

OSSE
Office of Dispute Resolution
December 06, 2022

Hearing Dates: November 14 & 15, 2022

² Effective July 1, 2022, DCMR Chapter 5E-30 was repealed and replaced by the new Chapter 5A-30.

Petitioner's Due Process Complaint, filed on October 6, 2022, named DCPS as respondent. The undersigned hearing officer was appointed on October 7, 2022. On October 18, 2022, the parties met for a resolution session and were unable to resolve the issues in dispute. On October 20, 2022, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. On November 4, 2022, DCPS filed a motion to dismiss based upon the statute of limitations, which I denied by order issued November 8, 2022. My final decision in this case is due by December 20, 2022.

With the parent's consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. The hearing, which was open to the public, was convened before the undersigned impartial hearing officer on November 14 and 15, 2022. MOTHER appeared online for the hearing and was represented by PETITIONER'S COUNSEL and PETITIONER'S CO-COUNSEL. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL.

Petitioner's Counsel made an opening statement. Mother testified and called as additional witnesses PRIVATE OCCUPATIONAL THERAPIST, EXECUTIVE FUNCTIONING COACH and SPECIAL EDUCATION ADVOCATE. DCPS called as witnesses SPECIAL EDUCATION TEACHER, SCHOOL PSYCHOLOGIST, SPECIAL EDUCATOR and DCPS OCCUPATIONAL THERAPIST. Petitioner's Exhibits P-5, P-7, P-9 through P-65 and P-67 were admitted into evidence, including Exhibits P-7, P-15

through P-27, P-53 and P-67, which were admitted over DCPS' objections. I sustained DCPS' objection to Exhibit P-66. After Petitioner rested in her case-in-chief, DCPS' Counsel made an opening statement and put on DCPS' case. DCPS' Exhibits R-1 through R-27 were all admitted into evidence without objection. After the taking of the evidence, counsel for the respective parties made oral closing arguments. There was no request to provide written closings.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-A, § 3049.1.

ISSUES AND RELIEF SOUGHT

The issues for determination in this case, as set out in the October 20, 2022 Prehearing Order are:

- a. Whether DCPS denied the student a FAPE by failing to comply with its child-find obligations under the IDEA beginning in Student's kindergarten year by: 1) failing to timely initiate evaluation and determine special education eligibility in light of the student's ongoing academic struggles and 2) failing to timely conduct evaluations, identify the student as eligible and develop an IEP following the parent's written request on September 30, 2021 and failing to conduct a comprehensive evaluation of the student. (Prior to the due process hearing, Petitioner, by counsel, represented to the hearing officer that she seeks relief only for DCPS' alleged child find violations that date to on or after October 6, 2020.)
- b. Whether DCPS denied the student a FAPE by not comprehensively evaluating Student in spring 2022 by failing to conduct Occupational Therapy, Assistive Technology, and a Functional Behavioral Assessment (FBA) evaluations;
- c. Whether DCPS denied the student a FAPE by failing to provide the student

with an appropriate IEP on April 7, 2022, in that the IEP does not provide enough service hours to address Student's severe deficiencies in reading, writing, and math and there are no occupational therapy services. (At the due process hearing, Petitioner's Counsel withdrew the parent's claim that the IEP should have included Extended School Year (ESY) services.)

For relief, the Petitioner seeks an order from the Hearing Officer requiring DCPS to revise Student's IEP to include an increase in specialized instruction in core academic areas such as reading, writing, and mathematics, and add IEP goals to address the student's deficits in executive functioning and speech-language, targeting his/her deficiencies, and goals to develop skills in reading decoding, reading comprehension, written expressions, writing mechanics, and written language content; order DCPS to provide a suitable location to implement the student's revised IEP and/or place the student in a private placement with transportation services; order DCPS to conduct or fund the following evaluations for Student: Occupational Therapy, Assistive Technology, and Functional Behavioral Assessment and order DCPS upon completion of the evaluations to timely reconvene the IEP team to review the results, revise the student's program as appropriate, and discuss the need for a Behavior Intervention Plan (BIP). The parent also seeks an award of compensatory education for the denials of FAPE alleged in the complaint.

FINDINGS OF FACT

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

1. Student, an AGE child, resides with the Mother in the District of

Columbia. Testimony of Mother.

2. Student is eligible for special education as a student with a Specific Learning Disability (SLD) impairment. Exhibit R-12.

3. Student has significant deficits in reading. Since the 2018-2019 school year, Student has made only limited progress in reading. On norm-referenced tests, Student has tested far below grade level. On January 25, 2022, Student tested at the end of kindergarten - beginning of 1st Grade level. Testimony of Special Education Advocate. In fall 2022, Student's reading scores were at kindergarten or 1st Grade levels. Testimony of Special Educator. These scores were years below Student's actual grade level.

4. Student's achievement in math is somewhat stronger than for reading, but still below grade level. In September 2022, Student tested at an overall 2nd Grade level in math. This score was years below Student's actual grade level. Testimony of Special Educator.

5. On September 30, 2021, the law firm retained by Mother (LAW FIRM) requested, by email, that CITY SCHOOL conduct comprehensive evaluations of Student to include, but not be limited to a comprehensive psychological evaluation, a speech and language evaluation, and a Functional Behavior Assessment (FBA). Law Firm represented that the parent was making the evaluation request as a result of the student's ongoing academic difficulties. Exhibit P-48.

6. City School attempted to schedule an Analysis of Existing Data (AED)

meeting on November 8, 2021, but the parent's attorney (FORMER ATTORNEY) had a scheduling conflict. With the agreement of Law Firm, the AED meeting was re-scheduled for December 1, 2021. Exhibit P-51.

7. On December 1, 2021, City School convened an AED meeting for Student. Student's parents, Former Attorney and a Law Firm advocate attended the meeting. At the time, Student was in a small guided-reading group, meeting 4 times a week. At the AED meeting, it was reported that Student was showing some progress in reading foundations. Student had scored a 402 on the i-Ready reading assessment which was in the kindergarten range. Student's vocabulary was at a 1st grade level. His/her reading comprehension was at a kindergarten level. It was reported that Student got easily frustrated if he/she did not know something and that he/she also may need repeated directions to understand what the teacher was saying. Student was also reported to have a difficult time with listening comprehension. Student's working memory was not where it could be. Multi-step directions were a problem. Student was able to verbally express him/herself, but got frustrated when trying to decode and may shut down and give up. The AED participants concluded that there were concerns with Student's speech and language, reading and listening comprehension, sight-word recall and working memory in general. City School proposed to conduct a comprehensive psychological evaluation of Student. Former Attorney requested that a speech and language evaluation also be done. The AED team decided that psychological and speech

evaluations of Student would be conducted. There was no disagreement at the meeting with the evaluations of Student which would be conducted. Exhibit R-5.

8. In a Prior Written Notice to the parent dated December 1, 2021, DCPS informed the parent that it would administer comprehensive psychological, educational, speech language and executive function assessments of Student to determine if he/she had a disability. Exhibit R-6.

9. SCHOOL PSYCHOLOGIST assessed Student at City School on January 13, 2022. In her January 14, 2022 report, School Psychologist reported, *inter alia*, that Student's general cognitive ability tested in the Low Average range when compared to other children of his/her age. On the Working Memory Index, Student displayed Low Average range performance. This reflected a slight weakness in auditory short-term memory. On the Processing Speed Index, Student earned Low Average scores. This was an area of slight weakness in his/her ability to use visual discrimination, decision making, fine motor control, and cognitive processing speed. Student's processing speed was a relative weakness when compared to verbal comprehension, but did not appear to be interfering with his/her capacity to perform complex verbal tasks. Student's relative weaknesses in mental control and speed of visual scanning may sometimes create challenges as he/she engages in more complex cognitive processes, such as learning new material or applying logical thinking skills. This cognitive profile revealed a few Low Average weaknesses that were likely to impact Student's ability to make age-appropriate academic progress without supports. School Psychologist reported that the

Woodcock-Johnson IV Tests of Achievement (WJ-IV) results and a review of school-based achievement data revealed that Student was performing at variable levels of academic achievement – below grade level standards in many areas. These data indicated that Student was below grade level in Reading and Writing skills, and in Math conceptual development. Student displayed below grade level weaknesses on the WJ-IV in Letter-Word Identification, Passage Comprehension and Sentence Reading – approximately 3 years below grade level. Student also displayed weak performance, approximately 3 years below grade level, in Word Attack (decoding/ phonemic awareness) and Oral Reading. School based data indicated that Student began the 2021-2022 school year below grade level in reading, and previously tested below grade level benchmarks in reading at the end of the 2019-2020 school year. In Math, Student's WJ-IV performance was in the Low Average to Average range in Calculation and Math Fact Fluency. Student tested approximately 2 years below grade level in Applied Problems (math concepts), and in the ability to understand grade level concepts. In Written Language, Student was performing overall approximately 2 years below his/her same-aged peers. Student struggled with spelling and writing words with accuracy and fluency. He/she also struggled with writing basic sentences when correct spelling was omitted. School Psychologist concluded that these results suggested that, due to cognitive and academic weaknesses, Student was likely to continue to struggle to acquire basic academic skills without individualized, direct, targeted instruction and academic supports.

Analyzing behavior rating scale responses from a teacher, Mother and Student's self-report revealed some areas of concern. However, while concerns were noted in Learning Problems and in Executive Functioning, the combined raters were not all consistently endorsing Very Elevated behavioral symptoms related to executive functioning delays and inattention. School Psychologist concluded that these results seemed to suggest that Learning Problems were more likely responsible for Student's reported possible symptoms of executive functioning and attention weaknesses. School Psychologist found that Student appeared to meet the IDEA criteria for classification as a student with a Specific Learning Disability (SLD). Exhibit R-7.

10. SPEECH-LANGUAGE PATHOLOGIST conducted a speech and language evaluation of Student in January 2022. In her January 16, 2022 report, Speech-Language Pathologist reported, *inter alia*, that results revealed that Student presented with expressive vocabulary and overall language concerns that may adversely impact his/her academic performance and that Student's scores indicated that due to the severity of his/her language impairment, Student may demonstrate difficulty communicating effectively to participate in and contribute to classroom discussions. Exhibit P-6.

11. On January 21, 2022, City School staff sought to schedule Student's special education eligibility meeting for January 31, 2022. Former Attorney was not available on that date. With the agreement of Law Firm, the eligibility meeting was scheduled for February 14, 2022. Exhibit P-54.

12. On February 14, 2022, the City School eligibility team determined that Student was eligible for special education as a child with an SLD. Exhibit R-11.

13. City School and Law Firm staff met the week of March 7, 2022 to discuss a draft initial IEP for Student. Exhibit P-59. With agreement of Law Firm, another IEP team meeting was scheduled for April 7, 2022 to complete the final IEP for Student. Exhibit P-58.

14. On April 7, 2022, Student's City School IEP team met to complete Student's initial IEP. Mathematics, Reading, Written Expression and Communication/ Speech and Language were identified as areas of concern for Student. The IEP team decided that Student should receive 210 minutes per week of Special Education Services, outside general education, divided among Reading (90 Minutes), Mathematics (60 minutes) and Written Expression (60 minutes). The IEP also provided for Student to receive 120 minutes per month of Speech-Language Pathology, outside general education, and 30 minutes per month in the general education setting. Exhibit R-15.

15. By letter of June 17, 2022, Law Firm requested that DCPS conduct Assistive Technology (AT) and Occupational Therapy (OT) assessments of Student. Exhibit P-62. By a Prior Written Notice (PWN) dated June 23, 2022, DCPS notified the parent that she had the right to request an evaluation of Student at any time. Exhibit R-18.

CONCLUSIONS OF LAW

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

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the parent in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the child's IEP 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. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

Analysis

- a. Did DCPS deny Student a FAPE by failing to comply with its child find obligations under the IDEA beginning on or after October 6, 2020 by failing to timely initiate an evaluation and determine special education eligibility in light of the student's ongoing academic struggles?

DCPS first evaluated Student for special education eligibility in early 2022, following the parent's September 30, 2021 request for evaluation. The parent contends that under the IDEA's child find requirement, DCPS should have evaluated Student at

least a year earlier. I agree.

Under the IDEA’s child find mandate, the local education agency (LEA) must “ensure that ‘[a]ll children with disabilities [enrolled in the LEA] . . . who are in need of special education and related services are identified, located, and evaluated.’” *Scott v. District of Columbia*, 2006 WL 1102839, at 8 (D.D.C. Mar. 31, 2006) (quoting *Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir. 2005); 20 U.S.C. § 1412(a)(3). “School districts may not ignore disabled students’ needs, nor may they await parental demands before providing special instruction.” *Reid*, 401 F.3d at 518. As U.S. District Judge Boasberg explained in *Davis v. District of Columbia*, 244 F. Supp. 3d 27 (D.D.C. 2017),

A school district must “evaluate a student who *may have* a disability and who *may require* special education services.” D.C. Code § 38–2561.02(a)(2) (emphases added). This duty applies to any “child *suspected* of having a disability who *may need* special education.” 5–E D.C. Mun. Regs. § 3004.1(a) (emphases added); see 34 C.F.R. § 300.111(c)(1) (extending duty to “[c]hildren who are suspected of being a child with a disability . . . and in need of special education, even though they are advancing from grade to grade”). Courts in this Circuit have thus repeatedly held that school districts are required to complete an evaluation process “as soon as a student is identified as a potential candidate for special education services.”

Davis, supra, 244 F. Supp. 3d at 49 (citing *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 25 (D.D.C. 2008)) (emphasis in original).

Petitioner’s expert, Special Education Advocate, opined that based on Student’s historical results on norm-based reading assessments and the child’s report cards, a reasonable educator should have referred Student for a special education evaluation no later than the start of the 2020-2021 school year. That school year, Student’s reading

scores were at kindergarten level, years below Student's then-current grade, and prior year report cards indicated that Student was demonstrating minimal progress in reading and decoding.

Special Education Advocate has served for 13 years as a special education teacher and director of special education for a local education agency in New York State. To form her opinion, she reviewed Student's education records and interviewed Student and Mother on the FaceTime online service. Special Education Advocate also attended an IEP team meeting for Student in November 2022. I found Special Education Advocate's opinion, which was not directly rebutted by DCPS' witnesses, to be credible.

I conclude that Mother met her burden of persuasion that by the start of the 2020-2021 school year, DCPS had cause to suspect that Student may have had an IDEA disability and may have required special education services. When Student was eventually evaluated in winter 2022, she was determined to be eligible for special education services as a child with an SLD. I find that DCPS denied Student a FAPE by not identifying him/her for evaluation for special education by October 2020 and not ensuring that a timely eligibility determination was made.

b. Following the parent's written request on September 30, 2021, did DCPS fail to timely conduct an initial evaluation of Student, determine eligibility and develop an initial IEP?

On September 30, 2021, Law Firm, on behalf of the parent, requested City School to evaluate Student for special education eligibility. City School attempted to schedule an Analysis of Existing Data (AED) meeting on November 8, 2021, but the parent's

attorney had a scheduling conflict. With the agreement of Law Firm, the AED meeting was re-scheduled for December 1, 2021. At the AED meeting, the DCPS team, including the parent and her representatives, agreed to conduct a comprehensive psychological evaluation and a speech-language evaluation of Student. These evaluations were completed on January 14, 2022 and January 16, 2022, respectively. On January 21, 2022, City School staff sought to schedule Student's eligibility meeting for January 31, 2022. Former Attorney was not available on that date. With the agreement of Law Firm, the eligibility meeting was scheduled for February 14, 2022. At the February 14, 2022 eligibility meeting, Student was determined eligible for special education as a child with an SLD. Student's initial DCPS IEP was developed at IEP team meetings on March 7, 2022 and April 7, 2022. Scheduling of the IEP team meeting dates was coordinated with Law Firm staff.

Once a potential candidate for special education services is identified, the District must conduct an initial evaluation and make an eligibility determination within 60 days from receipt of parental consent. *See DL v. District of Columbia*, 109 F. Supp. 3d 12, 16-17 (D.D.C. 2015); D.C. Code § 38-2561.02(a); 5E DCMR § 3005.2 (Now 5A DCMR § 3005.4.) In Student's case, there was a lapse of some 137 days between the parent's September 30, 2021 evaluation request and the February 14, 2022 eligibility determination. Assuming that taking more than 60 days to make the eligibility determination was a procedural violation of the IDEA, I do not deem there was a denial of FAPE, because City School staff attempted to schedule earlier meeting dates and the

meetings were postponed at the requests of Law Firm and Former Attorney. *See* 34 C.F.R. § 300.513(a)(2).³

City School's initial IEP team meeting for Student, convened on March 7, 2022, was timely. *See* 34 C.F.R. § 300.323(c)(1) (Meeting to develop initial IEP shall be conducted within 30 days of eligibility determination.) I conclude that Petitioner did not meet her burden of persuasion that, following the parent's September 30, 2021 evaluation request, DCPS denied Student a FAPE by not timely completing the evaluation, eligibility determination or development of the initial IEP.

c. Did DCPS deny Student a FAPE by not comprehensively evaluating the Student in spring 2022 by failing to conduct Occupational Therapy, Assistive Technology, and Functional Behavioral Assessment evaluations?

At the AED meeting for Student on December 1, 2022, the City School representatives proposed to conduct a comprehensive psychological evaluation to evaluate Student for a suspected disability. Former Attorney requested that a speech and language assessment also be done, out of concern for reading and underlying

³ Procedural violations of the IDEA may only be deemed a denial of FAPE if the procedural inadequacies—

- (i) Impeded the student's right to a FAPE;
- (ii) Significantly impeded the parent's (or adult student's) opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or
- (iii) Caused a deprivation of educational benefit.

34 C.F.R. § 300.513(a)(2).

language issues. The MDT team agreed to this request. There was no request to conduct other assessments. By letter of June 17, 2022, weeks after Student's eligibility evaluation, Law Firm requested that DCPS conduct Assistive Technology (AT) and Occupational Therapy (OT) assessments of Student. By a Prior Written Notice (PWN) dated June 23, 2022, DCPS notified the parent that she had the right to request an evaluation of Student at any time. In her due process complaint, Petitioner alleges that DCPS' spring 2022 evaluation of Student was not comprehensive because it did not include AT or OT assessments or a functional behavioral assessment (FBA). I disagree.

The IDEA requires the District to adequately gather functional, developmental and academic information about the child's needs to determine the content of the IEP in all areas of suspected disability and to ensure that the evaluation was sufficiently comprehensive to identify all of the child's needs. 20 U.S.C. §§ 1412(a)(6)(B), 1414(b)(1-3); 34 C.F.R. § 300.304(b)(1-3), (c)(4, 6). The December 1, 2021 AED team, including the parent and her representatives, decided to evaluate Student with a comprehensive psychological evaluation and a speech and language assessment. There was no request by the parent or her representatives to conduct AT, OT or FBA assessments of Student as part of the evaluation.

The decisions of the student's educators as to what areas to assess are entitled to some deference. *See R.B., ex rel. F.B. v. Napa Valley Unified School Dist.*, 496 F.3d 932, 937 (9th Cir.2007) (Fact-intensive nature of a special education eligibility determination coupled with considerations of judicial economy render more deferential

approach appropriate). Here, the DCPS educators and the parent agreed in December 2021 on what assessments were needed for Student, namely the comprehensive psychological and speech and language evaluations. The evaluations were completed and Student was determined to be a child with a qualifying SLD disability. No additional evaluation were requested until mid-June 2022, weeks after Student's initial IEP had been finalized. I find that Petitioner did not meet her burden of persuasion that DCPS' spring 2022 evaluation of Student was not sufficiently comprehensive because the evaluation did not include AT, OT or FBA assessments.

d. Did DCPS deny Student a FAPE by failing to provide an appropriate IEP on April 7, 2022, in that the IEP does not provide enough service hours to address Student's severe deficiencies in reading, writing, and math and there are no occupational therapy services?

On March 7, 2022 and April 7, 2022, the City School IEP team met to develop Student's initial IEP. Mathematics, Reading, Written Expression and Communications/ Speech and Language were identified as areas of concern. The IEP team decided that Student would receive 210 minutes per week of Special Education Services, outside general education, divided among Reading (90 Minutes), Mathematics (60 minutes) and Written Expression (60 minutes). Petitioner contends that these IEP special education services were not adequate. DCPS' experts, Special Education Teacher 1 and Special Educator opined at the hearing that the special education services in the initial IEP were appropriate, as written, for Student.

As U.S. District Judge Randolph Moss explained in *Smith v. Dist. of Columbia*,

No. CV 16-1386 (RDM), 2018 WL 4680208 (D.D.C. Sept. 28, 2018), in *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017), the U.S. Supreme Court clarified the standards for assessing the appropriateness of proposed IEP:

In [*Endrew F.*], the Court held that an IEP must be “reasonably calculated to enable [the] child to make progress appropriate in light of the child’s circumstances.” 137 S. Ct. at 999; *see id.* at 1001 (“[A]dequacy . . . turns on the unique circumstances of the child.”). This “fact-intensive” standard recognizes that “crafting an appropriate program of education” requires “the expertise of school officials” as well as “the input of the child’s parents or guardians.” *Id.* at 999. . . . [T]he inquiry centers on “whether the IEP is reasonable, not whether the court regards it as ideal.” *Id.* at 999. A reviewing court may not “substitute [its] own notions of sound educational policy for those of the school authorities.” *Rowley*, 458 U.S. at 206. This deference “is based on the application of expertise and the exercise of judgment by school authorities.” *Endrew F.*, 137 S. Ct. at 1001. . . . [B]ecause the deference the Court owes school authorities is a product of their expertise, “[a] reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions,” and this explanation should show why “the IEP is reasonably calculated” to ensure that the child “make[s] progress appropriate in light of his circumstances.” *Id.* at 1002.

Smith, 2018 WL 4680208, at *5.

The parent’s expert, Special Education Advocate, opined in her testimony that with Student’s being several years behind grade level in reading, the April 7, 2022 IEP special education services were not sufficient for Student to make adequate progress to close the gap, specifically in encoding and decoding. She recommended that in addition to the 210 minutes per week of services in the initial IEP, Student needed 30 minutes per day of direct reading instruction outside general education and 3.75 hours per week of “push-in” reading/writing services. As discussed above in this decision, Special

Education Advocate is a very experienced special educator. She reviewed Student's records, interviewed Mother and Student and attended a recent IEP team meeting for Student.

DCPS' experts, Special Education Teacher 1 and Special Educator, are also very qualified educators. Special Educator emphasized that the April 7, 2022 IEP was Student's first IEP and 210 minutes per week of pull-out services would be a start for a child who had not previously had special education. However DCPS' experts' respective opinions on the appropriateness of the April 7, 2022 IEP were conclusory and not supported by cogent and responsive explanations for why the IEP was reasonably calculated to ensure Student would make progress appropriate in light of his/his circumstances – specifically Student's severe reading deficits. *See Smith, supra*. I find that DCPS did not meet its burden of persuasion on the appropriateness of the level of special education services in the April 7, 2022 IEP.

Petitioner also contends that the April 7, 2022 IEP was inappropriate because it did not provide Student occupational therapy (OT) related services. Petitioner's expert, Private OT, opined that Student's challenges with writing output and motor control could be areas of need addressed with occupational therapy. However Private OT had never met or evaluated Student, or spoken to any of his/her educators. To the extent Private OT was attempting to support Student's need for OT services in the IEP, I did not find her testimony persuasive. DCPS' expert, School Psychologist, who evaluated Student in winter 2022, testified that she did not see any visual motor or other deficits

that would have warranted OT services. DCPS OT, who reviewed Student's writing samples and observed him/her in the classroom this school year, likewise did not see any OT concerns. She opined that Student does not need IEP OT services. I find that DCPS met its burden of persuasion on the appropriateness of the April 7, 2022 IEP team's decision not to provide OT services on Student's IEP.

Remedies

For relief in this case, the parent requests, *inter alia*, that Student be awarded compensatory education. When a hearing officer finds a denial of FAPE he has "broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education. . . . [A]n award of compensatory education must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.)

In this decision, I have determined that DCPS denied Student a FAPE by not initiating a special education eligibility evaluation by October 2020. Petitioner's expert, Special Education Advocate, testified that had the evaluation process been started by October 2020, Student's eligibility could have been determined by Thanksgiving break that year. On that timing, Student should have had an initial IEP by January 2021. Student's initial IEP was actually completed in April 2022. I find, therefore, that Student missed some 53 school weeks of IEP services from January 2021 to April 2022.

I have also found that DCPS failed to establish that the April 7, 2022 IEP provided appropriate special education services for Student. Special Education Advocate recommended that Student needed an additional 2.5 hours per week of pull-out reading instruction and 3.75 hours per week of push-in services. While I make no finding as to the appropriateness of that level of services, DCPS must ensure that the IEP team considers this recommendation.

In her written compensatory education proposal, Exhibit P-67, Special Education Advocate recommended, *inter alia*, that Student be awarded, as compensatory education – both for untimely commencement of services and for insufficient services in the initial IEP – 360 hours of specialized tutoring to support Student’s academic deficits. This proposed award would be considerably less than the total hours of special education which Special Education Advocate opined that Student should have received, had he/she been provided an appropriate IEP beginning in January 2021.

Notwithstanding, I find that Special Education Advocate’s recommendation is reasonable to meet Student’s needs and I will order DCPS to provide those services. *See Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C.Cir. 2005) (Rejecting “mechanical hour-counting” in favor of award designed to meet the student’s unique needs.)

Special Education Advocate also recommended an award of “Executive Function Coaching.” Inasmuch as it was not established that DCPS should have provided Student executive function coaching in the initial IEP, I find no support for this recommended

award. *See B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (Award of compensatory education must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.)

There was testimony at the due process hearing that Student's City School IEP team met in November 2022, but the outcome of that meeting was not made known at the hearing. Since it appears that the City School IEP team is already working on a revised IEP for Student, I will order DCPS to ensure that the IEP team further reviews and revises Student's IEP, as appropriate, in light of the findings in this decision and current data, including Special Education Advocate's input, on Student's special education needs and academic progress.

ORDER

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

ORDERED:

1. As compensatory education for the denials of FAPE found in this decision, DCPS shall promptly issue funding authorization to the parent for Student to receive 360 hours of 1:1 academic tutoring by a qualified professional with expertise in reading instruction;
2. DCPS shall promptly convene Student's IEP team, including the parent and her representatives, to review and revise Student's IEP in accordance with this decision and with 34 C.F.R. § 300.324, *et seq.* and
3. All other relief requested by the Petitioner herein is denied.

Date: December 6, 2022

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

NOTICE OF RIGHT TO APPEAL

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

cc: Counsel of Record
Office of Dispute Resolution
DCPS - SPED
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