

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

Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
August 11, 2016

<i>Student</i> , ¹)	Date Issued: 8/11/16
through her <i>Parent</i> ,)	
<i>Petitioner</i>)	Case No.: 2016-0141
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates: 8/3/16 & 8/4/16
("DCPS"),)	Hearing Location: ODR Room 2004
Respondent)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because speech-language services were eliminated from her Individualized Education Program (“IEP”). DCPS responded that the speech-language services were appropriately ended as Student had made no progress.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

Procedural History

Following the filing of the due process complaint on 5/27/16, the case was assigned to the undersigned on 5/31/16. Respondent filed a timely response on 6/1/16 and did not challenge jurisdiction. The resolution session meeting took place on 6/13/16, but the parties neither settled the case nor terminated the 30-day resolution period, which ended on 6/26/16. A final decision in this matter must be reached no later than 45 days following the

¹ Personally identifiable information is provided in Appendix A, including terms initially stated in italics.

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end of the resolution period, as extended by a 4-day continuance granted on 8/9/16, which requires a Hearing Officer Determination (“HOD”) by 8/14/16.

The due process hearing took place on 8/3/16 and 8/4/16 and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner was present in person during the first day of the hearing and listened by telephone to a portion of the second day.

Petitioner’s Disclosures, filed on 7/26/16, contained documents P1 through P37, which were admitted into evidence without objection.

Respondent’s Disclosures, filed on 7/18/16, contained documents R1 through R16, which were admitted into evidence without objection.

Petitioner’s counsel presented 5 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Independent Speech-Language Pathologist* (qualified without objection as an expert in Speech & Language)
2. *Educational Advocate* (qualified over objection as an expert in Special Education Programming, IEP Development, and Psychology)
3. Student
4. Parent
5. *Tutor*

Respondent’s counsel presented 2 witnesses in Respondent’s case (*see* Appendix A):

1. *DCPS Speech-Language Pathologist A* (qualified without objection as an expert in Speech-Language Pathology)
2. *DCPS Speech-Language Pathologist B* (qualified without objection as an expert in Speech-Language Pathology)

The issue to be determined in this Hearing Officer Determination is:

Issue: Whether DCPS denied Student a FAPE when it failed to include speech/language therapy in her current IEP at the meetings on 10/23/15 and/or 5/24/16, despite Student’s severe deficiencies in speech/language, the fact she had been making progress when services were discontinued, and an independent speech/language evaluation’s recommendation that Student still needed services.

Petitioner seeks the following relief:

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1. A finding that Student was denied a FAPE.
2. Within 10 business days, DCPS shall revise Student's IEP to (a) provide at least 30 minutes/week of speech/language therapy, and (b) incorporate proposed goals from Student's independent speech/language evaluation.
3. DCPS shall fund or provide compensatory education² for any denial of FAPE for the period from 10/23/15 or 5/24/16 (as proven by Petitioner) to the present.
4. Any other relief that is just and reasonable.

The parties were permitted to submit legal citations by the next business day after the hearing. Respondent provided a short argument (in response to a recent case mentioned in Petitioner's closing argument) in an untimely filing on 8/8/16 which was not considered by the undersigned.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact³ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁴ Student is *Age*, completed *Grade* at *Public School* in 2015/16,⁵ and will be participating in a vocational program in 2016/17.⁶ Student, an adult, authorized Parent as her agent to make educational decisions pursuant to a Power of Attorney for Educational Decision Making.⁷

² Petitioner's counsel was put on notice at the Prehearing Conference that Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was encouraged to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

³ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁴ Parent.

⁵ All dates in the format "2015/16" refer to school years.

⁶ Parent; P3-1; Educational Advocate.

⁷ P32.

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2. Student's classification was changed to Intellectual Disability ("ID") from Specific Learning Disability ("SLD") on 10/23/15 with full agreement by her IEP team (including Parent).⁸ Parent and Educational Advocate on 10/23/15 sought a different type of instruction that would be reflective of Student's disability and "more of a vocational program," because she was "not learning."⁹ The IEP team (including Parent) on 10/23/15 agreed to move Student from the diploma track to the certificate track to focus on life skills in order to better meet her needs.¹⁰

3. It is undisputed that Student continues to "fall in the severe range of language functioning" and exhibits "significant delays with overall language development (receptive, expressive, syntactical, vocabulary)."¹¹ Academically, based on a Woodcock Johnson III ("WJ-III") achievement test on 4/21/15, Student was about 10 years behind her grade level in math, 8 years behind in reading, and 8 years behind in written expression.¹² An independent comprehensive psychological evaluation of Student on 3/25/16 found on the WJ-Cognitive that Student's IQ score was 49.¹³ Student's language skills are commensurate with her overall cognitive level of development, which goes to her global delays and is not a basis for cognitive referencing.¹⁴

4. Student's 5/31/16 Amended IEP provided 28.75 hours/week of specialized instruction outside general education to address life skills, but no related services.¹⁵ Prior to that, Student's 10/23/15 IEP provided 25 hours/week of specialized instruction outside general education to address life skills, but no related services.¹⁶ Before that, Student's 11/14/14 IEP and 3/11/14 IEP each provided 23 hours/week of specialized instruction, 3 hours/week of reading, and 120 minutes/month of speech-language pathology, all outside general education.¹⁷ The prior 6/14/13 IEP provided 23 hours/week of specialized instruction, 3 hours/week of reading, and 240 minutes/month of speech-language pathology, all outside general education.¹⁸

5. In Student's IEPs containing speech-language services, most of her speech-language goals were repeated; Student did not master any of them.¹⁹ Modifying unachieved goals on

⁸ P1-2; P5-25; Educational Advocate.

⁹ P1-1; R2-2.

¹⁰ P5-25.

¹¹ R7-1; DCPS Speech-Language Pathologist A; Educational Advocate.

¹² P5-4,6,7.

¹³ P12-7.

¹⁴ DCPS Speech-Language Pathologist A; R6-10.

¹⁵ P5-10,11.

¹⁶ P6-10,11.

¹⁷ P7-1,12 (draft); P8-1,14.

¹⁸ P9-1,15.

¹⁹ Educational Advocate; DCPS Speech-Language Pathologist A; Independent Speech-Language Pathologist; P19, P20. There was some change in Student's goals; functional vocabulary was added as a goal at the request of Parent. DCPS Speech-Language

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Student's IEPs into smaller goals would not necessarily have allowed Student to achieve them.²⁰ DCPS Speech-Language Pathologist A worked with Student's teachers in multi-modal efforts to assist Student in attempting to achieve her goals.²¹ The efforts to meet Student's goals changed regularly, based on what different teachers worked on with Student and the different vocabulary and concepts in each class, even when the wording of her goals did not change.²² Petitioner criticized the speech-language goals in Student's IEPs, but Independent Speech-Language Pathologist's proposed goals were largely academic-based, some differed little from DCPS's goals, while others – such as improving “recall” – were unlikely to change whether or not direct services were provided.²³

6. At the 10/23/15 IEP meeting, DCPS Speech-Language Pathologist A explained that 7 years of consistent speech-language services had not resulted in progress for Student.²⁴ Student did not continue to meet eligibility criteria for ongoing speech-language services because she was not making reasonable progress; she had plateaued.²⁵ Educational Advocate urged an increase in speech-language services to address the lack of progress, but changing the frequency of direct services would not result in progress by Student.²⁶

7. Student has severe speech-language deficits that have not changed over time, as measured by a 2008 speech-language evaluation, a 5/15/15 speech-language evaluation conducted by DCPS Speech-Language Pathologist A (the “2015 evaluation”) and a 5/1/16 speech-language evaluation conducted by Independent Speech-Language Pathologist (the “2016 evaluation”).²⁷ On the overall measure of Core Language, Student in 2008 received a standard score of 54 (on the Comprehensive Evaluation of Language Fundamentals – Fourth Edition (“CELF-4”)) and in 2015 received a standard score of 58 (on the CELF-5), which is not a statistically significant difference.²⁸ Standard scores below 70 are in the “severe” range and indicate profound language deficiencies.²⁹ On the Receptive Language Index (“RLI”), Student in 2008 received a standard score of 61 and in 2015 received a standard score of 59, which is not a statistically significant difference.³⁰ On the Expressive Language Index (“ELI”), Student in 2008 received a standard score of 63 and in 2015 received a

Pathologist A; Independent Speech-Language Pathologist. It is acceptable to repeat IEP goals if they have not been met.

²⁰ DCPS Speech-Language Pathologist A.

²¹ *Id.*

²² *Id.*

²³ DCPS Speech-Language Pathologist A; P10-7; P8-13; Independent Speech-Language Pathologist.

²⁴ DCPS Speech-Language Pathologist A; R1-2.

²⁵ P1-2; R2-5; DCPS Speech-Language Pathologist A.

²⁶ P1-2; P3-1.

²⁷ DCPS Speech-Language Pathologist A.

²⁸ P11-1,5; DCPS Speech-Language Pathologist B; DCPS Speech-Language Pathologist A.

²⁹ DCPS Speech-Language Pathologist A.

³⁰ P11-1,5; DCPS Speech-Language Pathologist B; DCPS Speech-Language Pathologist A.

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standard score of 59, which is not a statistically significant difference.³¹ Student did not make reasonable progress in speech-language therapy between 2008 and 2015 when the decision was made to terminate her direct speech-language services.³² Nor are the 2016 scores (from the CELF-5) notably different, with a Core Language standard score of 54, RLI of 57, and ELI of 55, which are all within the same confidence interval as the 2015 standard scores.³³

8. Student's general vocabulary composite standard score in 2008 was 66 (on the Comprehensive Receptive and Expressive Vocabulary Test – Second Edition (“CREVT-2”)) and in 2015 was 68 (on the CREVT-3), which is not a statistically significant difference. Both scores are Very Poor; the higher score of 68 has a percentile rank of 1.³⁴ Independent Speech-Language Pathologist didn't use CREVT but the Peabody Picture Vocabulary Test – Fourth Edition (“PPVT-4”) to conclude that Student's receptive vocabulary level had dropped from a standard score of 71 in 2015 to a standard score in 2016 of 52, which was across tests so not the best comparison.³⁵ There was no regression from 2015 to 2016 in receptive or expressive language, so the apparent change in vocabulary likely does not represent actual regression.³⁶

9. The scaled scores from subtests of the CELF-5 in 2015 and 2016 are all within one point of each other, which is within the confidence interval and not statistically significant, including Word Class (3 in 2015, 3 in 2016), Formulated Sentences (3 in 2015, 2 in 2016), Understanding Spoken Paragraphs (2 in 2015, 2 in 2016), Sentence Assembly (3 in 2015, 2 in 2016), and Semantic Relationships (4 in 2015, 3 in 2016).³⁷ DCPS Speech-Language Pathologist A agreed with the results of the 2016 speech-language evaluation, which are in line with the 2015 evaluation and the results in 2008, and support the conclusion that Student was not making progress with direct speech-language services.³⁸

10. DCPS's 5/12/15 comprehensive psychological evaluation of Student contained a speech-language section which stated that Student continues to make progress toward her goals and benefits from pull-out services; Service Trackers and IEP Progress Reports also noted that Student was making “progress” toward speech-language goals.³⁹ None of these affects DCPS Speech-Language Pathologist A's expert conclusion that direct speech-

³¹ *Id.*

³² DCPS Speech-Language Pathologist A.

³³ DCPS Speech-Language Pathologist B; DCPS Speech-Language Pathologist A; P10-6.

³⁴ P11-1,5; P11-4.

³⁵ DCPS Speech-Language Pathologist A; P11-5; P10-4.

³⁶ DCPS Speech-Language Pathologist A. Further, vocabulary alone is not a sufficient basis for direct speech-language services, according to DCPS Speech-Language Pathologist A.

³⁷ P11-5; P10-3; DCPS Speech-Language Pathologist B; DCPS Speech-Language Pathologist A.

³⁸ R1-2; DCPS Speech-Language Pathologist A.

³⁹ P13-9; DCPS Speech-Language Pathologist A.

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language services were appropriately terminated on 10/23/15.⁴⁰ With all of Student's supports in place, she did show some signs of progress, but the speech-language evaluations reveal whether there was actual progress without supports.⁴¹ Documents referring to Student making progress generally mean some "inching" or qualified progress, in which she was able to do more with the assistance of aides or multi-modal support than without.⁴² Even with maximal support, Student could not master any of her speech-language goals.⁴³ Making progress with full accommodations is not true progress on her own that would boost Student's independence.⁴⁴

11. In the absence of progress, the American Speech-Language-Hearing Association ("ASHA") recommends trying a variety of things before terminating speech-language services.⁴⁵ Public School exhausted alternative modalities seeking to make speech-language progress with Student by presenting information in various multi-modal ways, with various teachers and different classes.⁴⁶ Public School also used assistive technology, including tablets, computers, cellphones apps, and smart boards in the classroom.⁴⁷ DCPS Speech-Language Pathologist A also pushed services for Student into certain classes and consulted with teachers to obtain information to modify speech-language therapy for Student.⁴⁸

12. Removing Student's speech-language services was in line with ASHA guidelines because Student was not receiving measurable benefits from direct speech-language services, although specific dismissal criteria are left to the states.⁴⁹ DCPS has dismissal criteria for direct speech-language services that it follows.⁵⁰ DCPS's Speech and Language Therapy Dismissal Criteria Checklist was completed on 10/23/15, concluding that "student demonstrates a documented lack of measurable progress, triennial to triennial, with consistent speech-language services."⁵¹ For Student, the lack of measurable progress was much longer than the required 3-year triennial cycle.⁵²

13. Student's IEP team agreed that there was no perceived benefit from direct speech-language services and agreed to terminate them based on Student's comparative performance on the CELF-4 in 2008 and CELF-5 in 2015.⁵³ Student's entire IEP team,

⁴⁰ DCPS Speech-Language Pathologist A.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ R8-1.

⁴⁶ DCPS Speech-Language Pathologist A.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ DCPS Speech-Language Pathologist B.

⁵⁰ DCPS Speech-Language Pathologist A; R2-5.

⁵¹ R5-1; DCPS Speech-Language Pathologist B.

⁵² DCPS Speech-Language Pathologist A; DCPS Speech-Language Pathologist B.

⁵³ R7-1; R16-2.

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except Parent and his advocate, agreed with terminating speech-language therapy.⁵⁴ Public School issued Parent a Completion of Services Form on 10/23/15 ending Student's speech-language therapy because she was receiving no benefit from services.⁵⁵

14. Once litigation commenced, DCPS Speech-Language Pathologist B was asked by DCPS to review the procedures used by Public School and analyze the case objectively to provide recommendations about what should have occurred.⁵⁶ Upon review, DCPS Speech-Language Pathologist B concurred with the conclusions of DCPS Speech-Language Pathologist A in the 2015 speech-language evaluation and agreed with the determination that no direct speech-language services were needed by Student.⁵⁷

15. Direct speech-language services had been reduced from 60 to 30 minutes/week in 2014 because Student was missing a lot of classroom instruction and having difficulties returning to class after being pulled out.⁵⁸ It was better for Student to be in her regular classes and have her speech-language needs reinforced there.⁵⁹

16. There was agreement on 10/23/15 that Student needed more functional language.⁶⁰ Functional communication skills and pragmatic language are a relative strength for Student; DCPS Speech-Language Pathologist A stated on 10/23/15 that Student had adequate functional communication skills for accessing her curriculum.⁶¹ Student will always need functional language skill support, but not in the form of direct services.⁶²

17. Functional language skills that Student needs can be taught in the classroom and acquired "across her environment"; direct services are ineffective.⁶³ Weaknesses in oral vocabulary and receptive language skills can be addressed at the classroom level and by accessing Student's academic and social environments to ensure the best possible outcomes.⁶⁴ In that way, Student may have ongoing language and vocabulary development, subject to her cognitive limitations.⁶⁵

18. Given Student's age and remaining time in school, it is important to determine what is most important for her now.⁶⁶ The change from diploma to certificate track means that

⁵⁴ R2-2; DCPS Speech-Language Pathologist A.

⁵⁵ P18-1; DCPS Speech-Language Pathologist A.

⁵⁶ DCPS Speech-Language Pathologist B.

⁵⁷ *Id.*

⁵⁸ DCPS Speech-Language Pathologist A; P8-14; P9-15.

⁵⁹ DCPS Speech-Language Pathologist A.

⁶⁰ R1-2; DCPS Speech-Language Pathologist A.

⁶¹ R1-2; DCPS Speech-Language Pathologist A; P11-9,10,11.

⁶² P2-2; DCPS Speech-Language Pathologist A.

⁶³ DCPS Speech-Language Pathologist A; R1-2.

⁶⁴ P11-10.

⁶⁵ P11-11.

⁶⁶ DCPS Speech-Language Pathologist A.

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the emphasis is on life skills, rather than academically-focused speech-language services.⁶⁷ Student will still receive all the accommodations of specialized instruction and receive speech-language support, but within a larger focus on needed vocational and transition skills.⁶⁸

19. Missed speech-language services prior to 10/23/15 have been made up with compensatory education.⁶⁹ Tutor has worked off and on with Student on speech-language skills for nearly 5 years, most recently in 2015/16.⁷⁰ Tutor often provided speech-language services even though tutoring was awarded as compensatory education, because speech-language is a part of all education.⁷¹ Student does not retain information well and sometimes has to repeat things “over and over and over.”⁷² Tutor’s credibility was somewhat undermined by her negative and rather contrary answers to various findings in the independent 2016 evaluation on proper topic initiation, topic maintenance, turn taking, and sequential narration skills of Student.⁷³

20. Independent Speech-Language Pathologist’s credibility was slightly impacted by listing in her 2016 speech-language evaluation that she administered one assessment when she admitted on cross-examination that she had administered a different assessment instead.⁷⁴ The weight of her 2016 speech-language evaluation was lessened by not expressly taking into account the prior speech-language evaluations that had been conducted and the years of services that had been provided to Student when Independent Speech-Language Pathologist recommended that direct services are now needed.⁷⁵ In weighing credibility it is relevant that Independent Speech-Language Pathologist had not worked with Student over time (and did not incorporate the prior information that was available into her 2016 evaluation), while DCPS Speech-Language Pathologist A knows Student well from working directly with her over multiple school years.⁷⁶

21. DCPS Speech-Language Pathologist A’s credibility was significantly enhanced when she answered a question from the undersigned about why she seemed intent on terminating direct speech-language services for Student, given her apparent passion for helping children with speech-language issues.⁷⁷ DCPS Speech-Language Pathologist A responded that she herself is the parent of a disabled child, so identifies with parents and

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Educational Advocate; P31-1.

⁷⁰ Tutor.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Tutor; P10-2.

⁷⁴ Independent Speech-Language Pathologist; P10-1.

⁷⁵ DCPS Speech-Language Pathologist A; DCPS Speech-Language Pathologist B; P10-2; Independent Speech-Language Pathologist.

⁷⁶ DCPS Speech-Language Pathologist A; Independent Speech-Language Pathologist.

⁷⁷ DCPS Speech-Language Pathologist A.

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tries hard to ensure that children with disabilities obtain what they truly need to be as successful as possible.⁷⁸ In this case, it is clear to DCPS Speech-Language Pathologist A that at Student's age she needs vocational support and real world targeted training, rather than direct speech-language services that have not and will not help her.⁷⁹

Conclusions of Law

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

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). See *Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"[T]o further Congress' ambitious goals for the IDEA, the Supreme Court has focused on the centrality of the IEP as 'the centerpiece of the statute's education delivery system for disabled children.'" *Harris v. Dist. of Columbia*, 561 F. Supp. 2d 63, 67 (D.D.C. 2008), quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988).

Once a child who may need special education services is identified and found eligible, DCPS must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. See 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

As discussed below, the Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential. *Rowley*, 458 U.S. at 198. Congress, however, "did not intend that a school system could discharge its duty under the [Act] by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985).

⁷⁸ *Id.*

⁷⁹ *Id.*

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A Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights.

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5-E D.C.M.R. § 3030.3. The burden of proof is on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

Issue: *Whether DCPS denied Student a FAPE when it failed to include speech/language therapy in her current IEP at the meetings on 10/23/15 and/or 5/24/16, despite Student's severe deficiencies in speech/language, the fact she had been making progress when services were discontinued, and an independent speech/language evaluation's recommendation that Student still needed services.*

Petitioner failed to meet his burden of proving a denial of FAPE as a result of DCPS removing speech-language services from Student's IEP on 10/23/15. Based on all the evidence in this case, including the detailed testimony of competing experts, the termination of direct speech-language services does not appear inappropriate given Student's lack of progress, as discussed herein.

The applicable legal standard is whether after removal of Student's speech-language services her IEP was still "reasonably calculated to produce meaningful educational benefit" and she was nonetheless able to access her curriculum so she could advance toward meeting her annual goals pursuant to 34 C.F.R. 300.320(a)(4). *See Damarcus S. v. Dist. of Columbia*, 2016 WL 2993158, at *12 (D.D.C. May 23, 2016); *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), *quoting Rowley*, 458 U.S. at 206-07.

The measure and adequacy of Student's IEP are to be determined as of 10/23/15, the time it was offered to her. *See, e.g., S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The suitability of Student's IEP is analyzed by considering the concerns raised by Petitioner about Student no longer receiving direct speech-language services, for "related services," including speech-language services, must be provided if they are "required" to assist a student with a disability to benefit from special education. *See* 34 C.F.R. 300.34(a),(c)(15), 300.320(a)(4),(7); *Honig*, 484 U.S. at 311.

There is no doubt that Student has very serious ongoing speech-language deficits. The dispute is simply whether those deficits can be addressed by direct speech-language services, for if therapy yields no progress the related services are not "required" pursuant to

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34 C.F.R. 300.34(a) and Student will be better served by spending her time in classes or other activities that will provide her benefit. DCPS persuasively demonstrated, by comparing Student's 2008 speech-language evaluation to her 2015 and 2016 speech-language evaluations, that 7 years of direct speech-language services had not resulted in meaningful progress. Thus, in the expert opinion of DCPS Speech-Language Pathologist A, there was no reason to continue ongoing speech-language services because Student had plateaued and was not making reasonable progress. While Educational Advocate argued for an increase in speech-language services to address the lack of progress, DCPS Speech-Language Pathologist A convincingly asserted that changing the frequency of direct services would not result in progress by Student. Indeed, the 7 years of direct services included time when Student was receiving twice the amount of speech-language services that Parent is now seeking, without notable progress.

Specifically, on the overall measure of Core Language, Student in 2008 received a standard score of 54 compared to 58 in 2015; on RLI, a 61 compared to 59 in 2015; on ELI, a 63 compared to 59 in 2015, none of which is a statistically significant difference. In short, Student did not make progress in her speech-language deficits between 2008 and 2015, so Student's IEP team modified her IEP on 10/23/15 to remove direct speech-language services because they were not providing benefit to Student. This modification was appropriately reached through the IEP process, with input from Parent, and was not based solely on guidelines applied to all children without regard to Student's individual needs. *See Letter to Koscielniak*, 58 IDELR 168 (OSEP 2011).

Petitioner asserted that Student regressed between the 2015 and 2016 evaluations since she had not received consistent speech-language services over that entire year, but there was no statistically significant difference between 2015 and 2016 on numerous measures, with the possible exception of receptive vocabulary which was based on different tests that DCPS Speech-Language Pathologist A in her expert opinion did not believe showed regression, particularly where there was no regression from 2015 to 2016 in receptive or expressive language. Specifically, the 2016 standard scores differed little from 2015, with a 2016 Core Language standard score of 54, RLI of 57, and ELI of 55, all of which are within the same confidence interval as the 2015 standard scores. Further, the scaled scores from subtests of the CELF-5 in 2015 and 2016 are all within one point of each other, which is within the confidence interval and not statistically significant.

Petitioner noted that DCPS's 5/12/15 comprehensive psychological evaluation of Student contained a speech-language section which stated that Student continued to make progress toward her speech-language goals; Service Trackers and IEP Progress Reports also stated that Student was making progress toward speech-language goals. However, none of these impacted DCPS Speech-Language Pathologist A's expert conclusion that direct speech-language services were properly terminated on 10/23/15. With all of Student's supports in place, she was able to show some signs of progress, but the 2008, 2015 and 2016 speech-language evaluations demonstrate that she was not able to make actual progress without supports.

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Public School exhausted alternative modalities seeking to make speech-language progress with Student through various multi-modal approaches by a variety of teachers in different classes, along with using various assistive technologies without success. Thus, removing Student's speech-language services was in line with ASHA guidelines because Student was not receiving measurable benefit from direct speech-language services. ASHA leaves the specific dismissal criteria to the states and DCPS has dismissal criteria for speech-language services that it must follow. Based on those criteria, Student should not receive direct services but continue working on her communication skills in the classroom and across her environment, as Student's IEP team agreed.

The appropriateness of this outcome was confirmed through the expert opinion of DCPS Speech-Language Pathologist B, who was asked by DCPS to review the procedures used at Public School and objectively analyze the situation to provide recommendations about what should have occurred. Upon review, DCPS Speech-Language Pathologist B concurred in the conclusions of DCPS Speech-Language Pathologist A in her 2015 speech-language evaluation and agreed with the determination that no direct speech-language services were needed by Student.

Significantly, the IEP team – including Parent – on 10/23/15 agreed to move Student from the diploma track to the certificate track in order to focus on life skills rather than academics and better meet her needs. Given Student's age and limited remaining time in school, it is important to focus on the transitional/vocational issues that will most impact her life. The functional language skills that Student needs can be taught in the classroom and acquired across her environment. Similarly, weaknesses in oral vocabulary and receptive language skills can be addressed across Student's academic and social environments to ensure the best possible outcomes.

Based on thorough consideration of the data and other information analyzed above, this Hearing Officer concludes that, unlike the situation in *Damarcus S.*, 2016 WL 2993158, at *11, the decision here to terminate Student's speech-language services did not rest on an "incorrect factual determination," but on meaningful comparisons of 3 speech-language evaluations and other information, and that Student's 10/23/15 IEP was calculated to provide meaningful educational benefit.

ORDER

Petitioner has failed to meet his burden of proof on the issue in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.
Hearing Officer

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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).

Copies to:

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