

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
December 13, 2022

Parent, on behalf of Student,¹)	
Petitioner,)	
)	Hearing Dates: 11/30/22; 12/1/22
)	Case No. 2022-0155
)	Hearing Officer: Michael Lazan
District of Columbia Public Schools,)	
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student who is currently eligible for services as a student with a Specific Learning Disability (the “Student”). A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on August 29, 2022. The Complaint was filed by the Student’s parent (“Petitioner”). On September 16, 2022, Respondent filed a response. A resolution meeting was held on September 8, 2022. The matter did not settle.

An amended Complaint was filed on September 6, 2022, with no corresponding motion. A second amended Complaint was filed on September 29, 2022, with a corresponding motion. An order granting the motion was issued on October 4, 2022. An amended response was filed by DCPS on October 7, 2022. The resolution period, as adjusted by the filing of the amended Complaint, expired on October 29, 2022.

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

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-A, Chapter 30.

III. Procedural History

A prehearing conference was held on September 28, 2022. Attorney A, Esq., counsel for Petitioners, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order summarizing the rules to be applied in the hearing and identifying the issues in the case was issued on October 3, 2022. A motion for stay-put relief was filed by Petitioner on October 20, 2022. Opposition was filed by DCPS on October 21, 2022. The motion was denied by an order dated November 11, 2022.

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

Hearings were held on November 30, 2022, and December 1, 2022. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-20 without objections being filed or raised. Respondent moved into evidence exhibits R-1 through R-31 without objection. Petitioner presented as witnesses, in the following order: herself; Witness A, an educational advocate (expert in administration of special education and compensatory education plans); Witness B, a clinical psychologist (expert in school and clinical psychology); and Witness C, program director at School C. Respondent presented as witnesses: Witness D, special education coordinator at School B (expert in

charge of the special education department, ensuring compliance, updates, and ordering transportation); Witness E, a social worker at School A (expert in school social work); and Witness F, assistant principal and Local Education Agency (“LEA”) representative for School B. After the presentation of DCPS’s case, Petitioner presented rebuttal through the testimony of Witness A. The parties presented oral closing statements at the end of testimony on December 1, 2022.

IV. Issues

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

1. Did DCPS fail to provide Petitioner with Prior Written Notice, pursuant to 34 C.F.R. 300.503 and related authority, before changing the Student’s educational placement from School D to School B? If so, did DCPS deny the Student a Free Appropriate Public Education (“FAPE”)?

2. Did DCPS fail to provide the Student with an appropriate Individualized Education Program (“IEP”) on June 24, 2021, and May 23, 2022? If so, did DCPS act in contravention of 34 C.F.R. 300.320, Andrew F. v. Douglas County School District, 137 U.S. 988 (2017), Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), and related authority? If so, did DCPS deny the Student a FAPE?

Petitioner contended that the Student’s IEPs contained inappropriate goals and were not designed in a manner that allowed the Student to make meaningful progress. As relief, Petitioner is seeking placement at School C and compensatory education.

V. Findings of Fact

1. The Student is an X-year-old who currently attends School B, a DCPS public school. The Student likes the school but would rather be in a setting where s/he can receive one-to-one instruction. Testimony of Petitioner. The Student can be shy, but once s/he is comfortable with a person, s/he will “come out of [his/her] shell.” The

Student benefits from previewing instruction and works hard at his/her schoolwork.

Testimony of Witness D. The Student makes more significant gains in closing his/her reading “gap” when s/he receives more intensive intervention. R-10 at 85.

2. The Student has been tested through the i-Ready measure during his/her time at DCPS schools. The i-Ready test is usually used for disabled students in DCPS and other jurisdictions, and it is so marketed. Testimony of Witness B. DCPS uses the i-Ready test to establish baselines for students with IEPs. The i-Ready measure adjusts to what a student can do. If a student makes progress on the test, the test gets harder. If the Student has trouble with the test, the test gets easier. Testimony of Witness D.

3. i-Ready testing of the Student in math, administered on or about September 12, 2019, indicated that s/he was at the first-grade level in number and operations, measurement and data, geometry, and algebra and algebraic thinking. Subsequent i-Ready testing of the Student in math, administered on or about January 21, 2020, indicated that s/he was at the first-grade level in measurement and data and algebra and algebraic thinking, at the second-grade level in number and operations, and at the kindergarten level in geometry. P-10-1.

4. ANet testing of the Student in English language arts was administered on October 18, 2019. The Student scored approximately “20” on the measure. Subsequent ANet testing of the Student in English language arts was administered on January 10, 2020. The Student scored “57” on this measure. R-18 at 166.

5. For the 2020-2021 school year, the Student attended School A, a DCPS public school. The Student had difficulty with the academics at School A. Testimony of Petitioner. DCPS administered the i-Ready reading assessment for the Student on

approximately September 23, 2020. The Student scored “405.” R-18 at 166. ANet testing for the Student in math was administered on October 30, 2020. The Student scored “7” on the measure. R-18 at 167. ANet testing for the Student in English language arts was administered on January 10, 2021. The Student scored “0” on the measure. ANet testing for the Student in English language arts was again administered on March 15, 2021. The Student scored “19” on the measure. R-18 at 166.

6. A comprehensive psychological evaluation of the Student was conducted in March, April, and May 2021. The evaluation report, dated May 14, 2021, written by Witness B, found that the Student was declining in cognitive functioning. The Student’s cognitive functioning had been in the “low average” range when the Student was younger. The report found that the Student’s cognitive functioning had declined to the “very low” range, at the 0.1 percentile, though the Student’s “visualization” score fell within the average range. The report found that the Student demonstrated a severe language-based learning disability. The Student’s oral language, basic reading, written expression, and mathematics skills were deemed to be in the “extremely low” range compared to same-age peers. The Student did demonstrate adequate oral word fluency, and adaptive testing indicated that the Student had relative strength in practical skills. Full-time specialized instruction in all academic areas was recommended. P-1-10-13.

7. A Hearing Officer Determination (“HOD”) by Hearing Officer Peter Vaden was issued in regard to the Student on June 21, 2021. Hearing Officer Vaden found that DCPS had denied the Student a FAPE, and ordered that the Student’s IEP team, including the Student’s parent and the parent’s representatives, give “careful

consideration” to Witness B’s recommendation that Student be placed in a full-time special education setting. R-22.

8. An IEP meeting was held for the Student on June 24, 2021. The meeting was attended by the Student’s special education teacher, the Student’s parent, the parent’s counsel, an evaluator, a general education teacher, and Witness D. The IEP indicated that the Student struggled with self-regulation and often shut down and refused to complete assigned tasks, though the Student was less likely to shut down in a smaller environment. The IEP contained “Area of Concern” sections, including goals, in math, reading, written expression, “cognitive,” communication/speech and language, and emotional, social and behavioral development. The reading section of the IEP referenced the report of Witness B and i-Ready testing indicating that the Student was functioning at the first-grade level overall. The IEP indicated that the Student had been “basically” at the “RB” reading level since kindergarten, and that the Student progressed the most in second grade, when s/he ended on “Level C.” The Student’s reading goals concerned answering questions about independent level, familiar texts, understanding prefixes and suffixes, and reading and decoding unfamiliar instructional passages. The math section of the IEP referenced the testing of Witness B and recommended goals in solving double-digit addition and subtraction problems, addition and subtraction of whole numbers less than twenty, and five-step word problems calling for multiplication and addition of one-digit numbers. The written expression section of the IEP referenced the testing of Witness B and included goals in answering short-answer writing prompts and editing drafts with errors to apply grade-level English conventions (such as punctuation, commas, underlining, quotation marks, and italics for book titles). The IEP recommended twenty hours per

week of specialized instruction outside general education, with two hours per month of speech-language pathology and 120 minutes per month of behavioral support services, both outside general education. The IEP stated that, with a great deal of one-to-one support, the Student excels at project-based learning. P-2.

9. The Student's June 2021 IEP recommended the "SLS" classroom at DCPS. The SLS classroom has a variety of children who function better in a smaller environment. The IEP was based on discussions with the Student's teachers, i-Ready testing, student work, and related sources of data. At the time of the IEP, the Student relied on someone walking him/her through steps and needed constant reminders and teacher prompting. The goals in the IEP were written to allow the Student to "take hold" of his/her learning. Testimony of Witness D; R-10. The IEP's "Other Classroom Aids and Services" included preferential seating so that the Student could pay more attention, parallel teaching, sentence starters, checklists, chunked texts, highlighted texts, and related supports, all of which are generally available in the special education classroom. Testimony of Witness D; R-10 at 89.

10. i-Ready testing in reading was administered to the Student on June 22, 2021. The Student's score was "285," a decline from his/her "405" score from the test administered on September 23, 2020. i-Ready testing in reading, was again administered to the Student on September 9, 2021. The Student scored "324." R-18 at 166. i-Ready testing in math was administered to the Student on or about September 7, 2021. This testing indicated that the Student scored at the kindergarten level in number and operations, measurement and data, geometry, and algebra and algebraic thinking. P-10-5. ANet testing in English language arts was administered to the Student on October 25,

2021. The Student scored “0” on this measure. R-18 at 166. ANet testing in math was administered to the Student on October 25, 2021. The Student scored “23” on this measure. R-18 at 167.

11. The Student continued at School A for the 2021-2022 school year, in the SLS classroom. During the school year, the Student had difficulty decoding multisyllabic words and comprehension without scaffolding. The Student also required extended time to read text in its entirety, but was not shutting down as much as s/he used to. The Student benefitted from preferential seating, small-group instruction, sentence starters, chunked text, scaffolded text, and frequent prompting to check for understanding and to ensure that the Student remained focused and on task in class. P-3-10. During the 2021-2022 school year, the Student received pull-out behavioral support services. The sessions included an “emotions check-in” and typically some therapeutic activity. The Student was ordinarily positive and engaged in this group. Testimony of Witness E.

12. On November 5, 2021, a recovery plan was written for the Student to determine whether s/he needed additional assistance, given the impact of virtual learning during the COVID-19 pandemic. DCPS felt that the Student was making progress, so the IEP was not changed. Testimony of Witness D; R-14.

13. The Student’s IEP progress reports for the first reporting period of the 2021-2022 school year indicated progress in two of three math goals (one was not introduced), one of three reading goals (one was not introduced, one was just introduced), and no progress on written expression goals (both were just introduced). The cognitive goal was not introduced at this time. P-4-22-27.

14. The Student's progress reports for the second reporting period of the 2021-2022 school year indicated progress in all three math goals, two of three reading goals (one was just introduced), and two written expression goals. The cognitive goal was just introduced. P-4-30-36.

15. i-Ready testing in math, administered to the Student on or about February 4, 2022, indicated that s/he was at the first-grade level in number and operations, measurement and data, geometry, and algebraic thinking. These levels represented an improvement from testing conducted on September 7, 2021. P-10-5.

16. The Student's progress report for the third reporting period of the 2021-2022 school year indicated progress in all three math goals, with a note that the Student was doing well with addition of double-digit numbers. Progress was noted on all three reading goals, with an indication that the Student was progressing in phonics. Progress was also noted in both written expression goals, with an indication that the Student was progressing in his/her ability to edit words. The cognitive goal was again considered to be just introduced. P-4-39-45. The progress report for the third reporting period stated that the Student could read pre-primer and primer sight words. R-17 at 147. The report also stated that, in or about April, 2022, the Student was functioning at "Level L" in reading. P-4-52.

17. An IEP meeting was held for the Student on May 23, 2022, and was attended by the Student's parent, a general education teacher, a speech language therapist, Witness D, and Witness E. The IEP indicated that the Student worked hard in the SLS classroom and rarely shut down. The IEP contained "Area of Concern" sections, including goals, in math, reading, written expression, "cognitive," communication/speech

and language, and emotional, social and behavioral development. The math section indicated that the Student had made tremendous progress and was working on regrouping in addition and fractions. The first math goal, relating to solving addition and subtraction problems with regrouping, was repeated from the prior IEP. The second math goal related to solving two-step word problems involving addition, subtraction, multiplication, and division up to 100 with a calculator. The third math goal related to comparing numbers. The fourth math goal related to writing the area of figures such as triangles. The reading section of the IEP indicated that the Student was reading at “Level M,” had made progress in phonics patterns, and had showed more independence in spelling words and understanding more complex phonics patterns. Goals related to answering higher-order questions about an independent-level text, writing the meaning of words in a text containing two “highlighted domain specific words,” and progressing 1.5 years on a reading growth assessment. In written expression, the IEP indicated that the Student’s progress was slow. Goals related to answering oral or written prompts and correcting errors in a written grade-level sentence that contained four writing convention errors. Specialized instruction and related services did not change from the prior IEP. P-3.

18. i-Ready testing in math, administered to the Student on or about June 3, 2022, indicated that s/he was at the kindergarten level in number and operations, measurement and data, and geometry. The Student was at the first-grade level in algebra and algebraic thinking. These levels represented a decline from the i-Ready testing in math conducted on February 4, 2022. P-10-5.

19. The Student’s IEP progress report for the fourth reporting period of the 2021-2022 school year reflected the goals on the May 2022 IEP. Progress was noted on

two of three math goals, with the goal relating to solving multi-digit addition and subtraction problems “very close” to being mastered. Two goals from the May 2022 IEP were not introduced or just introduced. Progress was indicated on two of the three reading goals, with one goal considered to be just introduced. Progress was noted on the Student’s cognitive goal. P-4-47-53. The report stated that, according to i-Ready testing, the Student was functioning at close to a third-grade level. P-4-52.

20. Because of the Student’s difficulties, Petitioner applied in or about summer 2022, via lottery, for the Student to attend School D, which is relatively small. The Student was accepted to attend School D. Testimony of Petitioner. However, because School D could not implement the Student’s IEP, DCPS would not enroll the Student at the school. Petitioner was so notified and was told that the Student had to be withdrawn from the school by September 19, 2022. The Student began attending School B in or about September 2022. Testimony of Petitioner.

21. Reading Inventory testing of the Student administered on September 12, 2022, indicated that his/her Lexile score was 56, toward the bottom of the “Below Basic” range. P-13-1.

22. The Student’s report card for the first term of the 2022-2023 school year at School B indicated that s/he received a “B” grade in English, a “B-” in extended literacy, a “C+” in science, “C” grades in art, concepts of the world, and academic enrichment, and a “C-” in math. P-15-2.

23. At School B, the Student is in a classroom with approximately four other children. These students are mostly children with specific learning disabilities. The

Student usually completes assignments in the class with minimal prompting. Testimony of Witness D.

24. On October 26, 2022, Witness A observed the Student at School B. The Student was in a special education classroom with six children, in a whole group lesson with “a lot” of video instruction. A teacher, an assistant teacher, and a substitute teacher were in the classroom. The Student seemed engaged during the lesson. The Student was asked to read a paragraph but was unable to decode some of the words. The teacher did not remind the Student of phonics strategies. Thereafter, a math lesson was observed in another classroom for about eight minutes, during which the Student sat quietly and worked on subtraction problems while the main teacher left the room. Testimony of Witness A; P-8-2-4. The entire observation lasted for about an hour.

25. The classroom at School C, a non-public school, provides services to students with IEPs, including students with a wide range of disabilities. If the Student attended School C, s/he would be assigned to a classroom with seven students, a main teacher, an assistant teacher, and two paraprofessionals. Testimony of Witness C.

VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following: “Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement” provided that “the party requesting the due process

hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency.” D.C. Code Sect. 38-

2571.03(6)(A)(i). Accordingly, on the first issue in this case, relating to the change in the Student’s school, the burden of persuasion is on Petitioner. On the second issue in the case, the burden is on Respondent if Petitioner presents a *prima facie* case.

1. Did DCPS fail to provide Petitioner with Prior Written Notice, pursuant to 34 C.F.R. 300.503 and related authority, before changing the Student’s educational placement from School D to School B? If so, did DCPS deny the Student a FAPE?

Pursuant to 34 C.F.R. Section 300.503, written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or “educational placement” of the child or the provision of FAPE to the child. “Educational placement” is a broader term than “school” or “location of services,” and numerous schools could possibly provide a given student with the same “educational placement.” Lunceford v. District of Columbia, 745 F.2d at 1582-1583 (change from hospital to institutional setting for student with severe special needs changed “location of services” but did not change “educational placement”).

For Petitioner to prevail on this claim, Petitioner had to show that the Student attended School D and that the Student was transferred to School B without a Prior Written Notice. However, there is no evidence in the record that the Student ever attended School D. As a result, there can be no determination that Respondent improperly changed the Student’s educational placement from School D to School B, as Petitioner appeared to concede by failing to address this issue in opening and closing statements. This claim must be dismissed.

2. Did DCPS fail to provide the Student with appropriate IEP on June 24, 2021, and May 23, 2022? If so, did DCPS act in contravention of 34 C.F.R. 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), and related authority? If so, did DCPS deny the Student a FAPE?

Petitioner contended that these IEPs contained inappropriate goals and were not designed in a manner that allowed the Student to make meaningful progress.

The IDEA was enacted to “ensure that children with disabilities have available to them free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” M.G. v. Dist. of Columbia, 246 F. Supp. 3d 1, 7 (D.D.C. 2017) (citing 20 U.S.C. Sect. 1400(d)(1)(A); 34 C.F.R. Sect. 300.300). Toward that end, school districts must develop a comprehensive plan, known as an IEP, for meeting the special educational needs of each disabled student. 20 U.S.C. Sect. 1414(d)(2)(A). In Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the Court explained that an IEP must be formulated in accordance with the terms of the IDEA and “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Id. at 204.

The Court’s decision in Endrew F. v. Douglas County School District, 137 S. Ct. 988 (2017), elaborated on the doctrines established in Rowley. The Court stated that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that the IEP should be “appropriately ambitious,” a standard “markedly more demanding than the ‘merely more than de minimis’ test applied by the Tenth Circuit.” Id. at 1000-1002. Finding that “instruction that aims so low” would be tantamount to “sitting idly...awaiting the time when they were old enough to drop out,”

the Court held that IDEA “demands” a higher standard. Id. (citing to Rowley). The District of Columbia Circuit Court of Appeals has accordingly found that Endrew F. raised the bar on what counts as an adequate education under the IDEA. Z. B. v. District of Columbia., 888 F.3d 515, 517 (D.C. Cir. 2018). Still, the Endrew F. Court cautioned that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001.

June 24, 2021, IEP

The prior IEP for this Student was dated November 6, 2020. According to the HOD by Hearing Officer Vaden, this IEP recommended that the Student receive 8.5 hours of specialized instruction outside general education and 2.5 hours of specialized instruction inside general education, with behavioral support services for 120 minutes per month and speech-language pathology for two hours per month. Hearing Officer Vaden’s HOD found that the IEP of November 6, 2020, was inappropriate. He therefore ordered DCPS to carefully consider the evaluation and recommendation of Witness B, to the effect that the Student required a placement in a “full-time” special education setting to receive a FAPE.

The Student’s IEP dated June 24, 2021, which was issued only three days after Hearing Officer Vaden’s HOD, appears to have been responsive to the original HOD, as made clear by the Prior Written Notice issued on June 25, 2021. R-12 at 100. In the IEP of June 24, 2021, the IEP team changed the Student’s program considerably. The Student had been in a program that largely provided him/her with instruction in general education. The new IEP recommended a program where academic instruction was

provided in self-contained special education classes. In particular, the recommendation was to provide the Student with twenty hours of specialized instruction outside general education through DCPS's SLS program. The recommendation from Witness B was for special education classes in all academic areas, including reading, writing, math, and oral language skills. There is no evidence in the record to indicate that Petitioner disagreed with this recommendation, and it cannot be argued that Petitioner was unaware of her rights since her lawyer also attended the meeting. No witness for Petitioner testified that this IEP was inconsistent with Hearing Officer Vaden's HOD, or that the IEP was inconsistent with Witness B's evaluation of the Student.

Witness A's testimony suggested that the IEP itself stated that the Student needed more one-to-one instruction. While the IEP does indicate that the Student needed one-to-one instruction to excel at "project-based learning," there is nothing in the record to establish that "project-based learning" equates to reading instruction. While the IEP also stated that the Student needed extensive small-group and individualized support, educational support can be "individualized" without being delivered to a student in a setting with one teacher and one student. Indeed, virtually all students with IEPs are supposed to receive "individualized" instruction, since IEP means "Individualized Education Program."

Petitioner also claimed that the IEP goals, baselines, and objectives denied the Student a FAPE. An IEP must include a "statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that

result from the child's disability.” 34 C.F.R. Sect. 300.320 (a)(2)(i); J.B. by & through Belt v. D.C., No. 17-CV-1298 (CRC/GMH), 2018 WL 10399853, at *20 (D.D.C. May 8, 2018), report and recommendation adopted, 325 F. Supp. 3d 1 (D.D.C. 2018) (on standards for IEP goals).

Witness A testified that the June 24, 2021, IEP's reading goals were not designed to address to the Student's special education needs. Witness A said that the reading goals were focused on comprehension and suggested that the Student, who was reading on a kindergarten level, could not comprehend stories, paragraphs, or sentences. Witness A suggested that the Student was at such a basic level that comprehension goals were unrealistic at that point. Witness A said that the Student's IEP goals needed to instead focus on decoding, spelling, syllabification, sight words, vocabulary, and the like.

But the Student's reading goals were not limited to issues relating to comprehension. While the first goal, relating to reading an independent-level familiar literary text and answering questions with one verbal prompt, was arguably a comprehension goal, it did not require that the Student read materials that were beyond a kindergarten level. Moreover, the second reading goal did not relate to comprehension. Instead, this goal related to identification and understanding of prefixes and suffixes. Similarly, the third reading goal related to decoding selected words in unfamiliar instructional-level passages. Additionally, Witness A's suggestion that any reading comprehension goal would be pointless for the Student was not convincing. While the Student obviously has a severe reading disorder, the record indicates that the Student can read a paragraph, as Witness A herself indicated in her description of her observation of the Student on October 26, 2022. Moreover, Witness B, in his evaluation of the Student,

indicated that the Student needed strategies to build verbal reasoning, knowledge, and comprehension skills and that adults should ask the child specific questions about reading material to encourage comprehension. P-1-13.

Witness A also testified that the IEP goals were aligned to the Student's grade standards, suggesting that the goals required the Student to work on materials that were at his/her grade level. While the goals did reference common core standards, the record does not establish that these references suggested that the Student was meant to work on grade-level reading materials during the 2022-2023 school year. There is nothing in the record to establish that the Student was ever provided with grade-level reading materials, which would seem unlikely in any event, since the Student was placed in a self-contained special education class with modified instructional standards. It is noted that Petitioner did not clearly explain in her closing argument why the goals in this IEP were defective. As a result of the foregoing, this Hearing Officer must find that this IEP was reasonably calculated to provide the Student with a FAPE.

May 23, 2022, IEP

This IEP recommended the same educational services as those recommended in the June 24, 2021, IEP. DCPS argued that the IEP did not need to change because the Student made good progress during the 2021-2022 school year and the same program was therefore appropriate for the 2022-2023 school year. Witness D indicated that the Student was at a "Level M" in reading, and one of the progress reports in the record indicated that the Student was reading at close to a third-grade level. R-17 at 157.

However, there are inconsistencies in the record with respect to the Student's reading levels. The reading testing in the record does not suggest that the Student made

good progress in reading after the new IEP was created on June 24, 2021. ANet testing revealed that, on October 25, 2021, the Student scored a “0” in English language arts, even though the Student scored a “57” on the same measure on January 10, 2020. There is no reference to more recent testing in the record. In Reading Inventory testing conducted on September 12, 2022, the Student scored at Lexile level 56, near the bottom of the “below basic” range in reading. DCPS offered no explanation for these scores.

Additionally, DCPS did not include the Student’s most recent i-Ready reading test reports in the record, though it did include the Student’s i-Ready math test reports. Nor did DCPS reference the Student’s i-Ready reading test results in the IEP dated May 23, 2022, though Witness D said that the Student’s i-Ready testing was used to establish the baselines for his/her goals. It is noted that the Student’s i-Ready reading assessment was referenced in the June 24, 2021, IEP.

Moreover, as pointed out by Witness A, the Student’s IEP progress report for the second reporting period of the 2021-2022 school year indicated that the Student was reading pre-primer and primer sight words. According to the un rebutted testimony of Witness A, this indicated that the Student was reading at the pre-kindergarten and kindergarten level. There is no explanation of this reference in the record, which is entirely inconsistent with the reference in the next IEP progress report, to the effect that the Student was approaching the third-grade level in reading.

DCPS suggested that the i-Ready measure was inappropriately used for this Student, whose deficits would not show up in such a measure. However, when testifying about the Student’s IEP of June 24, 2021, Witness D said that DCPS used the i-Ready (in addition to other data) to write the Student’s IEP baselines. Witness D also testified that

the i-Ready test was developed to accommodate struggling students. Witness D said that if a student struggles with the measure, the i-Ready is designed to “bring it back a little,” meaning that the test would “adjust itself” to what the Student can do.

DCPS also argued that the Student has only been in the SLS program for one year, that the Student has made progress in his/her IEP goals, and that the Student has received relatively good grades for the first part of the 2022-2023 school year. All this is true. There is evidence that the Student has made progress in school during the 2021-2022 school year. However, there is also evidence that the Student has *not* made progress in school, particularly in reading, during the 2022-2023 school year. Given the conflicting evidence, it was incumbent upon DCPS to explain the drop in reading scores in the Student’s recent assessments and the inconsistencies in the Student’s progress reports. No clear explanation was offered for these inconsistencies. Moreover, no teacher from School B was called as a witness to describe the Student’s current reading levels or explain how the Student can be characterized as a third-grade-level reader if the Student can only read primer-level words and scored at the bottom of the “below basic” level on Reading Inventory testing.

It is noted that the record indicates that the Student does respond to intensive reading interventions, and there is nothing in the record to suggest that the Student cannot improve from the kindergarten level to the first-grade level, which is the level suggested by the Student’s Reading Inventory score. P-13. Indeed, the numbers in the record suggest that the Student read better in 2020 than s/he does now. The Student’s score of 405 on the i-Ready reading test of September 23, 2020 (more than two years ago), seems to be the Student’s highest score in i-Ready reading testing administered by DCPS.

Similarly, ANet testing in the record indicates that the Student's best English language arts scores occurred on January 10, 2020, almost three years ago. DCPS did not show that the preponderance of the evidence establishes that its decision to keep the Student's program exactly the same, without any additional reading intervention, was appropriate under the circumstances.

Petitioner also argued that the IEP reading goals were defective, pointing to the testimony of Witness A, who contended that these goals were defective for the same reasons as described above with respect to the June 24, 2021, IEP. As with the IEP of June 24, 2021, this Hearing Officer is not convinced that the problem with the IEP of May 23, 2022, was the goals. The goals in this IEP related to answering higher-order questions about an independent-level text, writing the meaning of words in a text containing two "highlighted domain specific words," and progressing 1.5 years on a reading growth assessment. These were new goals, and there is no evidence or suggestion in the record that these goals were unclear, unmeasurable, or specifically geared to students who were reading on grade level. While the first reading goal was arguably about comprehension, because it asked the Student to answer higher-order questions, this goal also allowed the Student to use a scribe or speech-to-text software to answer the questions. Witness A testified that it was inappropriate to use a scribe to meet goals, and that goals should be accomplished without accommodations, but Petitioner did not so argue during closing. Witness A also did not clearly and specifically explain why the second reading goal, which related to understanding the meaning of two "highlighted, domain-specific words," was about reading comprehension. In addition, Witness A did not clearly and specifically object to the third goal, which was written to encourage the

Student to advance 1.5 years during the 2022-2023 school year from his/her beginning-of-year reading level.

Still, based on the above, this Hearing Officer must find that DCPS failed to meet its burden to show that the May 23, 2022, IEP offered the Student a FAPE.

RELIEF

As relief, Petitioner seeks placement for the Student at School C. When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to “grant such relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confers broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.” If petitioners meet their burden of persuasion (D.C. Code Sect. 38-2571.03(6)(A)(ii), the school district may be required to pay for educational services obtained for a student by the student’s parent, if the services offered by the school district are inadequate or inappropriate, the services selected by the parent are appropriate, and equitable considerations support the parents’ claim, even if the private school in which the parents have placed the child is unapproved. Florence County School District Four et al. v. Carter by Carter, 510 U.S. 7 (1993). Courts must consider “all relevant factors,” including the nature and severity of the student’s disability, the student’s specialized educational needs, the link between those needs and the services offered by the private school, the placement’s cost, and the extent to which the placement represents the least restrictive educational environment. Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005).

While a witness was called from School C to describe its program, there is little to no testimony or evidence in the record to the effect that the services offered by School C would address the Student's issues in reading any better than the program at School B has. The Witness from School C said that the school uses certified teachers and provides services to a wide range of students with different disabilities. But School B provides the same services for the Student. There is nothing in the record to establish that the class size at School C would be any smaller than the class size at School B. There is also nothing convincing in the record to establish that the Student would receive instruction in a different methodology than the approach that School B has employed, or that School C has a special program in reading that would help the Student learn. Nor does the record establish that School C would provide the Student with individual drilling, or a one-to-one reading class, or instruction by a reading teacher who is specifically trained to work with students who have the same kind of reading issues as the Student. As a result, the request for placement at School C must be denied.

Petitioner also seeks 500 hours of compensatory education as relief. Hearing officers may award "educational services to be provided prospectively to compensate for a past deficient program." Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). The award 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. Id., 401 F. 3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "qualitative, fact-intensive" inquiry used to craft an award "tailored to the unique needs of the disabled student"). A petitioner need not "have a perfect case" to

be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011).

Petitioner's request for 500 hours of compensatory education is largely premised on a finding of FAPE denial based on the June 24, 2021, IEP. Petitioner claimed that the Student was denied a FAPE for the entirety of the 2021-2022 school year, in addition to the 2022-2023 school year (to date). This amounts to FAPE denial over approximately a thirteen-to-fourteen month period. However, this Hearing Officer did not find that the June 24, 2021, IEP was inappropriate. The finding was only that the May 23, 2022, IEP was inappropriate. This means that the Student has been denied a FAPE over the course of approximately four months, including parts of May and June, 2022, and the period between the beginning of the 2022-2023 school year and the present date. While Witness A's calculation of the amount of compensatory education was reasonable in light of the relatively long time period at issue, this Hearing Officer must reduce the amount of the award so that it reflects the actual time period of FAPE denial. Accordingly, the Student will be awarded 150 hours of compensatory tutoring, to be provided by a certified special education teacher at a reasonable and customary rate in the community.

VII. Order

As a result of the foregoing, the following is ordered:

1. DCPS shall pay for 150 hours of compensatory tutoring on behalf of the Student, to be provided by a certified special education teacher at a reasonable and customary rate in the community;
2. All other requests for relief are denied.

Hearing Officer Determination
Michael Lazan, Hearing Officer
Case # 2022-0155

Dated: December 13, 2022

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
OSSE Division of Specialized Education
[REDACTED]/DCPS
[REDACTED]/DCPS

VIII. Notice of Appeal Rights

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

Dated: December 13, 2022

Michael Lazan
Impartial Hearing Officer