

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

PETITIONER, on behalf of STUDENT, ¹)	
)	Date Issued: February 27, 2018
Petitioner,)	
)	Hearing Officer: Peter B. Vaden
v.)	
)	Case No: 2017-0333
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	
)	Hearing Dates: February 1 and 8, 2018
Respondent.)	
)	Office of Dispute Resolution, Room 111 Washington, D.C.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (D.C. Regs.).

Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on December 14, 2017, named District of Columbia Public Schools (DCPS) as Respondent. The undersigned hearing officer was appointed on December 15, 2017. In her due process complaint, Petitioner alleges that DCPS has failed to comprehensively evaluate Student and that DCPS denied Student a free appropriate public education (FAPE) by failing to provide appropriate Individualized Education Programs (IEP) and educational placements for the 2016-2017 and 2017-

¹ Personal identification information is provided in Appendix A.

2018 school years. Petitioner and DCPS met for a resolution session on January 12, 2018 and were not able to reach an agreement. On January 5, 2018, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters. The due process hearing was convened before this Impartial Hearing Officer on February 1 and 8, 2018 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared at the hearing, by telephone on the first day and in person for the second day. Petitioner was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by SPECIAL EDUCATION COORDINATOR and by DCPS' COUNSEL.

Petitioner, MOTHER, testified and called as additional witnesses, INDEPENDENT AUDIOLOGIST, EDUCATIONAL ADVOCATE 1, INDEPENDENT PSYCHOLOGIST, EDUCATIONAL ADVOCATE 2, INDEPENDENT OT, and EDUCATIONAL ADVOCATE 3. DCPS called as witnesses DCPS OT, SCHOOL PSYCHOLOGIST 1, SPEECH PATHOLOGIST and Special Education Coordinator. Petitioner's Exhibits P-1 through P-65 were admitted into evidence without objection, except for Exhibits P-48 and P-50 admitted over DCPS' objections and Exhibit P-47 to which DCPS' objection was sustained. DCPS' Exhibits R-1 through R-17 were admitted into evidence without objection. I sustained Petitioner's objection to Exhibit R-18. Counsel for the respective parties made opening statements and closing arguments. There was no request to file post-hearing written briefs.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The following issues for determination were certified in the January 5, 2018

Prehearing Order:

- Whether DCPS denied the student a free appropriate public education (FAPE) by failing to provide the student with an appropriate IEP, location of service, and/or placement during the 2016-2017 school year at meetings on or about October 7, 2016, November 22, 2016 and/or December 20, 2016 – in that the IEPs developed failed to provide the student with occupational therapy services and/or any services to address the ongoing bullying situation Student had allegedly encountered since enrolling in CITY SCHOOL 2 in September 2016; the current location had been unable to meet this student’s needs; and the IEPs do not contain updated adaptive goals, transition goals or services, and/or specify whether this student was on a diploma or certificate track;

- Whether DCPS denied the student a FAPE by failing to provide the student with an appropriate IEP, location of service, and/or placement during the 2017-2018 school year and/or following the November 27, 2017 MDT/IEP meeting – in that the finalized IEP provided by the school following the meeting did not contain all of the agreed upon changes, and the parent objected to the IEP based on the fact that 1) it did not include speech or communication goals or services despite the student’s deficits and the fact that Student was placed in a Communication & Education Support (CES) program; 2) it did not include occupational therapy services despite recommendations for such services in the independent evaluation for the student; 3) it maintained the student’s placement in a diploma track program, which is not appropriate for the student given the student’s cognitive abilities and achievement levels; 4) the academic goals were not appropriate in that the student required more functional academic goals to address Student’s deficits and needs; 5) the adaptive goals were not adequate; 6) there were no behavioral support services (BSS) goals, despite an agreement that this service would be added to the student’s program; 7) the IEP was not based on comprehensive evaluations and 8) and the transition plan was inadequate;

- Whether District of Columbia Public Schools (DCPS) failed to comprehensively evaluate or re-valuate the student by failing to conduct an adaptive assessment or vocational evaluation.

For relief, the parent requests that the hearing officer order DCPS to fund an

independent vocational evaluation and adaptive assessment for this student; to immediately revise the student's IEP to include occupational therapy services, speech and language services, BSS goals, play therapy, revised academic goals, adaptive goals, and transition goals; and to provide the student with an alternate location of services capable of implementing the student's IEP and/or fund the private placement of the student with transportation. Petitioner also seeks an award of compensatory education for the denials of FAPE alleged in her complaint.

FINDINGS OF FACT

After considering all of the evidence admitted at the due process hearing in this case, as well as the arguments of counsel, this hearing officer's findings of fact are as follows:

1. Student resides with Mother in the District of Columbia. Student currently attends City School 2. Testimony of Mother. Student is eligible for special education and related services as a student with an Autism Spectrum Disorder (ASD).

Exhibit R-3.

2. Student was diagnosed at age 5 with Autism. Exhibit P-20. Since being diagnosed, Student has had a DCPS IEP. Exhibit P-16. Student has been placed since fall 2016 in the Communication & Education Support (CES) classroom at City School 2 where Student is now in the GRADE. Hearing Officer Notice.

3. Student's March 18, 2014 IEP provided for Student to receive consultative Occupational Therapy (OT) services. A DCPS Occupational Therapist conducted reevaluated Student for OT concerns in January 2015. She reported that Student had made gains in school from having previous therapies and educational supports. On

standardized testing, Student demonstrated Below Average visual motor skills. Student's drawings were neat. However Student demonstrated difficulty with drawing that required more detail. This was reported to be commensurate with Student's cognitive function. Student had met the OT consultation goal of copying sentences independently and legibly. However, Student required assistance and direction for tasks that required comprehension, such as editing work. The evaluator concluded that Student's OT progress had "plateaued" and therefore, Student's needs could be met in the classroom setting. Exhibit R-13. At an IEP team meeting at CITY SCHOOL 1 on January 29, 2015, the IEP team discontinued OT services for Student. Exhibit R-12. There were also no OT services provided in Student's January 12, 2016 IEP. Exhibit P-4.

4. Student was the subject of a prior due process proceeding brought by Mother in summer 2016 (Case No. 2016-0161). In that case, Mother alleged (1) that DCPS' January 12, 2016 IEP for Student was inappropriate because it did not adequately address deficits in Adaptive/Daily Living Skills, Speech-Language and Emotional, Social and Behavioral Development and (2) City School 2 was unable to fully implement Student's IEP or provide a setting to address Student's ASD disability. Following a due process hearing on August 31, 2016, Hearing Officer Keith L. Seat issued his Hearing Officer Determination on September 8, 2016 (the September 8, 2016 HOD). In the September 8, 2016 HOD, Hearing Officer Seat determined that Student was denied a FAPE because the January 12, 2016 IEP lacked goals and services for Adaptive/Daily Living Skills and Emotional, Social and Behavioral Development. On the second issue, Mr. Seat determined that City School 2 was appropriate for Student and could provide a

full-time out of general education placement to carry out Student's IEP, address Student's needs and provide educational benefit. In the September 8, 2016 IEP, Hearing Officer Seat awarded Student compensatory education services for the inadequate January 12, 2016 IEP and ordered DCPS to convene Student's IEP team to develop and add appropriate goals to Student's IEP for Adaptive/Daily Living Skills and Emotional, Social and Behavioral Development. Exhibit P-54.

5. On September 20, 2016, Petitioner's Counsel made a written request to the principal of City School 1 for Student to be reevaluated for special education, to include a psychological evaluation, an adaptive assessment, a speech-language evaluation and an OT assessment. Exhibit P-38.

6. In October and November 2016, a DCPS school psychologist, SCHOOL PSYCHOLOGIST 2, conducted a comprehensive psychological reevaluation of Student. School Psychologist 2 reviewed prior evaluations of Student, administered the Woodcock-Johnson IV Tests of Achievement (WJ-IV ACH), the Behavior Assessment Scale for Children, 3rd Edition (BASC-3) and the Gilliam Autism Rating Scale - Third Edition (GARS-3), interviewed the parent, Student and the special education teacher and conducted a classroom observation. On the BASC-3 rating scales, there were no clinically significant emotional, social or behavioral difficulties reported by Student's teachers. Mother's responses on the BASC-3 indicated that Student was in the Clinically Significant range for Resiliency and in the At-Risk range for Atypicality, Withdrawal, Developmental Social Disorder and Executive Functioning. On the GARS-3, the teacher's responses indicated a "Probable" probability of ASD and that minimal support was required. Mother's responses indicated a "Very Likely" probability of ASD,

requiring substantial support. School Psychologist 2 concluded that the results from his psychological evaluation showed that Student was presenting symptoms of ASD.

Exhibit P-20.

7. The November 5, 2016 comprehensive psychological evaluation report indicates, apparently incorrectly, that School Psychologist 2 also administered the Reynolds Intellectual Assessments Scales intelligence tests. School Psychologist 2 did report that at the age of 5, Student had been diagnosed with Autistic Disorder and Student's cognitive results were in the Extremely low range – Full-Scale IQ Standard Score of 40. Exhibit P-20. However this FSIQ score of 40, when Student was 5 years old, was previously reported to be in the “Moderately Delayed” range. Exhibit P-24. Another DCPS School Psychologist, SCHOOL PSYCHOLOGIST 3, administered the Reynolds Intelligence Assessment Scales (RIAS) to Student in November 2011. School Psychologist 3 reported that Student's overall intelligence score, the Composite Intelligence Index (CIX), was 40, in the “Significantly Below Average” range. Exhibit P-24.

8. On June 13, 2017, Independent Psychologist conducted an Independent Educational Evaluation (IEE) psychological evaluation of Student. To assess cognitive functioning, she administered the Wechsler Intelligence Scale for Children - Fifth Edition (WISC-5). Independent Psychologist reported that Student's tested FSIQ was 62, in the Extremely Low range. Independent Psychologist also administered the WJ-IV ACH tests to Student to learn more about Student's current functioning abilities in the classroom setting. Overall, Student demonstrated academic performance that was significantly below grade-level peers and more consistent with very early elementary

skills. Independent Psychologist noted that these impairments indicated that Student likely encountered difficulty carrying out many tasks of daily living. Independent Psychologist had Mother, Student and Student's classroom teacher complete the BASC-3 rating scales. She reported that the BASC-3 provided three important findings: The teacher's rating for Learning Problems was in the significantly statistical range. Student's own responses were invalid for "faking good," which indicated that Student has a very difficult time naming challenges or being honest about times when feeling overwhelmed or out of place. According to Independent Psychologist, these responses indicated that Student's communication of distress and struggles cannot be relied upon as an accurate gauge of subjective experience. Lastly, both Mother's and the teacher's responses rated Student's "Atypicality" as high, which means that Student is likely to have an experience that is idiosyncratic and unlike that of Student's peers. Independent Psychologist reported that Student qualified as having both ASD and Intellectual Disability (ID) disabilities as defined by the IDEA. She recommended that Student needed support not only in academic and social learning, but also in the areas of adaptive functioning and daily living. Exhibit P-16.

9. In October 2016, Speech Pathologist conducted a Speech and Language Reevaluation of Student. Speech Pathologist reported that Student presented as a pleasant student with severe/very low language impairment. Oral Vocabulary, Expressive Language and Receptive Language were areas of weakness. Pragmatic Language was an area of strength. She reported that Student's performance on previous assessments, as compared with current assessments evaluating receptive and expressive language skills, was indicative of a plateau of skills with respect to continued

development as a result of direct services and that Student had obtained maximum benefit from direct services. She reported that teacher feedback across the academic environment reflected that Student's then-current functional and academic communication needs were being met at the level of the classroom through explicit instruction and use of classroom accommodations. Speech Pathologist recommended that Student should continue to receive classroom accommodations to assist with Student's speech-language weaknesses. Exhibit P-22, Testimony of Speech Pathologist.

10. In the fall of 2016, Student's IEP team discussed whether Student should be on the high school diploma track or the certificate of IEP completion track. All of the members of Student's IEP team, including Mother, agreed that Student should remain on the high school diploma track. Testimony of Special Education Coordinator.

11. On October 7, 2016, Student's City School 2 IEP team convened to amend Student's IEP following issuance of the September 8, 2016 HOD. Annual Goals and Present Levels of Performance were added in the area of Adaptive/Daily Living Skills, but not for Emotional, Social and Behavioral Development. BSS Consultation Services were added to Student's program. For Special Education and Related Services, the IEP provided full-time, 6.5 hours per day, of Specialized Instruction outside general education, 45 minutes per month of Speech-Language Pathology services and 30 minutes per week of BSS Consultation Services. Petitioner's Counsel disagreed with the IEP because Student's issue with sensory processing was not addressed and because she believed Student should received direct BSS services, not only consultation services. Exhibits P-6, P-7, P-8.

12. On November 28, 2016, Student's IEP team at City School 2 reconvened to review the DCPS psychological and speech-language reevaluations of Student conducted in fall 2016 and to review Student's IEP. Mother and Educational Advocate 2 attended the meeting. Speech Pathologist reported that Student had obtained the maximum benefit from direct speech and language services and had reached a plateau. She added that Student's deficits in speech and language did not keep Student from accessing the curriculum. DCPS OT reviewed a January 2015 DCPS occupational therapy evaluation and stated that no school-based OT services were recommended. The school social worker reported that she had no behavioral concerns for Student, that Student was a very positive person and had good insight. She stated that Student did not need BSS services. Special Education Coordinator reported on the DCPS psychological reevaluation and noted that Student continued to be a student in need of special education services and supports as a student with an ASD. The November 28, 2016 IEP provided for Student to receive full-time, 28.75 hours per week, Specialized Instruction in the self-contained special education classroom with a low student to teacher ratio. The IEP discontinued Speech-Language services and BSS consultation services and provided no other related services for Student. Exhibit P-10.

13. On November 21, 2016, Independent OT's associate, INDEPENDENT OT ASSESSOR, conducted an IEE OT reevaluation of Student. This assessor reported that Student was uncomfortable with gross motor movement that was off the ground and that Student struggled with fine motor precision and manual dexterity tasks. She reported that while Student writes legibly, writing for more than 2 minutes caused pain and fatigue and that Student demonstrated more comfort and efficiency when using a

computer keyboard. Independent OT Assessor recommended that Student receive 30 minutes per week of OT to address visual perception, keyboarding development, use of writing software, endurance challenges, and independent organization and to collaborate around transition planning and vocational preparation. Exhibit P-21.

14. On November 27, 2016, Petitioner's Counsel wrote the City School 2 Principal by email about an incident when another student with an ASD disability, who had a cast on his arm, allegedly hit Student in the face with his cast-wrapped arm. At the time of the incident, the school summoned the D.C. Metropolitan Police and both students parents. After meeting with the other parent and the police officer, Mother decided not to press charges. Initially, school staff intended to involuntarily transfer the other student to another school. But after Petitioner's Counsel's law firm intervened on behalf of the other student, school administrators moved the other student to another part of City School 2. Afterwards, there were no other concerns between these two students. Testimony of Special Education Coordinator.

15. On December 20, 2016, Student's IEP team met again at City School 2 to review the IEE OT reevaluation report. Educational Advocate 2 participated in the meeting and Mother attended by telephone. Student's teacher reported that there had been no complaints about Student's handwriting and that Student was able to complete writing warm-ups for 5 minutes. DCPS OT reported that no problems with handwriting endurance had been reported at City School 2, that Student was able to keyboard and to fold and cut paper. She repeated that she did not recommend OT related services for Student. Student's IEP was not revised at this meeting. Exhibit P-12.

16. By letter of January 5, 2017, Educational Advocate 2 wrote the principal of

School 2 concerning the law firm's dissent to decisions at the December 20, 2016 IEP team meeting. On behalf of the parent, she requested that Student be provided 30 minutes per week of OT services. She also requested DCPS funding authorization for an IEE psychological reevaluation and that an aide be assigned to accompany Student on transitions within the school building. Educational Advocate 2 also requested a change in school location for Student, because Student allegedly did not feel safe after being hit in November 2016 by Student's classmate. Exhibit P-43.

17. On March 3, 2017, Student's IEP was amended to add an Annual Goal, Baseline and Objectives for Student to identify, cope and manage feelings. These items were appended to the Adaptive/Daily Living Skills area of concern on the IEP. No additional Related Services were added to the IEP. Exhibit R-16.

18. On July 11, 2017, Independent Audiologist conducted an IEE speech-language evaluation of Student. The focus of this evaluation was to identify whether Student presented with any specific speech, language or communication problems so that appropriate services could be provided. With regard to Speech Production, Independent Audiologist reported that Student had no problems with voice production or articulation. Speaking fluency, related to word-finding difficulties, appeared to be a problem. Additionally, using language to make inferences and understand "Why things are the way they are", based on the linguistic information taken in, were deficits. Independent Audiologist found that all other speech challenges for Student were due primarily to Student's cognitive and intellectual limitations associated with ASD. In his report, Independent Audiologist recommended that Student be provided speech-language individual and group therapy for three times a week in sessions at least 30

minutes long. Exhibit P-18.

19. On November 27, 2017, Student's IEP team at City School 2 convened to review Independent Audiologist's evaluation and to update Student's IEP. The team also considered several recent behavior incidents where Student was allegedly "bullied" by special education classmates. Mother and Educational Advocate 2 attended the meeting. At the meeting, Educational Advocate 2 advocated for OT and Speech-Language services to be added to Student's IEP. The DCPS school representatives declined to add these services. The IEP team agreed to provide 60 minutes per month of BSS to Student's IEP, on an interim basis, pending receipt of an adaptive assessment and to initiate "restorative justice" circles within the classroom to address the conflicts with classmates which Student had experienced or perceived. Exhibit R-17. Behavioral Support Services for 60 minutes per month, outside general education, were added in the resulting November 27, 2017 IEP. Exhibit P-2.

20. At the end of the November 27, 2017 IEP team meeting, after Mother had left for another appointment, Educational Advocate 2 asserted that Student should be on the Certificate track and not on the High School Diploma track. Student's teacher agreed with this recommendation. Since this was a major change from Mother's past preference that Student remain on the Diploma track, the school representatives waited to make this change when the IEP team reconvened to review the Adaptive assessment of Student. Exhibit R-17, Testimony of Special Education Coordinator.

21. In January 2018, School Psychologist 1 conducted a psychological reevaluation of Student to measure Student's adaptive functioning and behaviors related to ASD. School Psychologist 1 administered the GARS-3 and the Adaptive Behavior

Assessment Systems - Third Edition (ABAS-3), conducted a classroom observation and reviewed Student's records pertaining to attendance, grades and Social-Emotional functioning. On the GARS-3, Student's English Language Arts (ELA) teacher and Mother both rated Student in the problematic range at Level 2, which means that the probability of an ASD is Very High. Student's geometry teacher's responses to the GARS-3 indicated that the probability of an ASD is Probable. On the ABAS-III General Adaptive Composite (GAC), an overall measure of adaptive behavior, Mother's responses to the rating scales indicated a score in the Extremely Low range. The teachers' responses to the ABAS-III indicated that Student's GAC fell in the Borderline range (Math teacher) and in the Extreme Low range (ELA teacher). School Psychologist 1 reported that these scores demonstrate that Student has Extremely Low to Borderline skills in the area of adaptive functioning, which will impact Student across multiple settings. School Psychologist reported that based on the autism rating scales, Student exhibits Very Elevated levels of behavior, which is indicative of an ASD. Student's teachers reported that Student's problems very often seriously affect Student's schoolwork or grades and seriously affect Student's friendships and relationships. School Psychologist 1 concluded that with Student's Extremely Low FSIQ score and Extremely Low adaptive functioning, it appeared that Student meets the IDEA criteria for ID as well as for ASD. Exhibit R-7.

22. On January 18, 2018, DCPS proposed a draft IEP for Student, which would provide for Student to receive full-time Specialized Instruction in a self-contained Certificate-track CES classroom. This IEP also provides for 60 minutes per month of BSS services, but has no annual goals for behavior concerns. Exhibit R-6. This draft

IEP had not been reviewed by Student's IEP team prior to the due process hearing.

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 Petitioner 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 student's IEP or placement, or of the program or placement proposed by DCPS, the District shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the District. The burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

Analysis

A.

Failure to Comprehensively Evaluate

- Did DCPS fail to comprehensively evaluate or reevaluate Student by failing to conduct an Adaptive Assessment or Vocational evaluation?

In her due process complaint, Petitioner alleges that DCPS' November 5, 2016 psychological reevaluation of Student was not comprehensive because it lacked adaptive or vocational testing to provide Student's IEP Team with information needed to update the adaptive goals in Student's IEP. On September 20, 2016, Petitioner's Counsel made a written request to the principal of City School 1 for Student to be reevaluated for

special education, to include a psychological evaluation, an adaptive assessment, a speech-language evaluation and an OT assessment. In early November 2016, City School 2 staff conducted a Life Skills assessment of Student. This self-reporting questionnaire yielded what appears to be unproductive data. For example, the responses indicate that Student, who has a tested FSIQ of 62 and performs academically at the early elementary level, is able to read food labels for nutrition content, can fill out job applications without assistance and knows the importance of a good credit score. See Exhibit P-19.

In October and November 2016, a DCPS school psychologist, School Psychologist 2, conducted what was supposed to be a comprehensive psychological evaluation of Student. However, this evaluation omitted cognitive and adaptive testing. The parent's contention that the November 2016 psychological evaluation was inadequate is supported by the fact that when Student was reevaluated by Independent Psychologist in June 2017 and by School Psychologist 1 in January 2018, both psychologists concluded that Student had an intellectual disability. Lacking a current cognitive assessment or adaptive testing, School Psychologist 2 had not addressed the possibility that Student had an intellectual disability. I find that the parent has established that the November 2, 2016 psychological reevaluation by School Psychologist 2 was not comprehensive.

The failure to conduct a comprehensive reevaluation is a procedural violation of the IDEA. See, e.g. *G.G. ex rel. Gersten v. District of Columbia*, supra, 924 F. Supp. 2d at 280 (District's failure to adequately evaluate student was a procedural error that effectively prevented development of an IEP reasonably calculated to provide student

with a meaningful educational benefit.) Procedural violations may only be deemed a denial of FAPE if the procedural inadequacies—

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

34 CFR § 300.513(a)(2).

In this case, Petitioner's expert, Educational Advocate 2, attended the December 20, 2016 IEP team meeting where School Psychologist 2's evaluation of Student was reviewed. On January 5, 2017, Educational Advocate 2 requested District funding to obtain an IEE psychological reevaluation of Student, because Student had not been administered adaptive behavior scales (She referenced Vineland Adaptive Behavior Scales, 2nd Edition.) By March 20, 2017, DCPS had issued funding authorization for the parent to obtain the requested adaptive assessment of Student, as part of an IEE psychological reevaluation. For reasons not explained at the due process hearing, the parent's designee, Independent Psychologist, did not evaluate Student until June 2017 and only issued her evaluation report on October 20, 2017. Independent Psychologist did not conduct formal adaptive testing, but recommended in her report that an adaptive functioning assessment might identify goals that would help with Student's adaptive functioning development. At an IEP team meeting on November 27, 2017, it was agreed that DCPS would complete an adaptive assessment of Student. DCPS' school psychologist, School Psychologist 1, conducted an adaptive assessment, Adaptive Behavior Assessment Systems - Third Edition (ABAS-3), in January 2018.

On these facts, DCPS' procedural violation of not ensuring that School Psychologists 2's psychological evaluation of Student in November 2016 included an adaptive assessment did not cause a denial of FAPE because, when notified of the parent's dissatisfaction with the evaluation, DCPS authorized funding for the parent to obtain an IEE reevaluation, as requested by the parent's attorney. DCPS is not responsible for how long it took Independent Psychologist to complete her reevaluation or for that professional's decision not to conduct adaptive testing. I conclude, therefore, that Petitioner has not met her burden of persuasion that DCPS' inadequate November 2016 reevaluation of Student impeded Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process or caused a deprivation of educational benefit.

B.
School Year 2016-2017 IEPs

Did DCPS deny Student a FAPE by failing to provide Student with appropriate IEPs, location of service, and/or placement during the 2016-2017 school year at meetings on or about October 7, 2016, November 22, 2016 and December 20, 2016, in that those IEPs failed to provide Student with OT services, services to address alleged bullying and a suitable location of services, because the IEPs lacked updated adaptive goals, transition goals or services and because the IEPs did not specify whether Student was on the diploma or certificate track?

In the summer of 2016, Mother brought a prior due process complaint on behalf of Student (Case No. 2016-0161), in which she alleged (1) that DCPS' January 12, 2016 IEP for Student was inappropriate because it did not adequately address deficits in Adaptive/Daily Living Skills, Speech-Language and Emotional, Social and Behavioral Development and (2) City School 2 was unable to fully implement Student's IEP or provide a setting to address Student's ASD disability. In the September 8, 2016 HOD, Hearing Officer Seat determined that City School 2 was appropriate for Student and

could provide a full-time out of general education placement to carry out Student's IEP, address Student's needs and provide educational benefit. However Hearing Officer Seat also determined that DCPS' January 12, 2016 IEP for Student was inappropriate, because the IEP lacked goals and services for Adaptive/Daily Living Skills and for Emotional, Social and Behavioral Development. Hearing Officer Seat ordered DCPS to convene Student's IEP team to develop and add to Student's IEP appropriate goals for Adaptive/Daily Living Skills and for Emotional, Social and Behavioral Development.

On October 7, 2016, Student's City School 2 IEP team convened to amend Student's IEP following issuance of the September 8, 2016 HOD. Annual Goals were added in the area of Adaptive/Daily Living Skills, including daily living goals and a social-emotional goal. Behavior Support Consultation Services for 30 minutes per week were also added to Student's program. Petitioner's Counsel stated her disagreement with the October 7, 2016 revised IEP because Student's alleged issue with sensory processing was not addressed and because she believed Student should receive direct BSS services.

Student's IEP team convened again on November 28, 2016 to review DCPS' fall 2016 psychological and speech-language reevaluations of Student and to review Student's IEP. At that meeting, Speech Pathologist reported that Student had obtained the maximum benefit from direct speech and language services and had reached a plateau. She added that Student's deficits in speech and language did not keep Student from accessing the curriculum. DCPS OT reviewed a January 2015 DCPS OT evaluation for the IEP team and stated that no school-based OT services were recommended. The school social worker reported that she had no behavioral concerns for Student and that

Student did not need BSS services. The resulting November 28, 2016 IEP provided for Student to receive full-time, 28.75 hours per week, Specialized Instruction in a self-contained special education classroom with a low student to teacher ratio. The November 28, 2016 IEP discontinued Speech-Language services and BSS consultation services and provided no other related services for Student.

On December 20, 2016, Student's IEP team met again at City School 2 to review a November 21, 2016 IEE OT reevaluation. Student's IEP was not revised at this meeting.

Petitioner contends that the City School 2 IEPs, as revised in October and November 2016 were inappropriate because the IEPs did not specify whether Student was on the diploma or certificate track, lacked updated adaptive goals, lacked transition goals or services, did not offer OT services or services to address alleged bullying and did not provide a suitable location of services. DCPS responds that the fall 2016 IEPs were appropriate for Student.

In *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017), the U.S. Supreme Court elaborated on the standard, first enunciated in *Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 LED.2d 690 (1982), for what constitutes an appropriate IEP:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F.*, 137 S.Ct. at 999. . . . The 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.* . . . Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. *Id.* (emphasis in original.) . . . The IEP must aim to enable the child to make progress. . . . [T]he essential function of an IEP is to set out a plan for pursuing academic and functional advancement. *Id.* . . . A focus on the particular child is a the core of the IDEA. The instruction offered must be "*specially designed*" to meet a child's "*unique needs*" through an

“*individualized* education program.” An IEP is not a form document. It is constructed only after careful consideration of the child’s present levels of achievement, disability and potential for growth. *Id.* (emphasis in original.) . . . When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. *Id.*, 137 S.Ct. at 1000. . . . [For a child who is not fully integrated in the regular classroom and not able to make grade-level advancement] his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Id.* . . . A reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances. *Id.*, 137 S.Ct. at 1002.

Andrew F., supra. “The adequacy of an IEP can be measured only at the time it is formulated, not in hindsight.” *District of Columbia v. Walker*, 109 F. Supp. 3d 58, 66 (D.D.C. 2015) (citing *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C.2008)). DCPS has the burden of persuasion on this issue.

The location of services issue was addressed in the September 8, 2016 HOD. The IDEA requires that every special education placement must be “based on the child’s IEP,” 34 C.F.R. § 300.116(b)(2), and be “capable of fulfilling the student’s IEP.” *Lofton v. District of Columbia*, 7 F.Supp.3d 117, 123 (D.D.C. 2013). *Joaquin v. Friendship Pub. Charter Sch.*, No. CV 14-01119, 2015 WL 5175885 (D.D.C. Sept. 3, 2015). In the September 8, 2016 HOD, Hearing Officer Seat determined that City School 2 was appropriate for Student and could provide a full-time out of general education placement to carry out Student’s IEP, address Student’s needs and provide educational benefits. There was no probative evidence at the due process hearing in the present case that in November 2016, the CES classroom, where Student was placed at City School 2,

was no longer capable of fulfilling Student's IEP.

With regard to whether Student was on a high school diploma track or a certificate track, in the District, a special education student is presumed to follow the same curriculum as for nondisabled students. An IEP team may decide and approve that pursuing a Certificate of IEP Completion is the best course of study for designated special education students and must document that decision on the student's IEP. *See* 5E DCMR § 3009.1(a). In the present case, it is undisputed that Student was considered to be on the diploma track. In the fall of 2016, Student's IEP team discussed whether Student should be on the diploma track or the certificate track. All of the members of Student's IEP team, including Mother, agreed that Student should remain on the high school diploma track. Only in November 2017 did the parent's representative, Educational Advocate 2, request that Student's curriculum be changed to the certificate track.

Assuming that Student's 2016-2017 school year IEPs should have recited that Student was on the high school diploma track, there was no showing that this procedural omission impeded Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process or caused a deprivation of educational benefit. I find that Student was not denied a FAPE by this omission.

Parent also complains that the October and November 2016 IEPs lacked updated adaptive goals for Student. Prior to attending City School 2, Student's January 12, 2016 IEP at City School 1 had a single Adaptive/Daily Living Skills goal, namely, to follow daily routines. After the September 8, 2016 HOD was issued, Student's IEP team at City

School 2 added two adaptive goals to the October 7, 2016 IEP, for Student to be able to tell and write the time from an analog clock and to count and compute various units of money. In the November 28, 2016 IEP, the IEP team dropped the annual goal to follow daily routines. Special Education Coordinator testified that the IEP team considered these annual goals to be appropriate because counting money and telling time were areas Student needed to work on and these goals had been specifically requested by Mother. Educational Advocate 2 asserted erroneously that the adaptive goals in the fall 2016 IEPs were repeated from Student's prior IEPs and were not appropriate. I find that the testimony of Special Education Coordinator was more credible on this issue.

Petitioner further contends that the fall 2016 IEPs were incomplete because they lacked transition goals or services. The IDEA's transition services provisions require that beginning not later than the first IEP to be in effect when the student turns 16, the IEP must include—

- (1) Appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 CFR § 300.320(b). Student would not turn 16 during the one-year periods covered by the October 7, 2016 or the November 28, 2016 IEPs. Therefore IEP transition goals and services were not required.

The Petitioner alleges that the fall 2016 IEPs were inadequate because the IEPs did not include Occupational Therapy (OT) services for Student and that DCPS denied Student a FAPE by not adding OT services at the December 20, 2016 IEP team meeting, as recommended by Independent OT Assessor. Independent OT Assessor evaluated

Student on November 21, 2016. In her undated report, this assessor reported that Student was uncomfortable with gross motor movement that was off the ground and that Student struggled with fine motor precision and manual dexterity tasks. She reported that while Student writes legibly, writing for more than 2 minutes caused pain and fatigue. She recommended that Student receive 30 minutes per week of OT services to address visual perception, keyboarding development, use of writing software, endurance challenges, independent organization and to collaborate around transition planning and vocational preparation. At the December 20, 2016 IEP team meeting, DCPS OT reviewed the IEE OT evaluation report for the IEP team. Student's teacher reported that there had been no complaints about Student's handwriting and that Student was able to complete writing warm-ups for 5 minutes. DCPS OT reported that no problems with handwriting endurance had been reported at City School 2, and that Student was able to keyboard and to fold and cut paper. She repeated that she did not recommend OT related services for Student. Over the objection of the parent's representative, the December 20, 2016 IEP team declined to add OT services to Student's IEP.

Occupational Therapy services must be included as a Related Service in a student's IEP, if required to assist the student to benefit from special education. The Independent OT Assessor had recommended in November 2016 that Student receive 30 minutes per week of OT services to address visual perception, keyboarding development, use of writing software, endurance challenges, independent organization and to collaborate around transition planning and vocational organization. Independent OT endorsed this recommendation in her testimony at the due process

hearing. At the December 20, 2016 IEP team meeting, the DCPS OT and Student's teachers reported that Student had no issues with handwriting being legible, that Student was able to write for more than three minutes, that Student could grasp a pencil and was able to use charts, graphs and graphic organizers in the classroom without problem. Student's English teacher reported that she had seen no noticeable struggle with Student's writing and that Student had voiced no complaints about writing and had pride in handwriting output. I find these reports of Student's teachers and of DCPS OT more credible than the opinions of Independent OT Assessor and Independent OT, neither of whom conducted a classroom observation of Student. On this evidence, I find that DCPS has established that at the time of Student's IEP team meetings in October, November and December 2016, OT services were not required to assist Student to benefit from special education.

Lastly, Petitioner alleges that Student's fall 2016 IEP teams did not satisfactorily address alleged bullying of Student at City School 2. In November 2016, another student with a disability allegedly attacked Student, hitting Student in the face with his cast-wrapped arm. Whether or not the bullying is related to the student's disability, any bullying of a student with a disability that results in the student's not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied. *See, e.g., Dear Colleague Letter*, 61 IDELR 263 (OSERS August 20, 2013). Not all attacks by another student rise to bullying. "Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time." *Id.* Whether or not the attack by Student's classmate in November

2016 should be considered a bullying incident, City School 2 acted appropriately to remedy the situation. Initially, the school intended to involuntarily transfer the other student to another school. But after Petitioner's Counsel's law firm intervened on behalf of the other student, school administrators moved the other student to another part of the school away from Student's classroom. Afterwards, there were no other concerns between these two students. DCPS has shown that revision of Student's IEP in December 2016 to address bullying was not warranted.

For the foregoing reasons, I conclude that DCPS has met its burden of persuasion that its October 7, 2016 and November 28, 2016 IEPs were reasonably calculated to enable Student to make progress appropriate in light of this student's circumstances.

See Andrew F., supra, 137 S.Ct. at 999.

C.
School Year 2017-2018 IEPs

Did DCPS deny Student a FAPE by failing to provide an appropriate IEP, location of service, and/or placement during the 2017-2018 school year and/or following the November 27, 2017 MDT/IEP team meeting, in that the finalized IEP did not contain all of the changes agreed upon at the meeting and the parent objected to the IEP on the grounds that 1) the IEP did not include speech or communication goals or services despite the student's deficits and the fact that Student was placed in a Communication Education Support (CES) program; 2) the IEP did not include occupational therapy services despite recommendations for such services in the independent evaluation of Student; 3) the IEP maintained Student's placement in a diploma track program; 4) the academic goals were not appropriate in that Student required more functional academic goals to address Student's deficits and needs; 5) the adaptive goals were not adequate; 6) there were no behavioral support services (BSS) goals, despite an agreement that this service would be added to Student's program; 7) the IEP was not based on comprehensive evaluations and 8) the transition plan was inadequate?

On November 27, 2017, Student's IEP team at City School 2 convened to review an IEE audiological evaluation and for the annual review of Student's IEP. The team also considered several recent behavior incidents where Student was allegedly "bullied"

by special education classmates. At the meeting, Mother's representative, Educational Advocate 2, advocated for OT and Speech-Language services to be added to Student's IEP. The DCPS representatives declined to add these services. The IEP team agreed to provide 60 minutes per month of Behavior Support Services to Student's IEP on an interim basis, pending receipt of an adaptive assessment. The IEP team also agreed, appropriately, to initiate "restorative justice" circles within the classroom to address the conflicts with classmates Student had experienced or perceived. In the resulting November 27, 2017 IEP, 60 minutes per month of Behavioral Support Services, outside general education, were added as a related service.

Mother contends that the November 27, 2017 IEP is not appropriate for multiple reasons. Addressing Mother's contentions, not necessarily in the order alleged, Mother alleges that at the time of the November 27, 2017 IEP team meeting, Student had not been comprehensively evaluated. I disagree. The IDEA regulations provide that the eligibility evaluation conducted by the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parents, that may assist in determining whether the child is a child with a disability. *See* 34 CFR § 300.304(b)(1). The IDEA does not require that a particular type of evaluation be conducted to establish a child's eligibility; rather, the evaluation requirements in §§ 300.530 through 300.536 are sufficiently comprehensive to support individualized evaluations on a case-by-case basis, including the use of professional staff appropriately qualified to conduct the evaluations deemed necessary for each child. *See* Federal Policy and Guidance – OSEP Memorandum, *Analysis of Comments and Changes*, Attachment

1 (OSEP May 4, 2000). By the time Student's IEP team met on November 27, 2017, Student had been subjected to multiple evaluations within the preceding 12 months, including an IEE comprehensive psychological evaluation (October 2017), an IEE speech and language evaluation (July 2017), and an IEE OT assessment (November 2016). DCPS had also conducted its own evaluations of Student during the prior school year, including a speech and language reevaluation (October 2016), a psychological reevaluation (November 2016) and a life skills assessment (November 2016). In the proceeding section, I found that DCPS' November 2016 psychological reevaluation was not comprehensive. DCPS also failed to conduct an adaptive assessment of Student until January 2018. But, as I have noted above, DCPS already addressed the evaluation shortcoming by agreeing to the parent's request for District funding for the IEE psychological evaluation, which was to include an adaptive assessment. I conclude that the November 27, 2017 IEP team had sufficient evaluation data to determine Student's educational needs. *See* 34 CFR § 300.305(a)(2)(i)(B).

Annual Goals

Mother alleges that the November 27, 2017 IEP lacked appropriate annual goals for functional academics, speech and language, adaptive/daily living skills, and behavioral support services. The IDEA requires that IEPs 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 education needs that result from the child's disability' . . . [and] 'a description of how the child's progress toward meeting the[se] annual goals . . . will be

measured.” *N.S. ex rel. Stein v. District of Columbia*, 709 F. Supp. 2d 57, 60 (D.D.C. 2010), citing 20 U.S.C. § 1414(d)(1)(A)(i).

Educational Advocate 2, who attended the November 27, 2017 IEP meeting, wrote a “letter of dissent” to DCPS on December 4, 2017. She faulted the November 27, 2017 IEP for lack of communication goals, unrealistic goals for Math, Reading and Written Expression, inadequate adaptive goals and lack of BSS goals. Special Education Coordinator testified that at the November 27, 2017 IEP meeting, there had been no changes to the draft IEP requested on behalf of Mother which the team had not agreed to, except for Educational Advocate 2's request, after Mother left the meeting, to immediately change Student's program from the diploma track to the IEP certificate track. In January 2017, DCPS proposed a revised IEP which would effect this change.

With regard to the academic goals on the November 27, 2017 IEP, Educational Advocate 2 opined in her testimony that the goals were unrealistic for a student with an extremely low full-scale IQ. The example cited by Educational Advocate 2 was a mathematics goal for Student to prove theorems about triangles, *e.g.*, prove the Pythagorean Theorem using triangle similarity. In her testimony, Special Education Coordinator did not attempt to justify the IEP academic goals. The appropriateness of the academic goals is now moot because both parties agree that Student will be moved to the IEP certificate track and new goals must be developed to correlate with Student's changed curriculum.

Special Education Coordinator defended the IEP team's decision to defer updating Adaptive and Social, Emotional and Behavioral Development goals for Student until Student's adaptive assessment by DCPS would be completed. I find this decision to

be reasonable. School Psychologist 1 completed the adaptive assessment in January 2018 and Student's IEP goals in these areas must be now be updated.

The omission of Speech and Language and OT goals is part of the broader issue, whether the November 27, 2017 IEP is inadequate for want of services in these functional areas, which I will consider next.

Speech and Language Services

DCPS' expert, Speech Pathologist, conducted a Speech and Language reevaluation of Student in October 2016. She concluded that Student's performance on previous assessments, as compared with current assessments evaluating receptive and expressive language skills, was indicative that Student had "plateaued" and had obtained the maximum benefit that direct Speech and Language services could provide. Speech Pathologist opined, in her testimony at the due process hearing, that direct speech and language services would not be beneficial to Student and that Student's needs could be met at the classroom instruction level. Petitioner's expert, Independent Audiologist, differed with this conclusion. He testified that Student had not plateaued, but had "gotten worse" since being evaluated in 2011. Nonetheless, Independent Audiologist opined that Student could progress if met at Student's "functional age level" which according to this expert is some 10 years below Student's chronological age.

I found Speech Pathologist to be the more credible expert witness. Speech Pathologist's October 31, 2016 Speech and Language Reevaluation report on Student impresses as thorough and comprehensive. Speech Pathologist evaluated Student with formal assessment tools in three testing sessions on different days and conducted a classroom observation in Student's English class. She obtained input from three of

Student's teachers, whom she had complete the Clinical Evaluation of Language Fundamentals - 5th Edition (CELF-5) and the DCPS Communication Abilities rating scales. She confirmed from Student's teachers that Student's oral language impairment did not negatively impact Student's ability to access the general education curriculum and that Student's functional and academic needs were being met through explicit instruction and classroom accommodations.

By contrast, Independent Audiologist conducted his evaluation of Student in one sitting. He did not obtain input from Student's teachers or conduct a classroom observation. As Speech Pathologist opined, Independent Audiologist's report does not capture Student's functional communication skills in the school environment. Independent Audiologist cites his own untitled "study" from 2004 as authority for his opinions, rather than current peer-reviewed research published by the American Speech–Language–Hearing Association (ASHA) or other recognized professional associations. Moreover, Independent Audiologist's report on Student appears to stray beyond the area of the author's expertise. For example, in his report, Independent Audiologist muses "it is wondered why [Student] is not in an educational setting using [Student's] love and skills in art to teach [Student] vocational skills to become an artist or artistic design worker or graphic designer." In sum, I found Speech Pathologist's opinions as to Student's need for direct Speech Language Pathology services more credible than those of Independent Audiologist and I conclude that DCPS has met its burden of persuasion that Student does not require direct Speech and Language goals or services as part of Student's IEP to make progress appropriate to Student's circumstances or to benefit from special education. *See Andrew F., supra*; 34 CFR § 300.34(a).

Occupational Therapy

Petitioner also contends that the November 27, 2017 IEP is adequate because it does not provide for Occupational Therapy (OT) services. For purposes of the IDEA,

“Occupational Therapy” means –

(i) Means services provided by a qualified occupational therapist; and (ii) Includes—

(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

34 CFR § 300.34(c)(6). As relevant to this case, the issue is whether Student currently requires OT services to improve Student’s ability to perform tasks for independent functioning. The occupational therapy experts called by the respective parties agree that Student has visual-motor and fine motor deficits. Where the experts disagree is whether Student now requires direct OT services as part of Student’s IEP. DCPS’ expert, DCPS OT has worked with Student both in elementary school and at City School 2. As noted above in my consideration of the 2016 IEPs, Student’s teachers reported that there were no issues with Student’s handwriting being legible, that Student was able to write for more than three minutes, that Student could grasp a pencil and, according to the math teacher, was able to use charts, graphs and graphic organizers in the classroom without problem. DCPS OT observed Student in the classroom and noted that Student was able to write for up to 5 minutes without facial grimace or vocalization, and that Student was able to manipulate an eraser and the pencil sharpener. DCPS OT opined in her testimony that Student benefits from classroom accommodations and modification for

visual-motor and fine motor deficits, but that Student does not require direct OT services.

The parent's expert, Independent OT, opined that with OT services, Student would be more able to access the curriculum and be available for learning. She testified that she did not see any evidence that Student had plateaued or would not make progress with OT services. Independent OT testified, based upon her associate's OT assessment of Student in November 2016. She did not personally evaluate Student and had not seen Student's handwriting. It does not appear that either Independent OT or her associate, Independent OT Assessor, conducted a classroom observation or communicated with Student's teachers. DCPS OT was better informed as to Student's strengths and needs in the school setting. I found that her opinion that Student does not require OT services in order to benefit from special education was more persuasive than the contrary opinion of the parent's expert. I conclude that DCPS has met its burden of persuasion that the IEP team's decision not to provide direct OT services in the November 27, 2017 IEP did not make the IEP inappropriate.

Transition Plan

As discussed in my consideration of the 2016 IEPs above, the IDEA requires that beginning not later than the first IEP to be in effect when the student turns 16, the IEP must include—

- (1) Appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 CFR § 300.320(b). "Transition services are integral to FAPE under IDEA. A primary

purpose of IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. U.S. Department of Education, *A Transition Guide to Postsecondary Education and Employment for Students and Youth with Disabilities* (OSEP 2017).

The post-secondary transition goals provided in Student's November 27, 2017 IEP are (1) for Student to use the internet to identify 2-Year colleges that match Student's needs; (2) for Student to apply for a job after high school in a field related to Student's course of study and (3) for Student to continue living at home to gain skills to increase independence. Exhibit P-2. For transition services, the IEP states that Student will meet quarterly with the case manager or transition coordinator to create a list of 4 yr. college [*sic*] programs of interest, to monitor community service and to engage in community safety trainings. On their face, these transition goals and services are not designed to meet the unique needs of this Student, whose tested cognitive abilities are in the Extremely Low range and whose demonstrated academic performance is more consistent with very early elementary skills. I will order, as Independent OT recommended in her testimony, that DCPS conduct an appropriate comprehensive vocational assessment of Student in order to permit Student's IEP team to develop an appropriate post-secondary transition plan, tailored to Student's unique needs, to prepare Student for further education, employment, and independent living.

Diploma Track vs. Certificate Track

At the end of the November 27, 2017 IEP team meeting, after Mother had left for another appointment, Educational Advocate 2 requested for the first time that Student be moved from the high school diploma track to the IEP certificate track. The DCPS

representatives deferred making this change until they could obtain consent from the parent, because the parent had previously wanted Student to be on the high school diploma track. In DCPS' proposed January 18, 2018 IEP, Student would be offered an IEP certificate track program. I find that City School 2's decision, at the November 27, 2017 IEP meeting, not to move Student from the high school diploma track program, without first obtaining the parent's personal input, was appropriate. *See, e.g., Doug C. v. Hawaii Dep't of Educ.*, 720 F.3d 1038, 1046 (9th Cir. 2013) (“[V]ital importance of parental participation in the IEP creation process.”)

Remedy

In this decision, I have determined that DCPS' November 28, 2017 IEP for Student was not appropriate for Student as developed and must be revised to develop appropriate goals and services, informed by DCPS' recent adaptive testing of Student and the decision to move Student from the high school diploma track to the IEP certificate track. I have also determined that DCPS must conduct a comprehensive assessment to develop an appropriate, individualized, post-secondary transition plan for Student. DCPS' failure to provide an appropriate IEP for Student at the November 28, 2017 meeting was a denial of FAPE. “If a hearing officer concludes that the school district denied a student a FAPE, he has ‘broad discretion to fashion an appropriate remedy,’ which may include compensatory education. *See B.D. v. District of Columbia*, 817 F.3d 792, 800 (D.C. Cir. 2016). The compensatory education inquiry requires ‘figuring out both [(1)] what position a student would be in absent a FAPE denial and [(2)] how to get the student to that position.’ *Id.* at 799.” *Butler v. District of Columbia*,

Case No. 16-cv-01033 (D.D.C. Aug. 14, 2017).

Petitioner requested a compensatory education award to compensate Student for the numerous denials of FAPE alleged in her due process complaint. However I have determined that DCPS' violations in this case relate only to the November 28, 2017 IEP. The parent filed her due process complaint just two weeks later, on December 14, 2017. In the brief span between the November 28, 2017 IEP team meeting and the hearing date, Student's "position" was not likely much altered. Student's greatest needs at this point appear to be in the areas of daily living skills and transition planning. In my discretion, I will order DCPS to provide, as compensatory education, 25 hours of mentoring/counseling services for post-secondary training, employment, and independent living.

ORDER

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

ORDERED:

1. Within 21 school days of this Order, DCPS shall, subject to obtaining the parent's consent, conduct an appropriate, comprehensive, vocational assessment of Student to determine Student's needs in the way of transition goals and services for the post-secondary stage of Student's development;
2. Within 15 school days of the date of this decision, DCPS shall convene Student's IEP team to finalize a revised IEP for Student with provision for Student to be on the IEP certificate track and to include, *inter alia*, appropriate goals and services for Academics, Adaptive/Daily Living and Social, Emotional and Behavioral Development. The IEP shall be further revised to update the IEP post-secondary transition section, promptly upon receipt of the above-ordered vocational assessment;
3. As compensatory education for the denials of FAPE in this case, beginning

not later than 15 school days from the date of this decision, DCPS shall provide Student 25 hours of one-on-one mentoring/counseling by a qualified counselor to provide Student mentoring and training in adaptive/daily living skills and counseling directed to post-secondary education/training, employment, and independent living. DCPS may provide these services directly or provide funding authorization to the parent to obtain the services, independently, for Student and

4. All other relief requested by the Petitioner herein is denied.

Date: February 27, 2018

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
OSSE - SPED
DCPS Resolution Team