

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

Office of Dispute Resolution  
1050 First Street, N.E., Third Floor  
Washington, D.C. 20002

OSSE  
Office of Dispute Resolution  
August 29, 2022

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2022-0094
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 8/29/22
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates (using Microsoft Teams):
("DCPS"),	)	8/17/22 & 8/18/22
Respondent.	)	
	)	

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**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") due to DCPS's failure to provide appropriate Individualized Education Programs ("IEPs") and required documents. DCPS responded that Student's IEPs were appropriate and documents were provided.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

**Procedural History**

Petitioner filed the due process complaint on 5/17/22, and the case was assigned to the undersigned on that same day. Respondent filed a response on 5/24/22 and did not challenge jurisdiction. A resolution meeting took place on 5/31/22, but the parties did not settle the case or shorten the 30-day resolution period, which ended on 6/16/22. A final

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<sup>1</sup> Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student's gender are omitted.

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decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by a 30-day continuance, which requires a Hearing Officer Determination (“HOD”) by 8/30/22.

A prehearing conference was held on 7/20/22 and the Prehearing Order was issued on 7/25/22, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 8/17/22 and 8/18/22 and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in much of the hearing.

### Documents and Witnesses

Petitioner’s Disclosure, submitted on 8/11/22 and modified on 8/15/22 and 8/18/22, contained documents P1 through P40, which were all admitted into evidence over numerous objections.<sup>2</sup> Respondent’s Disclosure, submitted on 8/11/22 and amended on 8/15/22, contained documents R1 through R49, which were all admitted into evidence over numerous objections.<sup>3</sup>

Petitioner’s counsel presented 3 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Educational Advocate* (qualified over objection as an expert in Special Education)
2. *Speech-Language Pathologist* (qualified over objection as an expert in Speech-Language Pathology)
3. Parent

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

1. *LEA Representative* (qualified without objection as an expert in Special Education and Programming, Including Speech-Language Pathology)
2. *Resolution Specialist* (qualified over objection as an expert in Interpreting Evaluation Data for Eligibility and Programming)

Petitioner’s counsel did not submit any rebuttal evidence.

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<sup>2</sup> P40, an OT evaluation dated 1/29/21, was admitted near the end of the hearing at the insistence of Respondent’s counsel and with the approval of the undersigned.

<sup>3</sup> Citations herein to Petitioner’s documents are indicated by a “P” followed by the exhibit number, followed immediately by a “p” (for page) and the Bates number with any leading zeros omitted, while Respondent’s documents are indicated in the same manner beginning with an “R.”

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### Issues and Relief Requested

The issues to be determined in this Hearing Officer Determination are:

**Issue 1:** Whether DCPS denied Student a FAPE by failing to provide timely and appropriate IEPs: (a) when on 2/28/22 it (i) did not include speech-language services based on a 7/8/21 evaluation, (ii) reduced occupational therapy and other services without data, and/or (iii) did not include a personal computer based on an assistive technology evaluation; and/or (b) when on 5/19/21 it did not include a personal computer based on an assistive technology evaluation. (*Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*)

**Issue 2:** Whether DCPS denied Student a FAPE by failing to provide required documents prior to the 2/28/22 meeting, specifically (a) the speech-language pathologist's review of the independent educational evaluation report, and (2) occupational therapy trackers prior to services being reduced. (*Petitioner has the burden of persuasion on this issue.*)

The relief requested by Petitioner is:

1. A finding that Student has been denied a FAPE.
2. DCPS shall revise Student's IEP to add (a) speech-language services, and (b) assistive technology.
3. DCPS shall provide or fund compensatory education for any denials of FAPE.<sup>4</sup>
4. Any other just and reasonable relief.

At the end of Petitioner's case-in-chief, Respondent's counsel orally moved for a directed finding that Petitioner's Issue 1(b) was barred by a settlement agreement between the parties dated 6/1/21 by which Petitioner released all claims that could have been brought as of that date. Petitioner asserted that Respondent had promised to take action related to Issue 1(b) on which Petitioner had relied in agreeing to the settlement. After consideration between the first and second hearing days, the undersigned denied the motion. Respondent's counsel then orally moved for another directed finding relating to Issue 1(a)(ii) and the asserted lack of occupational therapy ("OT") data based on an OT evaluation

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<sup>4</sup> Petitioner's counsel was put on notice at the prehearing conference that, at the due process hearing, 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.

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report not being included by Petitioner in her Disclosure, which the undersigned took under advisement and hereby denies.

### Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>5</sup> are as follows:

1. Background. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>6</sup> Student is *Age, Gender*, in *Grade* during 2021/22<sup>7</sup> at *Public School*.<sup>8</sup> Student is bright, engaging, and friendly.<sup>9</sup>

2. IEPs. Student's 1/5/21 IEP, based on the disability classification Other Health Impairment ("OHI") due to Attention Deficit Disorder ("ADD") or Attention Deficit Hyperactivity Disorder ("ADHD") (all IEPs herein were based on OHI), provided for 26 hours/week of specialized instruction outside general education and 180 minutes/month of behavioral support services ("BSS") outside general education.<sup>10</sup> Student's IEP was amended on 3/16/21 – when Student moved from *Prior Public School* to Public School – to provide 22 hours/week of specialized instruction, rather than 26.<sup>11</sup> On 5/19/21, Student's IEP added 120 minutes/month of OT services.<sup>12</sup> On 2/18/22, a draft IEP provided the same service hours.<sup>13</sup> On 2/28/22, Student's final IEP reduced OT services from 120 to 60 minutes/month; the Assistive Technology ("AT") section stated there were no AT concerns not addressed in the IEP.<sup>14</sup>

3. Cognitive. Student's Full Scale IQ ("FSIQ") was in the Extremely Low range based on the Woodcock-Johnson IV Tests of Cognitive Ability ("WJ-IV COG") in a 12/6/20 comprehensive psychological reevaluation.<sup>15</sup> Student's 2016 FSIQ was Extremely Low

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<sup>5</sup> 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.

<sup>6</sup> Parent.

<sup>7</sup> All dates in the format "2021/22" refer to school years.

<sup>8</sup> Parent; P11p174.

<sup>9</sup> P4p61.

<sup>10</sup> P7p108,120.

<sup>11</sup> P8p125,136; LEA Representative.

<sup>12</sup> P9p141,154.

<sup>13</sup> P10p159,169.

<sup>14</sup> P11p174,175,184.

<sup>15</sup> P3p49.

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with a 62 recorded in a 9/22/16 Wechsler Intelligence Scale for Children – Fifth Edition (“WISC-V”).<sup>16</sup>

4. Academics. Student’s overall academic functioning was extremely low to below average in reading, math, and overall academic skills, based on the Woodcock-Johnson IV Tests of Achievement (“WJ-IV ACH”).<sup>17</sup> The present levels of performance (“PLOPs”) in Student’s 2/28/22 IEP stated that Student was some 8 years below grade in math and about 6 years below grade in reading.<sup>18</sup> Student’s 2/8/22 iReady results showed Student 8 years behind grade in math, in the 1<sup>st</sup> percentile compared to peers nationally.<sup>19</sup>

5. Speech-Language Evaluation. An independent, comprehensive, speech-language evaluation of Student was conducted by Speech-Language Pathologist on 7/8/21.<sup>20</sup> On the speech-language evaluation, Student could create simple sentences, but struggled with more complex sentences appropriate for Student’s age; Student’s scores on reading and comprehension abilities were “poor,” falling below expected limits for Student’s age.<sup>21</sup> Student’s receptive language, expressive language, reading and comprehension skills were determined to be average-to-significantly-impacted, affecting access to the educational curriculum.<sup>22</sup> The speech-language evaluation concluded based on review of records, standardized testing, and informal observations that school-based, direct speech therapy was recommended for Student for 45 minutes/week outside general education.<sup>23</sup>

6. The speech-language evaluation report was sent to DCPS on 8/11/22, with efforts by Petitioner to schedule DCPS’s review of the evaluation over subsequent months.<sup>24</sup> LEA Representative explained that the delay in reviewing the speech-language report was due to Covid, the unavailability of Parent and Student, and the change in Petitioner’s counsel.<sup>25</sup> DCPS reviewed the speech-language independent educational evaluation (“IEE”) on 2/28/22 and determined that Student did not meet eligibility requirements for speech-language services.<sup>26</sup> Speech-Language Pathologist noted the age of the speech-language report during her testimony, but stood by the conclusion of 45 minutes/week of speech-language services for Student.<sup>27</sup>

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<sup>16</sup> P3p30.

<sup>17</sup> P3p49.

<sup>18</sup> P11p176,177; P21p248 (reading between 5 and 7 years below grade); P7p113 (5 years behind in reading the prior year).

<sup>19</sup> R44p356.

<sup>20</sup> P5p73.

<sup>21</sup> P5p84.

<sup>22</sup> *Id.*

<sup>23</sup> P5p84-85.

<sup>24</sup> P12p193; P13; P14.

<sup>25</sup> LEA Representative.

<sup>26</sup> P18p218; P21.

<sup>27</sup> Speech-Language Pathologist.

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7. Occupational Therapy. The 1/29/21 OT evaluation recommended 180 minutes/month of OT to support Student's classroom needs; the evaluation noted that Student's progress should be assessed in a year to determine the need for any change in intervention.<sup>28</sup> At the 5/7/21 Multi-disciplinary Team ("MDT") meeting, the DCPS occupational therapists for both Public School and Prior Public School agreed that Student needed direct OT services because Student's scores were so low, but did not recommend a specific amount of services.<sup>29</sup> At the 5/19/21 MDT meeting, the Public School occupational therapist agreed to 120 minutes/month based on the previous therapist's recommendation.<sup>30</sup>

8. At the 2/28/22 IEP review, the Public School occupational therapist explained in some detail why he reduced Student's OT services from 120 to 60 minutes/month, stating that Student's handwriting had improved "dramatically" since last year, and Student's writing had increased from 3-4 sentences to 5-6 sentences, with other qualitative improvements.<sup>31</sup> Student's OT progress was also noted in monthly service trackers which provided progress notes each time services were rendered.<sup>32</sup> The OT service trackers indicated that Student often made progress.<sup>33</sup> Student's IEP Progress Reports showed that Student progressed on OT goals and mastered an OT goal.<sup>34</sup> Instructional time is lost when a child receives related services.<sup>35</sup>

9. Assistive Technology. Speech-Language Pathologist also conducted an AT evaluation of Student on 1/29/21 and determined that Student required direct access to AT to facilitate academic output, independence, and access to the curriculum.<sup>36</sup> To increase access to the educational curriculum, the AT evaluation recommended a consistently assigned laptop computer for Student's personal and dedicated use for in person and distance learning; Student should receive ongoing training and orientation to the AT software and websites; and educational staff should configure disability settings to maximize access and function, and check the computer's functionality intermittently.<sup>37</sup>

10. DCPS proposed on 3/16/21 for Student to transition to a self-contained classroom and have specials inside the general education classroom, with a dedicated laptop added to Student's IEP as an academic resource based on the AT evaluation, along with software and recommended resources.<sup>38</sup> Student was the only child attending the self-contained program

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<sup>28</sup> P40p394,403,407.

<sup>29</sup> P19p221,226.

<sup>30</sup> P20p230,233.

<sup>31</sup> P21p250-51.

<sup>32</sup> P22.

<sup>33</sup> P23 (10/21/21); P24 (11/1/21, 11/29/21); P26 (12/2/21); P27 (1/13/22, 1/18/22, 1/24/22); P28 (2/3/22, 2/17/22).

<sup>34</sup> R5p118,119 (11/10/21); R5p126 (2/1/22, mastered OT goal, others progressing).

<sup>35</sup> LEA Representative.

<sup>36</sup> P4p61; Speech-Language Pathologist (Student needs personalized computer customized for Student).

<sup>37</sup> P4p63,65; P5p76-77,85.

<sup>38</sup> R33p257.

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in person; the other 5 students were virtual.<sup>39</sup> Student had access to Microsoft Word, Microsoft Teams, speech-to-text, highlighting, and downloaded ebooks.<sup>40</sup> Student's SLS program included access to a computer to be used in person as well as at home; the DCPS AT specialist and Parent's representative agreed that appropriate accommodations in the school setting were sufficient.<sup>41</sup> Petitioner's counsel agreed on 2/28/22 that it "definitely" seemed that Student got a computer at Public School and the concern was only that Student might not receive a computer the following school year.<sup>42</sup>

11. Documents. LEA Representative credibly testified that he made P6, the 1/31/22 DCPS review of the speech-language evaluation available for pick up 2 weeks prior to the 2/28/22 meeting, but that the law firm for Petitioner failed to pick up the document until after the meeting, despite have picked up documents from LEA Representative in that manner in the past.<sup>43</sup> LEA Representative stated that there was no objection at the time to not having the DCPS review document at the meeting.<sup>44</sup> OT service trackers were provided to Petitioner.<sup>45</sup> Parent's representative signed a receipt for OT service trackers received on 4/5/22.<sup>46</sup>

12. Compensatory Education. Student has received past awards of compensatory education and has worked with a tutor who has been helpful.<sup>47</sup> Educational Advocate's 7/25/22 compensatory education proposal sought 30 hours of 1:1 speech-language therapy in person to make up for the lack of speech-language services.<sup>48</sup> Educational Advocate credibly testified that her compensatory education proposal would put Student in the position Student should have been in but for the denial of FAPE.<sup>49</sup>

### 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*

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<sup>39</sup> LEA Representative.

<sup>40</sup> *Id.*

<sup>41</sup> P18p218 (3/2/22 Prior Written Notice)

<sup>42</sup> P21p251,252.

<sup>43</sup> LEA Representative.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> R41p288.

<sup>47</sup> Parent.

<sup>48</sup> P30p281.

<sup>49</sup> Educational Advocate.

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*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”).

“The IEP is ‘the centerpiece of the statute’s education delivery system for disabled children.’” *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Endrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent 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); *Endrew F.*, 137 S. Ct. at 994; *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).

The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. 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 Rowley*, 458 U.S. at 203. 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. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Endrew F.*, 137 S. Ct. at 1001.

In addition, the local education agency (“LEA”) must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at \*3 (D.D.C. 2018).

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



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(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. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

**Issue 1:** *Whether DCPS denied Student a FAPE by failing to provide timely and appropriate IEPs: (a) when on 2/28/22 it (i) did not include speech-language services based on a 7/8/21 evaluation, (ii) reduced occupational therapy and other services without data, and/or (iii) did not include a personal computer based on an assistive technology evaluation; and/or (b) when on 5/19/21 it did not include a personal computer based on an assistive technology evaluation. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a *prima facie* case on this issue through testimony and documents, shifting the burden to DCPS, which failed to meet its burden of persuasion on subparts (a)(i) and (a)(iii), as discussed below.

The applicable legal standard for analyzing the appropriateness of the IEPs at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether they were “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. As the U.S. Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* “raised the bar on what counts as an adequate education under the IDEA,” requiring more than “merely some” educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be “reasonably calculated to produce meaningful educational benefit”). The measure and adequacy of the IEPs are determined as of the time they were offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at \*12 (D.D.C. 2021); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student’s IEPs is analyzed by focusing on the specific concerns raised by Petitioner, which are considered in turn.<sup>50</sup> *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

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<sup>50</sup> A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), *quoting Rowley*, 458 U.S. at 206-07. Certain procedural concerns were raised and are discussed herein.

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The “related services” at issue here must be provided if required to assist a student with a disability to benefit from special education. *See* 34 C.F.R. § 300.34(a); *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883, 890, 104 S. Ct. 3371, 82 L. Ed. 2d 664 (1984).

(i) Speech-Language Services. An independent, comprehensive, speech-language evaluation of Student was conducted on 7/8/21, but not reviewed by DCPS until 2/28/22. The speech-language evaluation found that Student could create simple sentences, but struggled with more complex sentences appropriate for Student’s age. Student’s scores on reading and comprehension abilities were “poor,” falling below expected limits for Student’s age. Indeed, Student’s 2/28/22 IEP PLOPs indicated that Student was about 6 years below grade in reading. Student’s receptive language, expressive language, reading and comprehension skills were determined to be average-to-significantly-impacted, affecting Student’s access to the educational curriculum. The speech-language evaluation concluded – based on review of records, standardized testing, and informal observations – that school-based, direct speech therapy was recommended for Student for 45 minutes/week outside general education.

Speech-Language Pathologist credibly supported the speech-language evaluation in her testimony, which the undersigned hereby accepts over DCPS’s unacceptably long-delayed review of the speech-language evaluation. This Hearing Officer is persuaded that Student needs speech-language services based on Student’s significant deficits, and DCPS’s delay impacted Student’s ability to access the curriculum, resulting in the compensatory education awarded below.

(ii) Occupational Therapy. The next issue raised by Petitioner is whether it was appropriate to reduce OT or any other services “without data.” While OT was reduced from 120 to 60 minutes/month in the 2/28/22 IEP, Petitioner did not note other services being reduced, so the current analysis focuses on OT and concludes that there was sufficient data on which the reduction in services was based.

Specifically, the Public School occupational therapist did explain in some detail why he reduced Student’s OT services, stating that Student’s handwriting had improved “dramatically” since last year, with the quantity increasing from 3-4 sentences to 5-6 sentences, along with other listed qualitative improvements. Data about Student’s OT progress was also included in monthly service trackers which provided notes relating to Student’s OT services and indicated that Student often made progress. Further, Student’s quarterly IEP Progress Reports showed that Student progressed on OT goals and mastered an OT goal in the relevant timeframe.

Accordingly, the undersigned concludes that DCPS met its burden of persuasion on this issue, as it reduced OT based on sufficient data, particularly when taking into account that instructional time is wasted whenever a child receives related services that may not be needed.

(iii) Assistive Technology. Next is whether a personal computer needed to be included on Student’s IEPs, which generated a great deal of controversy even though there

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seemed to be little or no disagreement that Student actually did have the necessary computer technology while at Public School. Specifically, a 1/29/21 AT evaluation determined that Student required direct access to AT to facilitate academic output, independence, and access to the curriculum. The AT evaluation recommended a consistently assigned laptop computer for Student's personal and dedicated use for in person and distance learning, along with training on AT software and websites. Indeed, DCPS proposed on 3/16/21 for Student to have a dedicated laptop added to Student's IEP as an academic resource, along with software and recommended resources, but failed to do so.

While there was no educational harm to Student and no denial of FAPE, the undersigned does conclude that the required technology should be included on Student's IEP based on 34 C.F.R. § 300.324(a)(2)(v). As stated in 34 C.F.R. § 300.513(a)(3), even without a denial of FAPE the undersigned can and does require DCPS to comply with procedural requirements and include a dedicated laptop and AT software in the Order below.

**Issue 2:** *Whether DCPS denied Student a FAPE by failing to provide required documents prior to the 2/28/22 meeting, specifically (a) the DCPS speech-language pathologist's review of the independent educational evaluation report, and (b) occupational therapy trackers prior to services being reduced. (Petitioner has the burden of persuasion on this issue.)*

Petitioner did not meet her burden of persuasion on the issue of access to education records. As a general matter, parents of a child with a disability have the right to examine all education records that pertain to the identification, evaluation, and educational placement of the child, and provision of a FAPE. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a), 34 C.F.R. § 300.613(a) (parents must be permitted to inspect and review any education records relating to their child that are collected, maintained, or used by an agency). *See also Jalloh ex rel. R.H. v. Dist. of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) ("parents have the right to examine records and DCPS must give parents the opportunity to inspect, review, and copy records").

Here, Petitioner asserted that she had not been provided the DCPS speech-language pathologist's review of the independent speech-language evaluation or the OT trackers prior to the 2/28/22 IEP meeting. LEA Representative credibly testified that he had provided the speech-language review to be picked up for Petitioner 2 weeks prior to the meeting and the fact it was not picked up was the fault of Petitioner's law firm and outside DCPS's control. LEA Representative also asserted that he had provided OT trackers to Petitioner as requested, pointing to a receipt for the documents that was dated weeks after the 2/28/22 meeting at which OT services were reduced. However, even if the OT tracker had not been provided to Petitioner in a timely manner, Petitioner failed to show any harm from delay. Thus, it would have at most been a procedural matter and would not have risen to the level of a substantive violation. Thus, DCPS prevails on this issue in the absence of any harm.

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### Remedies

Having analyzed and resolved the issues in this case, what remains is to consider appropriate remedies that will address or compensate for the denials of FAPE herein. As an initial matter, DCPS is ordered below to convene the IEP team and revise Student's IEP by including (a) speech-language services of 180 minutes/month unless the parties agree otherwise, and (b) a personalized computer and appropriate AT software for Student added to the AT section of the IEP, recognizing that Petitioner did not assert that Student lacked an appropriate computer at Public School during 2020/21 and 2021/22.

Beyond that, compensatory education is awarded to make up for the denial of FAPE found above in the lack of timely speech-language services. In determining the amount of compensatory education for the denial of FAPE, there is often "difficulty inherent in figuring out both what position a student would be in absent a FAPE denial and how to get the student to that position," *B.D. v. Dist. of Columbia*, 817 F.3d 792, 799 (D.C. Cir. 2016), but that does not permit the effort to be avoided. See *Henry v. Dist. of Columbia*, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse). Moreover, a student is not required "to have a perfect case to be entitled to compensatory education." *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (citations omitted).

Here, a non-trivial amount of speech-language services is required to make up for the delay in reviewing Student's independent speech-language evaluation and concluding that Student needed services, with the goal of restoring Student to the position in which Student would be but for the denial of FAPE. Educational Advocate testified that the compensatory education hours sought in her compensatory education proposal would achieve that goal. However, Educational Advocate's proposal needed to be adjusted to account for the denial of FAPE actually found herein and this Hearing Officer's view that compensatory education was required as described above. Thus, based on the experience and judgment of the undersigned, the Order below awards 30 hours of speech-language services as requested by Educational Advocate.

These determinations by the undersigned have been carefully considered and specifically tailored to address Student's unique needs as a matter of equity, as "hearing officers are reminded that '[t]he essence of equity jurisdiction' is 'to do equity and to mould each decree to the necessities of the particular case.'" *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), quoting *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005). All compensatory education hours are to be used within 24 months to avoid administrative burdens on Respondent, although the undersigned encourages Parent to get Student engaged as quickly as possible to ensure that the remedial services that Student needs are obtained without undue delay.

### ORDER

Petitioner has prevailed in part in this case, as set forth above. Accordingly, **it is hereby ordered that:**

## Hearing Officer Determination

Case No. 2022-0094

- (1) Within 20 business days, DCPS shall convene an IEP meeting to revise Student's IEP by (a) adding speech-language services of 180 minutes/month, and (b) in the assistive technology section, adding a consistently assigned laptop computer for Student's personal and dedicated use, including appropriate assistive technology software.
- (2) As compensatory education for the denial of FAPE found herein, within 10 business days after request by Petitioner, DCPS shall provide a letter of authorization for 30 hours of speech-language services from an independent provider chosen by Petitioner; all hours are to be used within 24 months and any unused hours shall be forfeited.

Any and all other 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

### **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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