

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, NE, 3rd Floor
Washington, DC 20002

PETITIONER, on behalf of)	Date Issued: December 9, 2024
STUDENT, ¹)	
)	Hearing Officer: Peter B. Vaden
Petitioner,)	
v.)	Case No: 2024-0163
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Dates:
Respondent.)	November 25 and 26, 2024

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner GRANDMOTHER under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the Petitioner seeks relief from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied STUDENT a free appropriate public education (FAPE) by not offering him/her an appropriate initial Individualized Education Program (IEP) on May 9, 2024.

Petitioner’s Due Process Complaint, filed on September 4, 2024, named DCPS as Respondent. The undersigned hearing officer was appointed on September 5, 2024. The parties met for a Resolution Session Meeting on September 18, 2024 and did not resolve the issues in dispute.

¹ Personal identification information is provided in Appendix A.

On September 18, 2024, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. The due process hearing was set for November 25 and 26, 2024. On November 14, 2024, I granted DCPS' continuance motion, opposed by Petitioner, to extend the final decision due date to December 20, 2024 in order to accommodate the parties' first mutually available dates to hold the due process hearing.

The hearing, which was open to the public, was convened before the undersigned impartial hearing officer on November 25 and 26, 2024. With Grandmother's consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. Grandmother appeared online for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL. Petitioner's Counsel made an opening statement.

Grandmother testified and called as additional witnesses EDUCATIONAL ADVOCATE and INDEPENDENT SCHOOL COUNSELOR. DCPS called as witnesses DIRECTOR OF SPECIALIZED INSTRUCTION, PHYSICAL EDUCATION TEACHER, SCHOOL SOCIAL WORKER, and OCCUPATIONAL THERAPIST. Petitioner's Exhibits P-1 through P-12, P-15 through P-17, P-19, P-20, P-22, and P-26 were admitted into evidence, including Exhibits P-15, P, 19, P-20, P-22, and P-26 admitted over DCPS' objections. I sustained DCPS' objections to Exhibits P-18, P-21 and P-23. Petitioner withdrew Exhibits P-13, P-14, P-24 and P-25. DCPS Exhibits R-1 through R-13 were all

admitted into evidence, except for of Exhibits R-2 and R-2A. Exhibits R-9 and R-12 were admitted over Petitioner's objections.

At the close of Petitioner's case-in-chief, DCPS' Counsel made an oral motion for a directed finding in the District's favor on all issues. For the reasons stated on the record, I denied DCPS' motion. On November 26, 2024, after the close of all of the evidence, Petitioner's Counsel and DCPS' Counsel made oral closing arguments. There was no request to file written closings.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and 5A DCMR § 3049.1.

ISSUE AND RELIEF SOUGHT

The issue raised by Petitioner against DCPS is as follows:

Whether DCPS denied a FAPE to the student, who was allegedly severely injured in an [REDACTED] shooting incident, by failing to provide the student with an appropriate IEP on or about May 9, 2024, or thereafter, because the IEP, 1) failed to contain sufficient hours of specialized instruction considering the results of Student's recent psychological evaluation; 2) failed to include sufficient Behavioral Support Services and/or counseling hours; 3) failed to provide direct Occupational Therapy Services; 4) failed to include Adaptive Physical Education; and/or 5) failed to adequately address Student's need for Assistive Technology.

For relief, the Petitioner requests that the hearing officer order DCPS to conduct an Adaptive PE evaluation and updated AT assessment for Student, and order DCPS to amend Student's IEP to provide for increased Specialized Instruction outside of the general education setting, direct Occupational Therapy, increased Behavior Support Services and Adaptive PE. In addition, Petitioner requests that DCPS be ordered to

make credit recovery available to Student and to provide Student with compensatory education for 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 youth, resides with Grandmother in the District of Columbia. Testimony of Grandmother.
2. Student is eligible for special education as a student having an Other Health Impairment (OHI). Student's was initially determined eligible for special education by DCPS on April 9, 2024. Exhibit R-7.
3. For the 2020-2021 and 2021-2022 school years, Student was enrolled at RELIGIOUS SCHOOL, a nonpublic school. Testimony of Grandmother.
4. In [REDACTED] Student was severely injured in a Washington, DC [REDACTED] shooting incident. Student sustained a gunshot wound to the left arm and flank which resulted in a T12 AIS B spinal cord injury with right hepatic and renal lacerations, multiple L1 fractures, and right psoas and retroperitoneal hematomas. As a result, as of March 2024, Student was prescribed medications and had to catheterize him/herself intermittently to urinate. Student had been diagnosed with chronic neuropathic pain and was using a wheelchair due to this injury. Exhibits P-5, P-6, Testimony of Grandmother.
5. Following the [REDACTED] shooting incident, Student was hospitalized

for about 1½ years and then went to rehabilitation. When Student completed therapy after the [REDACTED] shooting incident, Religious School provided Student some online classes, but Religious School administrators eventually realized the school could not accommodate Student. In September 2023, Grandmother sought to enroll Student in CITY SCHOOL 1. Student attended City School 1 for only 1 to 3 days in January 2024. Due to safety concerns at City School 1, Grandmother obtained a safety transfer for Student to CITY SCHOOL 2. Student had his/her first in-seat day at City School 2 on January 31, 2024. Testimony of Grandmother, Exhibit R-4.

6. In December 2023, Student was referred for an initial IDEA eligibility evaluation at City School 1 at the request of Grandmother. Pending the special education evaluation, on December 11, 2023, Student was found eligible for a Section 504 Plan (Section 504 of the Rehabilitation Act of 1973), as having an “Other Disabilities” disability. Exhibit R-5. It had been planned for Student to undergo an initial evaluation at City School 1 for eligibility of special education services. Because Student attended City School 1 for only 1 to 3 days, and because information on his/her academic progress and previous educational data was not available, the City School 1 evaluation team reported that they did not have enough information on the student to complete the eligibility evaluation. Exhibits P-4, P-5, P-6. A due diligence psychological report was completed on February 3, 2024. Updated cognitive, academic, behavioral, and social functioning was not obtained before Student transferred to City School 2. Exhibit R-4.

7. In March 2024, DCPS completed an initial psychological evaluation, an initial OT evaluation and a comprehensive PT evaluation of Student. Exhibits P-7, P-8, P-9.

8. In the Comprehensive Psychological Evaluation report, the City School 2 school psychologist reported, *inter alia*, that Student, his/her father and teachers reported varied areas of concern about his/her behavioral and emotional functioning. Student reported that he/she had significant depressive feelings and also feelings of anxiety and social stress. Student was observed to be withdrawn at times by his/her father and the English teacher. In Geometry, his/her teacher indicated that Student had some difficulty sustaining his/her attention, comprehending the work given to him/her, and adapting to changing situations. The cognitive assessment results indicated a significant discrepancy between Student's nonverbal and verbal abilities, scoring in the Significantly Below Average range in verbal abilities. Academically, on the educational achievement assessment, Student attained Below Average scores in Letter & Word Recognition and Spelling and very low scores in Reading Comprehension, Math Concepts & Application, Math computation, and Written Expression. The school psychologist recommended that Student receive classroom accommodations and support via an IEP Plan to help promote continued success in the school setting, under the classification of Other Health Impairment (OHI), and that Student receive academic support in the areas of Reading Comprehension, Math, and Written Expression. Exhibit R-4.

9. In the March 26, 2024 Comprehensive Physical Therapy Evaluation Report, the DCPS Physical Therapist reported, *inter alia*, that on the Wheelchair Skills Test, Student could perform all of the assessed items; that functionally at school, Student was able to navigate hallways, classroom space, elevators and ramps independently; that Student was able to maintain his/her body position when engaged in desktop activities; that Student could open and close internal doors independently and, per self and parental report, could enter and exit a car independently. During the evaluation, Student presented with functional active range of motion, muscle tone, endurance, and strength in his/her upper extremity musculature and trunk musculature for school related gross motor tasks. It was noted that Student had extended time to make transitions between classes to avoid crowded hallways. It was noted that Student did have difficulty opening and passing through external doors of the school building. The evaluator reported that using accommodations (*i.e.* extra time for transitions, access to a chair to elevate his/her legs when needed during classwork, and access to an elevator) and with continued monitoring and adaptations as needed, Student could safely access the school environment. Exhibit P-8.

10. Occupational Therapist conducted a comprehensive occupational therapy (OT) evaluation of Student in March 2024. Occupational Therapist reported in her March 25, 2024 report that Student used his/her wheelchair to navigate around the school building and could follow simple commands throughout the academic day; that in terms of handwriting, Student utilized a right-handed dynamic tripod grasp, had an

open workspace while writing and produced legible written work; that Student inconsistently used his/her left hand for bilateral tasks suggesting hand weakness and guarding; that Student was able to navigate several computer programs independently; that Student's performance on the Beery Visual-Motor Integration (VMI) assessment indicated scores in the Below Average range for overall visual-motor integration and visual perception skills, and in the Very Low range for motor coordination; that Student's inconsistent use of his/her left-hand strength to stabilize the page impacted his/her ability to complete the items on the motor coordination test with accuracy and that Student demonstrated slight fine motor weakness in his/her upper body due to injury and challenges with visual-motor skills; that Student produced legible written work with inconsistent inter-spacing; that Student presented with inconsistent bilateral coordination skills secondary to left, upper body fine motor weakness; that Student was independent with navigating the school environment and following directions, and that he/she successfully completed classroom assignments, with some accommodations. Occupational Therapist reported that while these challenges existed for Student, they were perceived to have minimal impact on Student's overall function and participation in the school setting. Exhibit R-6.

11. On April 9, 2024, the City School 2 eligibility team determined that Student was eligible for special education and related services as a student with an OHI disability. Exhibit R-7.

12. In her September 4, 2024 due process complaint, Grandmother alleged that on or about February 26, 2024, an Administrative Due Process Complaint was filed on behalf of Student to address DCPS' alleged failure to timely and comprehensively evaluate the student, resulting in a Settlement Agreement executed by Grandmother and DCPS on or about April 23, 2024. Part of the settlement terms included the provision of independent counseling and tutoring services for Student. As of the due process hearing date, compensatory counseling and tutoring services were being provided by Independent School Counselor's company. Tutoring had just started prior to the due process hearing. Testimony of Independent School Counselor.

13. Student's IEP team at City School 2 convened online to develop Student's initial IEP on May 9, 2024. Grandmother, Student's father, Grandmother's attorney and Educational Advocate participated in the IEP team meeting. Exhibit R-9, Testimony of Educational Advocate. The IEP team identified Reading, Mathematics, Written Expression, Emotional-Social-Behavioral Development and Motor Skills/Physical Development as IEP Areas of Concern for Student. The team determined that Student should receive 6 hours per week of Specialized Instruction inside general education, 8 hours per week of Specialized Instruction outside general education, 2 hours per month of Behavioral Support Services and 30 minutes per month of OT consultation services. The IEP also provided for a host of other classroom aids and services and accommodations. Exhibit P-12. The May 9, 2024 IEP team also decided to provided 45 minutes per months of Adaptive Physical Education (Adaptive

PE) consultation services, but these services were unintentionally omitted from the IEP documents. Physical Education Teacher has provided the Adaptive PE services per the IEP team's decision. Testimony of Physical Education Teacher.

14. At the May 9 2024 IEP team meeting, the IEP team agreed to a request by the family's attorney to increase Student's IEP Behavioral Support Services from 60 minutes to 120 minutes per month. The City School 2 IEP team did not agree to the family's requests for all academic classes for Student to be outside of general education, for direct OT services or for direct Adaptive PE instruction. Exhibit P-15.

15. At the end of the first term of the 2024-2025 school years, Student had accrued 13 absences and 2 tardies. Many of the absences were unexcused. Student's grades for the term were all F's except for a C in U.S. History and L's (Late entries) in Algebra and Physics. Exhibit P-16.

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, Grandmother 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

Did DCPS deny a FAPE to Student by failing to provide him/her with an appropriate IEP on or about May 9, 2024, or thereafter, because the IEP 1) failed to contain sufficient hours of specialized instruction considering the results of Student's recent psychological evaluation; 2) failed to include sufficient Behavioral Support Services and/or counseling hours; 3) failed to provide direct Occupational Therapy services; 4) failed to include Adaptive Physical Education and/or 5) failed to adequately address Student's need for Assistive Technology.

In [REDACTED] Student was the victim of a tragic shooting which resulted in his/her missing some 1½ years of school and caused Student to be a wheelchair user. At the time of the 2022 shooting, Student was enrolled in Religious School. In the fall of 2024, Grandmother enrolled Student in DCPS and sought special education services for him/her. DCPS started Student's eligibility evaluation at City School 1, but did not complete the initial eligibility evaluation until April 2024, after Student transferred to City School 2. According to Petitioner's due process complaint, in February 2024, Grandmother filed a prior complaint, alleging that DCPS had failed to timely and comprehensively evaluate Student. That complaint was resolved with a Settlement Agreement reached on or about April 23, 2024.

The current complaint concerns the appropriateness of DCPS' initial May 9, 2024 IEP for Student. Grandmother contends that the IEP was not appropriate because the IEP did not offer sufficient hours of Specialized Instruction and Behavioral Support Services; did not provide direct Occupational Therapy (OT) or Adaptive Physical Education (Adaptive PE) services and does not adequately address Student's Assistive Technology (AT) needs. For the reasons explained below, I find that DCPS has met its burden of persuasion on the appropriateness of the May 9, 2024 IEP.

IEP Appropriateness

U.S. District Judge Rudolph Contreras explained in *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 (D.D.C. 2018), how a court or a hearing officer must assess an IEP:

In reviewing a challenge under the IDEA, courts conduct a two-part inquiry: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206–07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (footnotes omitted).

Middleton at 128. See, also, *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 996 (2017). Aside from the alleged untimeliness of DCPS' initial eligibility determination for Student, resolved in the April 23, 2024 settlement agreement, Grandmother does not allege that DCPS did not comply with IDEA procedures in developing the May 9, 2024 IEP. Therefore, I turn to the second, substantive, prong of

the *Rowley* inquiry. Was the May 9, 2024 IEP reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances? *See Andrew F.* at 996.

In *A.D. v. Dist. of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570, (D.D.C. Mar. 8, 2022), U.S. District Judge Beryl Howell explained the IDEA’s IEP requirement:

A “free and appropriate public education,” or “FAPE,” is delivered by local education authorities through a uniquely tailored “ ‘individualized education program,’ “ or “IEP.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 993-994 (2017); *see also* 20 U.S.C. §§ 1401(9)(D), 1412(a)(1). To be IDEA-compliant, an IEP must reflect “careful consideration of the child’s individual circumstances” and be “reasonably calculated to enable the child to receive educational benefits,” *Andrew F.*, 137 S. Ct. at 994, 996 (cleaned up), “even as it stops short of requiring public schools to provide the best possible education for the individual child,” *Z.B. v. District of Columbia*, 888 F.3d 515, 519 (D.C. Cir. 2018). . . . An IEP failing to satisfy these statutory directives may be remedied through an IDEA claim to the extent the IEP “denies the child an appropriate education.” *Z.B.*, 888 F.3d at 519.

A.D., 2022 WL 683570 at *1. “[A]n IEP’s adequacy thus ‘turns on the unique circumstances of the child for whom it was created,’ and a reviewing court should defer to school authorities when they ‘offer a cogent and responsive explanation’ showing that an IEP ‘is reasonably calculated to enable the child to make progress appropriate in light of [her] circumstances.’” *A.D.* at *7, quoting *Andrew F.*, *supra*, 137 S. Ct. at 1001-02.

The proposed IEP also must comply with the IDEA’s requirement that students “be educated in the least restrictive environment possible.” *Leggett*, 793 F.3d at 74. As the D.C. Circuit recently pronounced,

The [IDEA], as noted, requires states to ensure that:

[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and special

classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A). That command to “mainstream” disabled students is a central feature of the IDEA’s design.

K.N. v. Bridges Pub. Charter Sch., 113 F.4th 970, 982 (D.C. Cir. 2024) (Citation omitted). The measure and adequacy of an IEP can only be determined as of the time it is offered to the student. *See, e.g., Jones v. District of Columbia*, No. 115CV01505BAHGMH, 2017 WL 10651264, at *10 (D.D.C. Jan. 31, 2017), *report and recommendation adopted*, No. CV 15-1505 (BAH-GMH), 2017 WL 10651306 (D.D.C. Feb. 22, 2017) (Appropriate question is whether the IEP was reasonably calculated to confer educational benefit based on the record at the time it was developed.)

Specialized Instruction Hours

At the May 9, 2024 IEP development meeting, Grandmother’s attorney requested that Student be placed in a self-contained special education setting for all academic classes. The attorney’s justification was that in light of Student’s low cognitive and academic achievement scores on the DCPS psychological evaluation, as well as Student’s physical needs, he/she needed to be in a self-contained setting at City School 2.

At the due process hearing, Petitioner’s expert, Educational Advocate, opined that the May 9, 2024 IEP was inappropriate, considering Student’s very low assessment scores in Reading, Writing and Mathematics on the DCPS psychological assessment. DCPS’ expert, Director of Specialized Instruction, explained that under the IEP, Student

was placed in the self-contained setting for English and math, where Student needed more intensive support, but that Student enjoyed his/her classes with general education peers. She opined that it was very appropriate to place Student in the inclusion setting, with special education support, for social studies and math.

I found Director of Specialized Instruction's opinion more persuasive. As Director of Specialized Instruction emphasized, Student's IDEA disability, Other Health Impairment, is based on his/her medical condition resulting from the shooting incident – not on a learning disability. Director of Specialized Instruction explained that due to Student's lengthy absences from school following the shooting, to find that Student had a specific learning disability would be difficult to justify. *See* 34 C.F.R. § 300.309(b) (To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, eligibility team must consider data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings.) It is notable that prior to the [REDACTED] incident, Student had not been identified as a student with a disability. Grandmother testified that in the 2021-2022 school year at Religious School, Student did well.

With regard to physical mobility, the March 2024 OT assessment indicated that on the Wheelchair Skills Test, Student could perform all the assessed items and that functionally, at school, Student was able to navigate hallways, classroom space, elevators and ramps independently.

Being mindful of the IDEA's command to "mainstream" disabled students, *see K.N., supra*, and according appropriate deference to the decisions of the City School 2 professionals, I conclude that DCPS has provided a cogent and responsive explanation for the decision of the May 9, 2024 IEP team to provide Student 14 hours per week of Specialized Instruction, of which 8 hours per week would be provided in the self-contained setting. *See, e.g., T.T. v. District of Columbia*, 2007 WL 2111032, 9 (D.D.C. 2007) (DCPS personnel had special education expertise requiring deference.) DCPS has met its burden of persuasion on the appropriateness of this decision.

Behavioral Support Services

At the May 9, 2024 IEP team meeting, the City School 2 representatives agreed to the family's request to provide 120 minutes per month of Behavioral Support Services, doubling the school's draft proposal to provide 60 minutes per month of such services. There was no disagreement with that decision at the IEP team meeting. In her hearing testimony, Petitioner's expert, Educational Advocate, opined that the initial IEP did not provide sufficient behavior support. However, she did not state that view at the May 9, 2024 meeting. In her testimony, DCPS' expert, School Social Worker, disagreed that the initial IEP Behavioral Support Services were insufficient for Student and opined that 120 minutes per month was appropriate. School Social Worker regularly provides counseling services to Student and is in a better position than Educational Advocate to understand Student's social-emotional needs. I found her testimony on this issue more persuasive and I find that DCPS has met its burden of persuasion that the provision of

120 minutes per month of Behavioral Support Services in the May 9, 2024 IEP was appropriate.

Direct Occupational Therapy Services

The May 9, 2024 IEP provided for Student to receive 30 minutes per month of Occupational Therapy (OT) consultation services and did not provide for direct OT services. Petitioner alleges that it was inappropriate not to provide for direct OT services for Student in the IEP. DCPS' expert, Occupational Therapist, explained in her hearing testimony that she had recommended to the IEP team that the initial IEP include consultation OT services. Her reasoning was that Student had some slight difficulty with left-side weakness, and consultation services would educate staff at City School 2 about Student's condition and allow the team to monitor Student when he/she started at the school. However, Occupational Therapist testified that the data, as well as her clinical findings, did not support direct OT services for Student. Petitioner did not offer OT expert testimony at the due process hearing and I found Occupational Therapist's testimony credible. I find that DCPS has met its burden of persuasion that it was appropriate not to provide for direct OT services in the May 9, 2024 IEP.

Adaptive Physical Education

At the May 9, 2024 IEP meeting, the LEA representative stated that Student did not qualify for direct services for Adaptive Physical Education (Adaptive PE). Petitioner's attorney responded at the IEP meeting that the family was in disagreement with Student not having direct Adaptive PE. At the due process hearing, DCPS' expert,

Physical Education Teacher, testified that at the May 9, 2024 IEP team meeting, the school team had agreed to 45 minutes per month of Adaptive PE consultation services. This provision for Adaptive PE consultation services was unintentionally omitted from Student's final IEP document. However, the consultation services have been provided, in the form of the Adaptive PE teacher going into the PE class to speak to the teacher and provide suggestions on how to integrate Student into PE class.

Physical Education Teacher testified that Student definitely did not want to be pulled out of class for Adaptive PE. This expert opined that the consultation services were very appropriate and beneficial for Student. Petitioner did not offer expert testimony on this issue. I find that DCPS has established that the May 9, 2024 IEP team's decision to provide consultation services for Adaptive PE, and not provide for direct PE services in the IEP, was appropriate for Student. I will order DCPS to ensure that Student's IEP is corrected to reflect the IEP team's decision to provide 45 minutes per month of Adaptive PE consultation services.

Assistive Technology

Petitioner alleges that the May 9, 2024 IEP, which stated that Assistive Technologies (AT) devices and services were not needed for Student, did not adequately address Student's need for Assistive Technology. AT devices and services must be funded by the District and be provided to a student if the IEP Team determines they are required as part of the student's special education, related services or supplementary

aids or services. *See* U.S. Department of Education, *Myths and Facts Surrounding Assistive Technology Devices and Services*, Page 4-5 (January 2024).

At the due process hearing, neither party called an AT expert to testify. Petitioner's special education expert, Educational Advocate, opined in her testimony that AT could enhance Student's educational achievement, organizational skills and social acceptance and promote his/her independence. DCPS' expert, Director of Specialized Instruction, opined in her testimony that Student had access to sufficient AT support on the applications already installed on the electronic devices provided by DCPS to all City School 2 students. Occupational Therapist similarly testified that from the OT viewpoint, she did not see a need for individual AT for Student because a lot of assistive technology was already provided as technology supports to all students across the District.

I found more credible DCPS' witnesses opinions that Student did not need AT services or devices on his/her initial IEP. Petitioner's witnesses did not identify any specific additional AT services or devices, not already available to Student, which he/she required as part of his/her special education, related services or supplementary aids or services. I find that DCPS met its burden of persuasion that the IEP team's decision was appropriate that Student did not require AT devices and services on his/her May 9, 2024 IEP.

In summary, I conclude that as to the IEP concerns raised by Petitioner in this proceeding – sufficiency of IEP Specialized Instruction hours and Behavioral Support

services, and Student's alleged need for direct Occupational Therapy services, direct Adaptive Physical Education and Assistive Technology – DCPS met its burden of persuasion that as of the time the May 9, 2024 IEP was offered to Student, the IEP was appropriate.

ORDER

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

ORDERED:

1. All relief requested by the Petitioner herein is denied;
2. DCPS shall ensure that Student's Individualized Education Program document is promptly corrected to reflect the decision of the May 9, 2024 IEP team providing for 45 minutes per month of consultation Adaptive Physical Education services.

Date: December 9, 2024

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