggered, had a challenging time controlling his/her emotions. The IEP indicated that the Student’s developmental delays in math made it difficult for him/her to access the general education curriculum. The IEP indicated that developmental delays in math required the Student to receive specialized instruction to make adequate progress in the general education curriculum. P-20. On May 19, 2023, the April 2023 IEP was amended to change the present levels of performance and annual goals in a single area of concern and to correct the spelling of the Student's name. P-21.

13. A Prior Written Notice was issued on April 28, 2023, declining to assess the Student in speech and language and occupational therapy, after a review of data. P-33; Testimony of Witness A. The Student’s year-end report card for the 2022-2023 school year indicated that s/he had shown significant growth in making individual decisions and taking self-directed actions. A substantial majority of the Student’s grades were “3” (meeting standards) or “4” (exceeding standards), with a “2” (approaching standards) in reading literature for the fourth reporting period. P-24.

14. The Student continued at School A for the 2023-2024 school year. The “BRIEF” scale was administered on September 6, 2023. This scale was completed by the Student’s classroom teacher in the domains of anxiety and social skills. It was determined that the Student was often reluctant to engage in social activities, often

excessively worried about academic performance, sometimes appeared stressed about academic work, sometimes refrained from speaking in class, and sometimes seemed nervous or timid in the presence of peers. The Student was also reported to be rarely sensitive to criticism, did not say s/he was sick and/or hurt, almost always cooperated with classmates and accepted classmate's ideas, often followed classroom rules, was sympathetic towards others' feelings, and complied with adult directions/requests. The BRIEF also found that the Student sometimes managed frustration appropriately, requested help appropriately, and ignored distractions by classmates. P-9-5.

15. On September 14, 2023, the Student was observed by a special education teacher in ELA class. The class was practicing letter sounds and tapping out the spellings of words. The Student was engaged in the activity and echoed all sounds with the class. The Student also used a finger to "air-write" words during the observation, though s/he used the pinky finger rather than the index finger. The class then proceeded to sound out and write "CVC" words. The Student wrote all the words with correct spelling and in a timely manner. His/her writing was legible and most letters were on or very close to the designated lines. Occasionally, an isolated letter was not as close to the line. The Student worked hard throughout the lesson, demonstrating understanding of the academic content that was introduced by correctly writing the CVC words in a workbook. P-9-1.

16. On or about September 18, 2023, the Student's ELA classroom teacher completed a "Communication Abilities Rating Scale." The scale consisted of identifying behaviors in the areas of articulation, fluency, understanding language, using language, voice, and pragmatics. The Student imitated sounds correctly in words, understood when the topic was known and unknown, sounded out unfamiliar words when reading aloud,

and spelled words correctly. The Student also was deemed to be willing to speak in class, use more speech than gestures to communicate, and speak without noticeable tension or effort. P-9-2-3.

17. An AED meeting was held for the Student on October 2, 2023. The meeting was discontinued. Petitioner objected to the meeting and wanted a psychologist at the meeting. Testimony of Witness E.

18. An interview was conducted with the Student's ELA teacher on November 14, 2023. The teacher indicated that the Student was doing well overall, did his/her work, and was on grade level. The teacher said that the Student did not use lines appropriately when writing but used appropriate sentence structure. The teacher said that the Student did well when s/he was focused. The teacher said that she did have to call for the Student to focus more than other students, but "not severely." P-10-4.

19. An AED meeting was held for the Student on or about January 16, 2024, which was effectively a continuation of the October, 2023, AED meeting, with the addition of a psychologist. At the meeting, Petitioner requested an FBA, a speech evaluation, and a psychological evaluation. The school team continued to feel that assessments were not needed in speech or occupational therapy. The Student's recent "DIBELS" scores showed improvement in ELA, surpassing typical growth. DCPS declined the request for an FBA because it felt that the Student's behaviors were not severe, but DCPS did authorize the speech and language and psychological evaluations. The team reviewed Strength and Difficulties Questionnaire ("SDQ") scales from the Student's teacher and parent. According to the parent scale, the Student scored very high for stress, emotional distress, and related areas. R-21; Testimony of Witness G.

20. On January 24, 2024, a classroom interview was conducted with the Student's teacher. The teacher indicated that the Student had not demonstrated any inappropriate or maladaptive behaviors in the classroom, and had demonstrated age- and grade-appropriate behavior consistently since the start of the school year. The teacher had no concerns about the Student's behavior in the educational environment and shared that s/he was very well behaved, had reciprocal friendships, and engaged well with peers. R-21.

21. During the 2023-2024 school year, the Student has been easy to work with and has responded well to interventions. The Student sometimes still says that s/he wants to go home, but s/he says it less and less as the year has gone on. Testimony of Witness A. One teacher felt that she needed to focus on the Student more than on others. P-10-4.

22. A speech and language evaluation was conducted by Witness E on February 26, 2024. The evaluation included an observation, a teacher interview, the Goldman Fristoe Test of Articulation-3rd Edition ("GFTA-3"), the Clinical Evaluation of Language Fundamentals-5th Edition ("CELF-5"), the Receptive One Word Picture Vocabulary Test-4th Edition ("ROWPVT-4"), and the Expressive One Word Picture Vocabulary Test-4th Edition ("EOWPVT-4"). Witness E found that the Student could engage appropriately with peers and adults in social interactions, take turns, and sometimes read communication cues, body language, and intonation to read meaning. The Student was able to ask for, give, and respond to information, such as giving/asking for the time of events, asking others for permission when needed, and correctly reading and responding to a social situation. The Student's teacher told Witness E that the Student always stayed on topic when talking and was able to express his/her thoughts.

Witness E found that the Student was within the average range of functioning and did not have a disabling oral communication disorder that would prevent him/her from accessing the educational curriculum. Per observation and teacher reports, the Student functioned within normal limits in the areas of hearing, voice, oral motor, articulation, receptive vocabulary, expressive vocabulary, receptive and expressive language, and pragmatic language. P-12.

23. During a morning observation in ELA class on February 21, 2024, the Student was seated for whole-group instruction. The teacher instructed the students to turn to a page in their workbooks to complete independent work. The teacher repeated the instructions and asked the students to repeat the directions aloud to confirm their understanding. The Student was able to follow the directions and complete the assignment independently. S/he was also able to write words to match pictures, given a choice of three. During the observation, the Student read fluently and intelligibly, and asked and answered questions. P-12.

24. A psychological evaluation of the Student was conducted in March 2024. Witness F issued the corresponding report on March 12, 2024. The evaluation included the Wechsler Intelligence Scale for Children-5th Edition (“WISC-V”), the Woodcock Johnson-IV Test of Achievement-4th Edition (“WJ-ACH-IV”), the Gilliam Autism Rating Scale-3rd Edition (“GARS-3”), and the Adaptive Behavior Assessment System-3rd Edition (“ABAS-3”). Cognitively, according to the WICS-V, the Student scored in the very high range. On the WJ-ACH-IV, the Student obtained a Broad Reading standard score of 122 (superior), a Broad Mathematics standard score of 110 (average), and a Broad Written Language standard score of 114 (high average). The GARS-3, completed

by the Student's ELA/social studies teacher, yielded an Autism Index score of 55, in the "Probable/Level 1/Minimal Support Required" range for the probability of autism. Per the ABAS-3, the Student did not exhibit concerns with adaptive functioning. R-34.

25. An occupational therapy evaluation of the Student was administered in January and February 2024. The corresponding report was issued on February 26, 2024. The evaluator gave the Student the Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI short form, Visual Perceptual and Motor Coordination Subtests) and the Sensory Processing Measure-Second Edition (Classroom Form). The report noted that the Student had no deficits regarding his/her ability to complete fine motor tasks, visual perceptual tasks, visual motor tasks for cutting and coloring, play skills, gross motor skills, ability to follow directions, ability to visually attend or track from left to right, ability to complete self-care tasks, gross motor skills, motor planning skills, bilateral coordination skills, eye-hand coordination skills, motor planning, postural control, and following directions. An analysis of the Student's handwriting samples from the 2023-2024 school year indicated that his/her handwriting was legible and "functional for the school setting" since s/he did not take an extended amount of time to copy a sentence. Although the Student showed signs of hand fatigue during prolonged writing tasks, the evaluator felt that this did not interfere with his/her ability to complete writing activities during testing. The evaluator noted that, in the Student's classroom, writing tasks were often short and broken up. R-24.

VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student

Rights Act of 2014. That burden is expressed in statute as the following: “Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement” provided that “the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency.” D.C. Code Sect. 38-2571.03(6) (A)(i). Accordingly, on Issue #1, Issue #2, and Issue #3, which do not directly relate to the appropriateness of the Student’s IEP and placement, the burden of persuasion is on Petitioner. On Issue #4, the burden of persuasion is on Respondent if Petitioner presents a *prima facie* case.

1. Did DCPS fail to conduct a reevaluation of the Student from July 3, 2023, to the present? If so, did DCPS deny the Student a FAPE?

Petitioner contended that the Student was denied a FAPE as result of DCPS's failure to conduct a timely comprehensive psychological reevaluation, which included cognitive, academic, adaptive, and social emotional testing. Petitioner also contended that DCPS did not conduct an FBA for the Student.

Pursuant to 34 C.F.R. Sect. 300.303 (a), a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 C.F.R. Sect. 300.304 through 34 C.F.R. Sect. 300.311, if the public agency determines that the child’s educational or related service needs, including improved academic achievement and functional performance, warrant a reevaluation, or if the child’s parent or teacher requests a reevaluation. A reevaluation conducted under 34 C.F.R. Sect. 300.303 (a) may occur not more than once a year, unless the parent and the public agency agree otherwise,

and must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 20 U.S.C. Sect. 1414 (a)(2).

No FAPE violation can be found unless a hearing officer determines that the procedural violation affected the Student's substantive rights. Lesesne ex rel. B.F. v. District of Columbia, 447 F.3d 828,834 (D.C. Cir. 2006). The failure to go beyond a review of existing data can constitute a denial of FAPE if more information is needed to develop an appropriate IEP. James v. District of Columbia, 194 F. Supp. 3d 131 (D.D.C. 2016) ("Summary of Existing Data" that DCPS prepared in response to a guardian's request for an updated psychological assessment of a teenager with an intellectual disability did not fulfill the district's obligation to reevaluate the student.).

Petitioner focused on claims that cognitive and academic testing was necessary for the Student through the testimony of Witness A, Witness B, and Witness C. However, Witness A is a speech and language pathologist, not a psychologist, and no witness could clearly explain why it was necessary for the school district to test the Student's cognitive ability or academic levels at a time when the Student was doing well in school. In fact, in the third reporting period of the 2022-2023 school year, the Student mastered four of six academic goals, made excellent progress, adapted well to his/her new school, and functioned on or near grade level in all academic areas.²

Petitioner argued that exhibit P-33, the Prior Written Notice from April 28, 2023, stated that DCPS agreed that more data was needed at the time in the area of cognitive,

² The Student's IEP progress report for the final reporting period of the 2022-2023 school year indicated that the Student made progress on all goals. Subsequent testing confirmed that the Student was functioning above average in all academic areas. On the WJ-ACH-IV, the Student obtained a Broad Reading standard score of 122 (superior), a Broad Mathematics standard score of 110 (average), and a Broad Written Language standard score of 114 (high average).

social, emotional and behavioral, and academics. However, the notice did not state that a psychological evaluation was needed. To the contrary, the notice effectively stated that a psychological evaluation was not needed, given the consistently positive academic data that was available to the team. Accordingly, when the team had an AED meeting on April 17, 2023, the team reviewed data that included report cards, i-Ready math and reading diagnostic assessments, previous IEP goals, a progress report, a speech teacher's checklist, an interview with a classroom teacher, the Student's work, and other assessments such as the SDQ. The team also reviewed observations by a speech language pathologist (Witness E), an occupational therapist, a social worker (Witness D), a special education teacher, and a general education teacher. None of these people suggested that a new psychological evaluation was needed for the Student at the time.

Petitioner also contended that the Student needed an FBA for reported behavioral concerns and needed to be assessed for adaptive concerns. However, at School A, the Student's behaviors were effectively addressed by the combination of specialized instruction and behavior support services weekly. According to the unrebutted testimony of Witness E, the Student maintained a very calm demeanor during the school day, demonstrated on-task behavior in the classroom, followed classroom rules, complied with adult directions/requests, managed frustrations appropriately, and cooperated with classmates. The Student was also rarely sensitive to criticism, never said that s/he was sick and/or hurt, almost always cooperated with classmates, accepted classmates' ideas, often followed classroom rules, was sympathetic towards others' feelings, and complied with adult directions/requests. The Student could also manage frustration appropriately, request help appropriately, and ignore distractions by classmates.

Moreover, there is nothing in the record to suggest that the Student has issues with adaptive skills that require intervention. Indeed, adaptive issues were not mentioned during closing argument.

Petitioner argued that the school district's own witness, Witness F, said that the Student's IEP would have been different if a psychological evaluation of the Student had been conducted, but this was not the witness's testimony. Witness F testified that the difference in IQ between 70 (the Student's IQ in 2020) and 127 (the Student's IQ per recent testing) is significant, which is of course true. What Petitioner failed to mention is that, by the spring of 2023, the team knew that the 70 IQ score was outdated or wrong, and they did not rely on that score to program for the Student, whose specialized instruction mandate was reduced at PCS School because of the Student's progress.

Finally, Petitioner did not show, and did not argue, that the reevaluation was late pursuant to 34 C.F.R. Sect.300.303 (a), which requires a reevaluation every three years. In sum, Petitioner did not show how the absence of a comprehensive psychological examination or an FBA resulted in a "loss of educational opportunity." Hart v. District of Columbia, 323 F.3d 1 (D.D.C. 2018) (parent made no serious attempt to show how the absence of a comprehensive psychological examination resulted in a "loss of educational opportunity"); E.L. Haynes Public Charter School v. Frost, No. 14-1472 (RMC) 66 IDELR 287, 115 LRP 58575 (D.D.C. 2015) (where a student is making good academic progress, even with some behavioral issues, FBAs and additional behavioral assessments are not necessarily required in a reevaluation).

This claim must be dismissed.

2. Did DCPS fail to timely review the assessments provided by Petitioner in the areas of speech and language and occupational therapy in spring 2023? If so, did DCPS deny the Student a FAPE?

3. Did DCPS fail to make changes to the Student's IEP and/or order additional assessments after reviewing the assessments provided by Petitioner in the areas of speech and language and occupational therapy in spring, 2023? If so, did DCPS deny the Student a FAPE?

As part of a reevaluation, the IEP team must review existing evaluative data on the child, including evaluations and information provided by the parents of the child. 34 C.F.R. Sect. 300.305 (a)(1). Based on its review of existing data and parental input, the team must identify what additional data, if any, are needed to determine: whether the child continues to have such a disability; what the child's educational needs, present levels of academic achievement, and related developmental needs are; whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in his or her IEP and to participate, as appropriate, in the general education curriculum. 34 C.F.R. Sect. 300.305 (a)(2).

Claims relating to occupational therapy were not pursued during closing argument and were not supported by testimony or evidence at the hearing. These claims must be dismissed.

With respect to speech and language pathology, there is no dispute that, in the spring of 2023, Petitioner provided School A with a speech and language evaluation from Hospital A dated October 2022. The speech and language evaluation indicated that the Student had issues with auditory attention, sound discrimination, short-term/working memory, recall, and the ability to manipulate sounds. The Student's expressive language was considered "verbose" and tangential, with poor sentence cohesion. The Student's

pragmatic language ability was considered compromised due to limited auditory attention to speakers, listener awareness, and social-conversational skills. Speech therapy was recommended for a minimum of two sessions per week, for thirty minutes per session.

Petitioner contended that DCPS did not review this speech and language evaluation, but this contention is not supported by the record, which suggests that DCPS did review the evaluation. The IEP team conducted an AED meeting on April 17, 2023. As stated in the Prior Written Notice, data was provided and reviewed by the speech language pathologist and occupational therapist, who, referring to observations and teacher checklists, indicated no concerns for the Student's communication or motor skills that warranted further testing/assessment at that time.

Moreover, a review of the observations and teacher reports and checklists makes it clear that DCPS had a good reason to decline to evaluate the Student in speech. The Student's grades were excellent, the Student had mastered goals, the Student was progressing on other goals, and the Student was not exhibiting the pragmatic language issues that were mentioned by Hospital A staff, who did not testify at the hearing and were therefore not cross-examined. To the contrary, on April 26, 2023, an observation of the Student was conducted by Witness E during an ELA class. During the observation, the Student was able to follow the instruction and answer questions in class. The Student used intelligent speech, attended to the lesson, expressed his/her wants and needs, asked "wh" questions, and engaged with the teacher and peers.

During testimony, Witness A suggested that DCPS erred by not using the CASL-2 measure for pragmatic delays. But Hospital A's report indicated that the Student was tested for pragmatics. The report cited the administration of the CELF-3 Preschool 3

Descriptive Pragmatics Profile, a checklist that is used to gain information about a child's overall pragmatic development and any pragmatic deficits that may influence social and academic communication. The Descriptive Pragmatics Profile was completed by the Student's mother. The Student's score was in the mild delay range.

Witness A also raised issues about disparities in the Student's vocabulary testing scores, but the record indicates that the Student was a good speller and that no more testing or services were needed in this area. Indeed, the Student was a finalist in the school spelling bee. Witness A also suggested that the Student needed to be tested for ASD and auditory processing, maintaining that what the Student really needed was an entire change of program to an autism-based school. These contentions were not convincing in view of the lack of corroboration in the record from any other witnesses, including from Petitioner's side. Nor is this recommendation consistent with the Student's success at School A, where the Student functions in the superior range in reading and in the high average range in writing. The Student is also on grade level in math. These claims must be dismissed.

4. Did DCPS deny the Student a FAPE by failing to provide him/her with an appropriate IEP from April 27, 2023, to the present?

Petitioner's original contention was that the Student's IEPs did not recommend sufficient or any: 1) speech language pathology services; 2) occupational therapy services; 3) a BIP; 4) access to a social skills group; 5) present levels of performance information or goals; 6) specialized instruction; and 7) related service hours. Petitioner also contended that the IEPs were not based on comprehensive evaluations.

The IDEA was enacted to "ensure that children with disabilities have available to them free appropriate public education that emphasizes special education and related

services designed to meet their unique needs and prepare them for further education, employment, and independent living.” M.G. v. Dist. of Columbia, 246 F. Supp. 3d 1, 7 (D.D.C. 2017) (citing 20 U.S.C. Sect. 1400(d)(1)(A); 34 C.F.R. Sect. 300.300). Toward that end, school districts must develop a comprehensive plan, known as an IEP, for meeting the special educational needs of each disabled student. 20 U.S.C. Sect. 1414(d)(2)(A). In Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the Court explained that an IEP must be formulated in accordance with the terms of the IDEA and “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Id. at 204. In Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), the Court cautioned that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001.

In this case, IEP-based claims relating to occupational therapy and specialized instruction were withdrawn at the start of the hearing, on the record. IEP-based claims relating to unspecified related services were not clearly raised during closing argument. Claims that the Student’s IEPs were not based on comprehensive evaluations were premised on a finding for Petitioner in the sections of this Hearing Officer Determination (“HOD”) corresponding to Issue #1, Issue #2, or Issue #3. There was no such finding. These claims therefore must be dismissed. Likewise, claims that the Student’s IEP did not provide for enough speech and language pathology or a BIP must be dismissed, as the analysis of Issue #1, Issue #2, and Issue #3 in this HOD indicates that the Student’s

specialized instruction and behavior support services were enough to allow the Student to receive good grades and make meaningful progress.

Regarding Petitioner's claims that the Student's IEP did not recommended access to a social skills group, the Student receives social skills instruction through the behavioral support services provided by Witness E. Though Hospital A and Petitioner's witnesses recommended a social skills group for the Student, there is nothing in the record to clearly establish why counseling had to be provided in a group rather than individually. In fact, Witness E credibly testified, without rebuttal, that the Student did well in counseling using the "Zones of Regulation" program. The Student mastered four of six goals during the 2022-2023 school year, including an emotional, social and behavioral goal relating to a self-calming strategy.

Petitioner also argued that the IEP did not contain appropriate information about the Student's performance, pointing to the testimony of Witness C. The IDEA requires that each IEP include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects his or her involvement and progress in the general education curriculum. 34 C.F.R. Sect. 300.320 (a)(1).

The math and cognitive sections of the Student's IEP do contain some old language from prior IEPs, though the math section also contains new information relating to the Student's IEP progress reports, report cards, and standardized testing. While DCPS could have been more careful to update portions of the IEP, there is no showing that teachers or the Student could have been affected by the old, repeated language. As a result, although this Hearing Officer finds that DCPS erred in describing the Student's

performance in the April 27, 2023, IEP, this should be considered a procedural error only. Belt v. District of Columbia, No. 17-CV-1298 (CRC/GMH), 2018 WL 10399853, at *20 (D.D.C. May 8, 2018), report and recommendation adopted, 325 F. Supp. 3d 1, 6 (D.D.C. 2018) (rejecting FAPE claim based on present levels in IEP as a procedural violation).

Petitioner also contended that the goals on the IEP were defective and copied from prior IEPs. But math goals were synchronized with the Student's weakness on i-Ready testing with respect to measurement and data; baseline data was updated to reflect the Student's performance on the IEP goals; and the "cognitive" goals were also updated.

The IEP's "Emotional, Social, and Behavioral Development" goals were the same as in the PCS School IEP. But, as Witness D credibly explained, the Student was relatively new to the school, and DCPS had just introduced "coping strategy" goals based on the prior IEP, which reported that the Student could get frustrated and overwhelmed. The Student had not mastered those goals, and there is no statutory requirement that IEP goals change from school year to school year. Belt, 325 F. Supp. 3d at 16. Further, there is nothing in the record to suggest that repeating these goals would be inappropriate. To the contrary, Witness E's testimony, to the effect that the goals were appropriate given the Student's progress toward those goals, was persuasive.

Petitioner also contended that the goals did not address the Student's needs in inattentiveness, but the IEP's goals related to calming strategies intended to make the Student more alert. Petitioner also suggested that the "cognitive" section of the IEP was inappropriate because it did not relate to the Student's cognitive deficits, per se. However, Witness G explained that DCPS uses the designation "cognitive" as a kind of catch-all designation for certain students. This designation did not suggest that the

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Student had cognitive deficits or needs, and there is no showing in the record that the use of the word “cognitive” in the Student’s IEP had any impact on the Student. These claims must be dismissed.

VII. Order

As a result of the foregoing this case is dismissed with prejudice.

Dated: April 4, 2024

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.

VIII. Notice of Appeal Rights

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 days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Dated: April 4, 2024

Michael Lazan
Impartial Hearing Officer