

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

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

OSSE
Office of Dispute Resolution
February 09, 2019

<i>Student</i> , ¹)	Case Nos.: 2018-0309 & 2019-0003
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 2/9/19
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
<i>PCS</i> ,)	Hearing Dates: 2/4/19 & 2/5/19
Respondent.)	ODR Hearing Room: 423
)	

HEARING OFFICER DETERMINATION

Background

Student's Parent pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") because Student had not been given specialized instruction outside general education and found eligible for related services. PCS responded that it had provided appropriate special education services and properly denied related services. PCS pursued its own due process complaint alleging that its speech-language evaluation was appropriate, although Parent sought an independent evaluation.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

Following the filing of the Parent's due process complaint in Case No. 2018-0309 on 11/30/18, the case was assigned to the undersigned on 12/3/18; PCS filed a response on 12/10/2018 (after hours), which was amended on 12/14/18, and did not challenge

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

jurisdiction. PCS filed a due process complaint in Case No. 2019-0003 relating to the same issues on 1/8/19 and the case was assigned to the undersigned on 1/8/19; Parent filed a response on 1/15/19. The undersigned granted an unopposed motion to consolidate the cases on 1/11/19. The resolution meeting in Case No. 2018-0309 occurred on 12/13/18, but did not resolve the dispute or shorten the 30-day resolution period, which ended on 12/30/18. A final decision in Case No. 2018-0309 must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 2/13/19. There is no resolution period in cases brought against parents, *see* 34 C.F.R. § 510, so the 45-day period began with the filing of the complaint and an HOD in Case No. 2019-0003 is due by 2/22/19.

The due process hearing took place on 2/4/19 and 2/5/19 and was open to the public. Parent was represented by *Parent’s counsel*. PCS was represented by *PCS’s counsel*. Parent participated in the large majority of the hearing in person or by telephone.

Parent’s Disclosures, submitted on 1/28/19, contained documents P1 through P50, which were admitted into evidence without objection. PCS’s Disclosures, submitted on 1/28/19, contained documents R1 through R40, including R1A and R13A, all of which were admitted into evidence without objection.

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

1. *Private Occupational Therapist* (qualified without objection as an expert in Occupational Therapy)
2. *Private Speech-Language Pathologist* (qualified without objection as an expert in Speech-Language Pathology)
3. *Clinical Psychologist* (qualified without objection as an expert in Clinical Psychology as it relates to conducting evaluations and making recommendations for students with special needs)
4. *Educational Advocate* (qualified without objection as an expert in Special Education as it relates to Individualized Education Program (“IEP”) development and placement)
5. Parent

PCS’s counsel presented ten witnesses in PCS’s case (*see* Appendix A) :

1. *Student Support Services Compliance Manager* at PCS (qualified without objection as an expert in Special Education, particularly with respect to IEP development and special education programming)
2. *School Speech-Language Pathologist* at PCS (qualified without objection as an expert in Speech-Language Pathology)

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

3. *Lead School Speech-Language Pathologist* at PCS (qualified without objection as an expert in Speech-Language Pathology)
4. *Campus Director of Student Support* at PCS (qualified without objection as an expert in Special Education, particularly with respect to IEP development and special education programming)
5. *School Occupational Therapist A* at PCS (qualified without objection as an expert in Occupational Therapy)
6. *School Occupational Therapist B* at PCS (qualified without objection as an expert in Occupational Therapy)
7. *Prior Grade Special Education Teacher* at PCS
8. *School Social Worker* at PCS (qualified without objection as an expert in School Social Work)
9. *English Special Education Teacher* at PCS
10. *Algebra Special Education Teacher* at PCS

Parent's counsel presented Private Speech-Language Pathologist as the sole rebuttal witness.

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

Issue 1 (*Parent*²): Whether PCS denied Student a FAPE by failing to (a) provide an appropriate IEP on 6/5/18 with occupational therapy services, speech-language services and sufficient specialized instruction outside general education, and/or (b) appropriately revise the IEP during 2018/19³ to date in light of new evaluation results and Student's functioning levels to include occupational therapy and speech-language services and sufficient specialized instruction outside general education. *PCS has the burden of persuasion on this issue, if Parent establishes a prima facie case.*

Issue 2 (*PCS*): Whether the speech-language evaluation conducted by PCS is appropriate under the IDEA. *PSC has the burden of persuasion on this issue.*

The relief requested by the parties is:

1. (*Parent*) A finding that Student was denied a FAPE.
2. (*Parent*) PCS shall amend Student's IEP to include (a) 120 minutes/month of occupational therapy services and goals; (b) speech-language services and

² In this consolidated case, the issues raised and remedies sought by each side are identified parenthetically as being from "Parent" or "PCS."

³ All dates in the format "2018/19" refer to school years.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

goals; and (c) increased specialized instruction (outside general education) for core academic classes.

3. (*Parent*) PCS shall provide compensatory education for any denial of FAPE that occurred.⁴
4. (*PCS*) A finding that the speech-language evaluation conducted by PCS is appropriate.
5. Any other just and reasonable relief.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact⁵ are as follows:

1. Student is a resident of the District of Columbia; Petitioner (in Case No. 2018-0309) is Student's Parent.⁶ Student is *Age*, *Gender* and in *Grade* at PCS, where Student began years ago.⁷ Student is pleasant, cooperative, and very considerate.⁸

2. Student has had a history of attention and academic difficulties dating from preschool.⁹ Student received special education services, including speech-language therapy and occupational therapy, under the classification of Developmental Delay and then Specific Learning Disability.¹⁰ Student made progress and was discharged from occupational therapy in 2011; in 2014 Student was exited from all special education services.¹¹ Student

⁴ Parent's counsel was put on notice at the prehearing conference that Parent must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. PCS was invited to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE was found.

⁵ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁶ Parent.

⁷ *Id.*

⁸ P2-4; P1-4; Parent.

⁹ P1-1.

¹⁰ P1-5; P5-1.

¹¹ P5-1; P1-5.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

was initially diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”) in 2009; Student continues to exhibit behavioral features of ADHD.¹² It is “strongly suspected” that behavior symptoms at home and at school may be ameliorated with medication and targeted behavioral interventions.¹³

3. Anxiety and Testing. Student is prone to anxiety and is interpersonally shy.¹⁴ Parent reports that Student often has extreme anxiety and headaches upon coming home from school and will start crying over school work.¹⁵ A school psychologist agreed on 5/15/18 that the effort to keep up with school work was “stressing [Student] out very much.”¹⁶ Parent testified that Student has a lot of fears, so Parent takes the Metro with Student to and from school daily.¹⁷ An independent comprehensive psychological evaluation dated 9/19/18 diagnosed Student with Generalized Anxiety Disorder, along with ADHD.¹⁸

4. Student receives 120 minutes/month of Behavioral Support Services (“BSS”) and works with School Social Worker on general anxiety and social anxiety; Student is one of School Social Worker’s best students in taking what is learned in sessions and applying it elsewhere.¹⁹ Student is coming out of shell; last week Student called a teacher in the evening to ask for help with homework (as PCS students are encouraged to do).²⁰ Student has never complained about headaches to School Social Worker; School Social Worker has never seen Student cry and teachers have not reported crying.²¹ Parent said that Student couldn’t do homework due to anxiety, but English Special Education Teacher has never heard about anxiety from Student, only from Parent.²²

5. Student self-reported being a poor test taker, which was consistent with Parent’s report and academic records.²³ Student tends to be distracted which impacts performance, most notably during timed tasks.²⁴ Student experiences anxiety on “high stakes” tasks such as test taking, whether timed or not, which may explain Student’s ability to function better in the classroom than at test time.²⁵ Student is an “inconsistent tester” due to inability to concentrate, so some of the decrease in Student’s cognitive abilities (below) as measured in

¹² P1-1,15; R8-4 (school psychologist in 2018 concluded that Student “definitely” needs specialized instruction based on Other Health Impairment (“OHI”)).

¹³ P1-15.

¹⁴ P1-4.

¹⁵ Parent; P1-4.

¹⁶ R8-4.

¹⁷ Parent.

¹⁸ P1-16.

¹⁹ School Social Worker.

²⁰ *Id.*

²¹ *Id.*

²² English Special Education Teacher.

²³ P1-6.

²⁴ P1-7.

²⁵ P2-11.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

2018 may have been due to testing anxiety.²⁶ Previous evaluators and teachers noted difficulty establishing what Student knows and does not know, due to test taking anxiety.²⁷ Performance on tests often does not reflect what Student shows during the school day, where Student is typically a “high performer.”²⁸

6. Cognitive Abilities. The results of a 4/13/18 psychological evaluation were reported with caution because they likely show much lower results than Student’s true ability.²⁹ The 4/13/18 evaluation indicated that Student’s cognitive abilities were significantly Below Average, with the Kaufman Brief Intelligence Test – Second Edition (“KBIT-2”) finding a standard score of 74 in “stark contrast” to Student’s cognitive abilities in 2014.³⁰ Memory was even lower, with a Wide Range Assessment of Memory and Learning–Second Edition (“WRAML-2”) standard score of 55.³¹

7. In 2014, a psychological reevaluation used the Reynolds Intellectual Assessment Scales (“RIAS”) to measure a Composite Intelligence Score of 82, in the Low Average range; memory was 103, in the Average range.³² Student appeared to show a clear decline in cognitive capacity over time, which may be indicative of neurological issues.³³ A neuropsychological evaluation was also considered necessary where Student’s academic scores were higher than cognitive scores would have predicted.³⁴

8. The independent 9/19/18 comprehensive psychological evaluation used the Wechsler Intelligence Scale for Children – Fifth Edition (“WISC-V”) and found a Full Scale IQ (“FSIQ”) of 70, in the Extremely Low range in the 2nd percentile.³⁵ Student’s performance on the Visual Spatial Index was in the Extremely Low range at 67; Student’s Processing Speed Index was in the Extremely Low range at 53.³⁶ Poor attention and concentration seemed to contribute to significant errors, impacting Student’s scores.³⁷

9. Academic Testing. The 4/13/18 psychological evaluation used the Kaufman Test of Educational Achievement – Third Edition (“KTEA-III”) and found that Student’s academic functioning was generally Below Average on nearly all subtests, with standard scores of 76 on Reading Composite, 73 on Math Composite, and 76 on Written Language Composite.³⁸

²⁶ P1-5; Clinical Psychologist.

²⁷ P1-5; P2-11.

²⁸ P1-5,6.

²⁹ P2-4.

³⁰ P1-5; P2-4,10.

³¹ P2-5,10; P1-5.

³² P2-3.

³³ P1-14,15; P2-4 (some genuine decline since last assessment); Clinical Psychologist.

³⁴ R17-4.

³⁵ P1-7,14; Clinical Psychologist.

³⁶ P1-8,9.

³⁷ P1-9.

³⁸ P2-6.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

10. The 9/19/18 comprehensive psychological evaluation measured Student's academic functioning with the Woodcock-Johnson – Tests of Achievement, Fourth Edition (“WJ-IV”) and found diverse performance on various subtests, with scoring in the Average range on some and Very Low range on others, with severely impaired academic fluency.³⁹ Student had standard scores of 65 in Broad Reading, 64 in Broad Mathematics and 81 in Broad Written Language.⁴⁰

11. On the PARCC assessment for 2017/18, Student was at Level 2, partially meeting expectations for both English Language Arts (“ELA”) and math.⁴¹ Notably, in 2017/18 in ELA, Student scored better than 52% of other students in Student's school and Grade, and better than 37% of other students in DC, while in Math Student scored better than 47% of other students in Student's school and Grade and nominally better than 54% of other students in DC.⁴²

12. School Performance. At a 2/20/18 multi-disciplinary team (“MDT”) meeting, the general education teacher stated that Student was one of her highest performing students in class; Student did not usually struggle and performance on standardized tests did not reflect how Student was doing in class; Student's classwork was on grade level, although the class as a whole was below grade level.⁴³ The 4/13/18 psychological evaluation reported that Student's English teacher stated that Student was performing well in class, able to complete work, and able to understand grade level material.⁴⁴ Student's co-teacher stated that Student was a high performer, really liked reading and did not appear as a struggling reader, but was able to grasp grade level concepts.⁴⁵

13. In the 5/15/18 MDT meeting on eligibility, the general education teacher stated that within her classroom she would not identify Student as a student who struggled with math, as Student was keeping up well and was average relative to peers.⁴⁶ The classes in 2017/18 were tiered and Student was in the tier on grade level.⁴⁷ On ANet, Student had consistently been performing above the PCS network average and on par with grade level peers.⁴⁸

14. Student's GPA in 2016/17 for the three trimesters was 2.96, 2.97 and 3.48; in 2017/18 the first two trimesters were 3.36 and 3.41, with the class grades for trimester 3 all

³⁹ P1-12.

⁴⁰ *Id.*

⁴¹ R13A.

⁴² R13A-2,4 (the 54% figure appears to the undersigned to be too high given other data in the report).

⁴³ P9-2.

⁴⁴ P2-3.

⁴⁵ P2-4.

⁴⁶ R8-2.

⁴⁷ *Id.*

⁴⁸ *Id.*

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

“As” and “Bs” apart from one “C” in math.⁴⁹ Student’s NWEA MAP scores had increased in reading, from 214 (42%) to 225 (67%) and then declined to 214 (35%), while math increased from 222 (40%) to 231 (55%) and then declined to 225 (38%).⁵⁰ Student’s ANet increased from 2016/17 to 2017/18 in both reading and math, except for the final test (A4) when Student answered only a few questions in reading and decreased from 84% to 5%; in math Student declined on the final test (A4) from 58% to 30%.⁵¹

15. Outside General Education Setting. The 5/22/18 IEP meeting discussed a reading program that would be available for Student outside general education, but Prior Grade Special Education Teacher stated that in her observation of Student it might be more harmful than helpful to pull Student from non-disabled peers in inclusion classes; in a special education classroom Student might not be working on grade-level material.⁵² In the 6/5/18 IEP meeting, Prior Grade Special Education Teacher was concerned about pulling Student out of inclusion math or English classes so that Student would not be able to work on grade level skills and continue building those skills.⁵³ The general education teacher added that Student was sufficiently close to grade level that concepts were within reach and pulling Student out for ELA might result in instruction that was not rigorous enough.⁵⁴ Student was not struggling to understand ELA content.⁵⁵ Receiving special education services in the inclusion setting was Student’s least restrictive environment (“LRE”) based on classroom performance.⁵⁶

16. Student’s teachers and data showed that moving Student to a separate resource room comprised only of children with IEPs would not be appropriate for Student, who is functioning much higher than students in resource classes.⁵⁷ School Social Worker is in resource rooms a lot and the outside general education setting is not for Student, as there are more behavior problems and they are not pushed to do the level of work that Student can do.⁵⁸ Student is in the right setting now, in inclusion.⁵⁹ English Special Education Teacher is Student’s co-teacher in English in the inclusion class and also teaches English in a resource class; Student would regress if put in the resource class, for the same material is

⁴⁹ R10-11; Campus Director of Student Support (Student doing well). Student had a GPA of 3.25 in the final trimester of 2017/18; Student was on the Honor Roll for each trimester (R13-5).

⁵⁰ R10-11.

⁵¹ R8-12.

⁵² R9-4.

⁵³ R10-6.

⁵⁴ R10-7.

⁵⁵ Prior Grade Special Education Teacher.

⁵⁶ *Id.*

⁵⁷ Student Support Services Compliance Manager.

⁵⁸ School Social Worker.

⁵⁹ *Id.*

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

not taught there as in inclusion.⁶⁰ Student is making appropriate progress in the inclusion class.⁶¹

17. Student is getting used to Grade (as are peers) and is participating more, including raising hand in class; with support of co-teachers, Student will do well.⁶² Student has greatly grown in 2018/19 in algebra class; Algebra Special Education Teacher watched Student come out of shell; Student was hesitant to participate at first, but now raises hand a little and is taking some leadership in the group.⁶³ In the algebra inclusion class of 24, Student is one of nine students with an IEP and requires the least attention of the nine.⁶⁴ Student is mastering the content and is on par with many of the general education students.⁶⁵ Student has mastered some IEP math goals and is on track to master all IEP goals by the end of the year.⁶⁶ Student's MAP scores are well above the level in the resource room; Student would be out of place in a resource class.⁶⁷

18. Eligibility and 6/5/18 IEP. Student was determined eligible for special education services and related services on 5/15/18 based on the disability classification of OHI due to ADHD.⁶⁸

19. At the 6/5/18 IEP meeting, the school team urged providing services in the inclusion setting first, before considering a more restrictive environment, as Student had been “demonstrating success” in general education without supports; Student had been performing close to grade level based on multiple sources of data.⁶⁹ Student's grades were good and indicate higher performance than standardized assessments, due to testing anxiety.⁷⁰ The team saw no evidence of a need for Student to be placed outside general education at that time.⁷¹ Student was able to demonstrate mastery in many skill sets throughout the year.⁷² The 6/5/18 IEP provided 12.5 hours/week inside general education (inclusion) and 120 minutes/month of BSS outside general education, along with 30 minutes/month of BSS consultation.⁷³ The IEP was reasonably calculated for Student to make appropriate progress in light of Student's circumstances.⁷⁴

⁶⁰ English Special Education Teacher.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Algebra Special Education Teacher.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ P16-1; P1-1.

⁶⁹ R10-5,6; Campus Director of Student Support.

⁷⁰ R10-6.

⁷¹ Campus Director of Student Support.

⁷² R10-6.

⁷³ P16-17.

⁷⁴ Campus Director of Student Support.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

20. The 6/5/18 IEP “present levels” of performance for math included that in the October 2017 ANet benchmark assessment, Student earned a score of 58% compared to the PCS network average of 35%; in December 2017 Student earned 56% compared to the network average of 44%; in February 2018, Student earned 56% compared to 49%; in April 2018, Student earned 30% compared to 40%.⁷⁵

21. The 6/5/18 IEP present levels for reading included that Student completed the NWEA MAP in the Spring of 2017 with a score of 225, in the 67th percentile and above the district grade level mean, suggesting that Student’s Lexile band was between 951 and 1101; Student was ready for reading instruction at a level above most U.S. peers.⁷⁶ In December 2017, Student earned an ANet score of 38% compared to the network average of 41%; in February 2018, Student earned 84%, showing mastery of most concepts, above the network average of 40%; and on the April 2018 ANet Student earned a score of 5%, answering only the first five questions of the test, far below all previous scores in 2017/18.⁷⁷ Student’s reading inventory score in both August 2017 and January 2018 was below basic with scores of 688 and 697 in the 12th and 13th percentiles, respectively.⁷⁸

22. The 6/5/18 IEP present levels for written expression included that Student was assessed in Spring 2018 by the KTEA-III which found both written expression and spelling subtests were in the Below Average range; Student’s writing samples were inconsistent.⁷⁹

23. Help with School Work. Parent may consider Student less capable than do Student’s teachers; in the Adaptive Skills Assessment Report, in the Conceptual domain, Parent rated Student 77, while teachers rated Student at 85 and 118; on the Social domain, Parent rated Student 85, while teachers were at 110 and 120; and on the Practical domain, Parent rated Student 75, while the teachers were at 110 and 120.⁸⁰

24. Parent tells Student to stop doing homework after 15 minutes of struggling, because it is too stressful.⁸¹ Parent considers it a “strain” for Student to stay after school to make up work.⁸² Parent’s advocates urged that Student not be asked to stay after school to get help with school work, based on the requests reportedly causing Student anxiety, instead advocates sought a “more appropriate” IEP so Student “doesn’t have to sacrifice [Student’s] time off to catch up with school.”⁸³

25. PCS agreed not to ask Student to stay after school, but noted that all students have the opportunity to get assistance with school work at lunch or after school; Student’s

⁷⁵ P16-3,4.

⁷⁶ P16-7.

⁷⁷ P16-8,9; R8-3 (don’t know what happened on low score).

⁷⁸ P16-9; P20-1,2,3.

⁷⁹ P16-11,12.

⁸⁰ P3-5.

⁸¹ R17-5; Parent.

⁸² Parent.

⁸³ P19-1; P40-1 (Student “would not be made to stay after school”); R17-4; R19-3.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

teachers were reminded on 12/17/18 not to approach Student about staying after school.⁸⁴ Rather than staying after school, if critical to make up work Student was to be pulled from an elective class.⁸⁵

26. Progress in 2018/19. Student's hours of specialized instruction were increased at the beginning of 2018/19 to provide inclusion support in each academic class, totaling 18 hours/week.⁸⁶ Student's IEP was amended on 1/25/19 to reflect 18 hours/week of specialized instruction inside general education (inclusion), along with adding a number of accommodations, including copies of teacher notes and noise cancelling headphones.⁸⁷ The amended IEP was reasonably calculated for Student to make appropriate progress in Student's circumstances.⁸⁸

27. At the 11/6/18 MDT meeting, Algebra Special Education Teacher stated that Student (and most students) struggled with algebra in the beginning of Grade, but there was "drastic improvement" for Student, who had just received one of the highest scores on an algebra quiz; it was "never a question of [Student] being able to do the work," but adjusting so it was not overwhelming.⁸⁹ Student reported that algebra is hard, biology is fine, and English and world history "have their moments."⁹⁰ In the 12/17/18 MDT meeting, the algebra teacher noted that Student has started to come out of shell; Student can do the work but is not able to stay after school or during lunch to get extra support if Student does not understand the material.⁹¹ School Social Worker views Student as doing "phenomenally" in algebra now.⁹²

28. Student's IEP Progress Report for term 1 in 2018/19 showed progress, with early mastery of one math goal.⁹³ Student's grades for the first semester of 2018/19 ranged from a "B" to a "C-"; Student Support Services Compliance Manager testified that she was "excited" by the grades, as Student was working hard and doing a good job, and the grades were an accurate reflection of Student's performance and understanding of the material.⁹⁴

29. Occupational Therapy. An independent 3/19/18 occupational therapy evaluation recommended 120 minutes/month of occupational therapy services based on a Test of Visual Perception Skills-Fourth Edition ("TVPS") assessment that found Student was Below

⁸⁴ P19-1; R19-3 ("standard for teachers to encourage students to stay after school to get extra help if needed, but it is not required").

⁸⁵ Parent; P41-1 (PCS agreed to speak with world history teacher about finding another time to work with Student instead of after school).

⁸⁶ Student Support Services Compliance Manager; P42-1; P43-1; R20-1; R21-1,2.

⁸⁷ R22-1,21.

⁸⁸ Student Support Services Compliance Manager.

⁸⁹ R17-4; Student Support Services Compliance Manager.

⁹⁰ R17-5.

⁹¹ R19-4.

⁹² School Social Worker.

⁹³ R24; R24-3.

⁹⁴ R25-3; Student Support Services Compliance Manager.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

Average or Well Below Average on five of seven categories of visual perception, among other things.⁹⁵ The overall visual perception score was a 79, which is less than 1.5 standard deviations below the mean, so considered a mild deficit which PCS found did not warrant direct occupational therapy services.⁹⁶ The evaluator of the 3/19/18 evaluation, Private Occupational Therapist, acknowledged the need to consider the entire picture of Student, including school performance, classroom observation and talk with teachers, none of which Private Occupational Therapist did.⁹⁷ PCS considered the areas of need found in the occupational therapy evaluation best addressed through accommodations or modifications to the presentation of school material.⁹⁸

30. The occupational therapy evaluation described, and Private Occupational Therapist testified about, the occupational therapy deficits in detail, but did not demonstrate impacts in real life with Student's writing or at school.⁹⁹ The evaluation concluded with a summary stating that the visual perception deficits alone can impact numerous listed academic skills, so it was "not a surprise" that Student had been struggling in school and with homework.¹⁰⁰ School Occupational Therapist A testified that if Student had trouble completing work it was not due to motor skills or visual perception skills.¹⁰¹ Student did not present in classes with deficits in visual discrimination (such as difficulty matching/sorting items, recognizing similarities/differences, or reversing letters), which was the lowest occupational therapy subtest, according to Student's general education math and English teachers.¹⁰²

31. The occupational therapy evaluation found that Student scored a 97 overall on the Beery-Buktenica Developmental Test of Visual-Motor Integration ("Beery-VMI"), which was solidly in the Average range and a large increase from the 77 that Student received on the Beery-VMI on 2/14/18.¹⁰³ The 3/19/18 evaluation noted that the assessments were just a month apart; the Beery can be administered monthly because it is a screening tool; School Occupational Therapist A testified that the practice effect would not explain the large difference in scores.¹⁰⁴

32. The 5/15/18 occupational therapy record review noted that there were no concerns related to Student's handwriting legibility, speed, or accuracy; nor were there motor skills issues.¹⁰⁵ Messy and neat samples of Student's handwriting were part of Student's work

⁹⁵ P4-6,12.

⁹⁶ P4-7; R6-2; P5-4; School Occupational Therapist A.

⁹⁷ Private Occupational Therapist.

⁹⁸ P5-4; School Occupational Therapist A (visual perception best addressed through classroom accommodations); School Occupational Therapist B; R11.

⁹⁹ P4-7,8,9; P19-3; School Occupational Therapist A.

¹⁰⁰ P4-12.

¹⁰¹ School Occupational Therapist A.

¹⁰² P5-4; School Occupational Therapist A (saw no visual discrimination issues; Student had no difficulty seeing the board in class).

¹⁰³ P4-5,6; P5-2; P19-3; Private Occupational Therapist.

¹⁰⁴ P4-6; P9-4; School Occupational Therapist A.

¹⁰⁵ P5-3; School Occupational Therapist A.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

samples.¹⁰⁶ The 5/15/18 MDT meeting discussed that it was more beneficial for Student to be in the classroom, as Student's deficit was less than 1.5 standard deviations from the mean, so considered a mild deficit.¹⁰⁷

33. In the 12/17/18 MDT meeting, School Occupational Therapist A again noted that the occupational therapy evaluation demonstrated some visual perceptual needs, but the deficits were mild and did not warrant direct services as Student was not presenting with deficits in class.¹⁰⁸ PCS again noted that there were no concerns regarding Student's handwriting.¹⁰⁹ Petitioner's counsel and Educational Advocate were asked for specific occupational therapy concerns and responded only that the occupational therapy evaluation recommended services.¹¹⁰ The team did not believe it was necessary to add direct occupational therapy services.¹¹¹

34. Speech-Language. The purpose of speech-language therapy in school is to enable children with speech-language disorders to access the curriculum.¹¹² The April 2018 speech-language evaluation found that Student communicated in the educational environment when interacting with adults and peers using sentences of age appropriate length, complexity, and vocabulary.¹¹³ Student's general education social studies teacher completed an evaluation form and reported no concerns in the areas of speech, language, or fluency; Student was not presenting with speech-language concerns in the classroom.¹¹⁴ Certain uses of so-called African American English by Student were noted in order to not be counted against Student.¹¹⁵ Private Speech-Language Pathologist testified that she believed Student qualified for speech-language services based on receptive language deficits identified in the speech-language evaluation.¹¹⁶

35. In the speech-language evaluation, Student's assessment with Peabody Picture Vocabulary Test-4 ("PPVT-4"); Oral and Written Language Scales, Second Edition ("OWLS II"); and Comprehensive Assessment of Spoken Language II ("CASL-2"), Receptive Language Index ("RLI") were all below average, with standard scores of 79, 83 and 80, respectively, none of which was more than 1.5 standard deviations below the mean, so were viewed as mild deficits; the Expressive Vocabulary Test-2 ("EVT-2") was average with a standard score of 104.¹¹⁷ Based on this testing, observation, teacher input, and school performance, there was not an educational need for speech-language related services in

¹⁰⁶ P30-3; P31-3.

¹⁰⁷ R9-6.

¹⁰⁸ R19-4.

¹⁰⁹ R19-3.

¹¹⁰ R19-4,5.

¹¹¹ R19-6; Student Support Services Compliance Manager.

¹¹² School Speech-Language Pathologist.

¹¹³ P6-2.

¹¹⁴ P6-2; R8-6.

¹¹⁵ P6-2,3,7.

¹¹⁶ Private Speech-Language Pathologist.

¹¹⁷ P6-4,5,6,7; R4-4; Private Speech-Language Pathologist.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

order for Student to access the educational curriculum and make reasonable academic progress.¹¹⁸

36. OWLS was the comprehensive speech-language assessment selected and used by School Speech-Language Pathologist, and then School Speech-Language Pathologist used parts of the CASL to supplement as needed on receptive issues.¹¹⁹ CASL doesn't mandate any subtests; School Speech-Language Pathologist gave all the CASL subtests needed to determine the Receptive Language Index.¹²⁰

37. School Speech-Language Pathologist used OWLS for some supralinguistic higher order assessment, although it was not comprehensive.¹²¹ Higher level language assessment through OWLS included inferencing, problem solving, figurative language and verbal reasoning.¹²² The 12/17/18 MDT meeting discussed the speech-language evaluation and Student's average skills in the supralinguistic area.¹²³

38. The low speech-language results found in the 2014 evaluation were in the area of expressive language, which was ruled out in 2018 as average, so did not need to be retested; others concerns were addressed through OWLS.¹²⁴

39. Lead School Speech-Language Pathologist testified that Student's speech-language needs could be best met through accommodations and strategies in inclusion classes, rather than Student being pulled out of class.¹²⁵ Lead School Speech-Language Pathologist credibly stated that she had no concerns about School Speech-Language Pathologist's speech-language evaluation.¹²⁶

40. IEE Request for Speech-Language Evaluation. In the 12/17/18 MDT meeting, Petitioner's counsel asked PCS for an independent educational evaluation ("IEE") for speech-language pathology.¹²⁷

Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

¹¹⁸ P6-8.

¹¹⁹ R8-6; Private Speech-Language Pathologist (reasonable approach).

¹²⁰ Private Speech-Language Pathologist.

¹²¹ *Id.*

¹²² School Speech-Language Pathologist.

¹²³ R19-6.

¹²⁴ School Speech-Language Pathologist.

¹²⁵ Lead School Speech-Language Pathologist.

¹²⁶ *Id.*

¹²⁷ R19-6.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

The overall purpose of the IDEA is to ensure that “all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA “aims to ensure that every child has a meaningful opportunity to benefit from public education”).

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

Once a child who may need special education services is identified and found eligible, the Local Education Agency (“LEA”) must devise an IEP, mapping out specific educational goals and requirements in light of the child’s disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Endrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Endrew F.*, 137 S. Ct. at 1001.

In addition, the LEA must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori ex rel. A.M. v. Dist. of Columbia*, 2018 WL 4623572, at *3 (D.D.C. 9/26/18).

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which the LEA has the burden of persuasion, if Parent establishes a prima facie case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). "Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide Student with a FAPE." 5-E D.C.M.R. § 3030.3.

Issue 1 (Parent): *Whether PCS denied Student a FAPE by failing to (a) provide an appropriate IEP on 6/5/18 with occupational therapy services, speech-language services and sufficient specialized instruction outside general education, and/or (b) appropriately revise the IEP during 2018/19 to date in light of new evaluation results and Student's functioning levels to include occupational therapy and speech-language services and sufficient specialized instruction outside general education. (PCS has the burden of persuasion on this issue, if Parent establishes a prima facie case.)*

Petitioner established a prima facie case on this issue based on expert testimony, shifting the burden of persuasion to PCS, which met its burden of showing that the IEPs for Student were appropriate.

The applicable legal standard for analyzing the appropriateness of the IEPs at issue was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether they were "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. As the Court of Appeals emphasized in *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 517 (D.C. Cir. 2018), *Endrew F.* "raised the bar on what counts as an adequate education under the IDEA" in that case, requiring more than "merely some" educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be "reasonably calculated to produce meaningful educational benefit").

The measure and adequacy of the IEPs are determined as of the time offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). Moreover, the analysis is not about achieving a perfect IEP, but one reasonably calculated to enable Student to make appropriate progress. *Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA "stops short of requiring public schools to provide the best possible education"). *See also Hill v. Dist. of Columbia*, 2016 WL 4506972, at *21 (D.D.C. 2016), *quoting Leggett v. Dist.*

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

of *Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015). The appropriateness of Student's IEP is analyzed by considering the specific concerns raised by Petitioner, which are considered below in turn.¹²⁸ See 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

Petitioner first asserts that two related services, occupational therapy and speech-language pathology, were required to assist Student, a child with a disability, to benefit from special education. See 34 C.F.R. §§ 300.34(a),(c)(6),(c)(15). The issue is whether in the absence of the related services Student's IEP was still reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances and Student was nonetheless able to access the curriculum to advance toward meeting Student's annual goals pursuant to 34 C.F.R. § 300.320(a)(4). See *Damarcus S.*, 190 F. Supp. 3d 35; *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013).

Occupational Therapy Services. First considering occupational therapy, PCS did clearly demonstrate that Student was able to access the curriculum even without receiving direct occupational therapy services. The independent occupational therapy evaluation on 3/19/18 did find a mild deficit, but PCS considered the areas of need to be best addressed through accommodations and modifications to the presentation of school material, which were incorporated into Student's IEPs. The occupational therapy evaluation and Private Occupational Therapist failed to demonstrate real life impact on Student. The evaluation concluded with a summary stating that visual perception deficits alone could impact numerous academic skills, so it was "not a surprise" that Student had been struggling in school, ignoring Student's cognitive functioning level and school successes. School Occupational Therapist A persuasively testified that if Student had trouble with school work it was not due to motor skills or visual perception skills. According to Student's general education teachers, Student did not present in classes with deficits in visual discrimination (e.g., difficulty matching/sorting items, recognizing similarities/differences, or reversing letters), which was the occupational therapy subtest with the lowest score. The 5/15/18 occupational therapy record review noted that there were no concerns related to Student's handwriting legibility, speed, or accuracy; nor were there motor skills issues.

The lack of impact on Student accessing the curriculum due to not having direct occupational therapy services was no different in 2018/19 (to the due process hearing date). In the 12/17/18 MDT meeting, School Occupational Therapist A again noted that the occupational therapy evaluation demonstrated some visual perceptual needs, but the deficits were mild and did not warrant direct services, as Student was not presenting with deficits in class. PCS once again noted that there were no concerns regarding Student's handwriting. The undersigned agrees with the team's conclusion that it was not necessary to add direct occupational therapy services for Student. Further, Student's progress and success in the

¹²⁸ A Hearing Officer must also determine whether "the State complied with the procedures" set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. No specific procedural violations were alleged in this case.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

classroom indicate that Student is accessing the curriculum, regardless of any occupational therapy deficits.

Speech-Language Services. Turning to speech-language, Student communicated with adults and peers in the educational environment using sentences of age appropriate length, complexity, and vocabulary. Student's teacher reported no concerns in the areas of speech, language, or fluency. Student was not presenting with speech-language concerns in the classroom. A speech-language evaluation found mild deficits, but Lead School Speech-Language Pathologist persuasively testified that Student's speech-language needs could be best met through accommodations and strategies in inclusion classes, rather than being pulled out of class.

Based on this testing, observation, teacher input, and school performance, there was not an educational need for direct speech-language related services in order for Student to access the educational curriculum and make reasonable academic progress. Nor had anything shifted to change this conclusion in 2018/19 (to the due process hearing date), as there has been no basis for finding any need for direct speech-language services. Further, Student's progress and success in the classroom indicate that Student is accessing the curriculum, regardless of any speech-language deficits.

Specialized Instruction Hours Outside General Education. Much of this dispute has focused on whether Student could receive sufficient support through specialized instruction hours inside general education in inclusion classes (which contain both a general education teacher and a special education teacher and students both with and without IEPs), or whether Student actually needed specialized instruction outside general education, as Petitioner claimed. Framed more formally, the question is whether in the absence of specialized instruction hours outside general education the IEPs were reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances. This issue largely turns on the perspective of how Student is doing at PCS without specialized instruction outside general education and whether or not Student is making appropriate progress. Much information about Student was available to the IEP team when determining whether to provide any specialized instruction outside general education in the 6/5/18 IEP.

As shown by the PCS "one-pager," Student's academic situation at the time of the 6/5/18 IEP was largely positive, albeit with notable decline on the final set of data points. But as an inconsistent tester, it is difficult to know whether any poor testing result is a true measure of Student's ability or merely a reflection of particular testing anxiety. At the time of the 6/5/18 IEP, Student's grades had been impressive in the last year, with GPAs from the last trimester of 2016/17 through the second trimester of 2017/18 of 3.48, 3.36 and 3.41 and consistent appearance on the Honor Roll. Student's NWEA MAP scores had increased in reading, from 214 (42%) to 225 (67%) and then declined to 214 (35%), while math increased from 222 (40%) to 231 (55%) and then declined to 225 (38%). Student's ANet increased from 2016/17 to 2017/18 in both reading and math, except for the final test (A4) when Student inexplicably answered only a few questions in reading and decreased from 84% to 5%; in math Student declined on the final test (A4) from 58% to 30%.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

Importantly, the PARCC assessment for 2017/18 showed that while Student was only at Level 2 and partially meeting expectations for both ELA and math, Student was doing well compared to other students at PCS, which objectively confirms the view of the undersigned there was no reason to pull Student from inclusion classes to place Student in lower performing special education classes. Specifically, in ELA Student scored better than 52% of other students in Student's school and Grade, while in math Student scored better than 47% of other students in Student's school and Grade.

At the 6/5/18 IEP meeting, the school team urged that Student be provided services in the inclusion setting before considering a more restrictive environment, as Student had been demonstrating success in general education without supports and performing close to grade level. The team saw no evidence of need for Student to be outside general education. Student was able to demonstrate mastery in many skill sets throughout the year. Prior Grade Special Education Teacher stated that based on her observation of Student it might be more harmful than helpful to pull Student from non-disabled peers in inclusion classes, for the special education classroom might not be working on grade-level material. The general education teacher added that Student was sufficiently close to grade level that concepts were within reach. Pulling Student out for ELA might result in instruction that was not rigorous enough, for Student was not struggling to understand ELA content.

As for 2018/19, Student is coming out of Student's "shell." Student was hesitant to participate at first, but is getting used to the challenges of Grade and is participating more, including raising hand in class and taking some leadership in the group. Student has greatly grown in 2018/19 in algebra class, which was Student's most difficult subject. In an algebra inclusion class of 24, Student is one of nine students with an IEP but requires the least attention of the nine. Student is mastering the content and on par with many of the general education students. Student is functioning much higher than students in resource classes. Student's MAP scores are well above the level in resource classes, where Student would be out of place. Student has mastered some math goals on Student's IEP and is on track to master all IEP goals by the end of the year.

The outside general education setting would not be appropriate for Student, as the resource classes are not pushed to do the level of work academically that Student can do and there are more behavior problems in resource classes (which are often part of students' disabilities). Student's co-teacher in English in the inclusion class also teaches English in a resource class and convincingly testified that Student would regress if put in the resource class, for the same material is not taught there as in inclusion. Student is making appropriate progress in the inclusion class, which is the right setting.

The undersigned concludes that receiving needed specialized instruction in the inclusion setting was Student's LRE. The 6/5/18 IEP was correct to provided specialized instruction inside general education (inclusion) and the IEP was reasonably calculated for Student to make appropriate progress in light of Student's circumstances. While advancing to Grade in 2018/19 was challenging for Student (and many peers), this Hearing Officer is persuaded that the inclusion setting remained Student's LRE and it would have been a grave mistake to pull Student from inclusion classes where Student has been able to make appropriate progress given Student's circumstances.

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

Issue 2 (PCS): *Whether the speech-language evaluation conducted by PCS is appropriate under the IDEA. (PSC has the burden of persuasion on this issue.)*

PCS met its burden of persuasion on the appropriateness of the disputed speech-language evaluation. The basic framework for IEEs is straightforward. Under 34 C.F.R. § 300.502(b), with certain limitations Parent has a right to seek an IEE at public expense if she disagrees with a public agency evaluation. *See Taylor v. Dist. of Columbia*, 770 F. Supp. 2d 105, 109 (D.D.C. 2011); *Letter to Baus*, 115 LRP 8855 (OSEP 2/23/15). Once an IEE at public expense is requested, the public agency must without unnecessary delay either (i) file a due process complaint to show that its evaluation is appropriate; or (ii) ensure that an IEE is provided at public expense. *Id.*; 34 C.F.R. § 300.502(b). *See also L.S. ex rel. K.S. v. Abington School Dist.*, 2007 WL 2851268, at *6 (E.D. Pa. 2007). PCS must pay for the full cost of the evaluation or otherwise ensure that the IEE is provided at no cost to parents. 34 C.F.R. § 300.502(a)(3)(ii). Here, Parent sought an IEE for speech-language on 12/17/18, based on her disagreement with PCS's April 2018 speech-language evaluation. PCS brought its due process complaint on 1/8/19 to seek to prove that its evaluation was appropriate, which was clearly without unnecessary delay. *See, e.g., Horne v. Potomac Preparatory PCS*, 209 F. Supp. 3d 146, 152-53, 155 (D.D.C. 2016) (three months was unnecessary delay).

Petitioner asserted that there were numerous speech-language subtests that should have been administered, but PCS demonstrated that the subtests chosen were reasonable in the circumstances. Indeed, the logic of School Speech-Language Pathologist's decision to first conduct the OWLS and follow up on receptive issues with the CASL was acknowledged as reasonable by Private Speech-Language Pathologist in her testimony. Further, while Petitioner repeatedly argued that there were "mandatory" subtests that School Speech-Language Pathologist failed to administer, Private Speech-Language Pathologist clearly testified that the assessments School Speech-Language Pathologist used do not have required subtests, although they do have certain groupings which allow specific conclusions to be reached, such as the Receptive Language Index, for which School Speech-Language Pathologist properly administered all necessary subtests.

Much advocacy at the due process hearing focused on the need for higher level language assessment, but Private Speech-Language Pathologist acknowledged that School Speech-Language Pathologist used OWLS for some supralinguistic higher order assessment. Specifically, higher level language assessment through OWLS included inferencing, problem solving, figurative language, and verbal reasoning. The 12/17/18 MDT meeting discussed Student's average skills in the supralinguistic area.

Finally, there were insinuations about the 2018 speech-language evaluation not retesting areas in which Student received low scores in speech-language testing in 2014. But PCS convincingly explained that those low scores were in the expressive area which had been ruled out by the 2018 OWLS testing, so there was no need to retest the low areas from 2014.

Lead School Speech-Language Pathologist testified that she had no concerns about School Speech-Language Pathologist's speech-language evaluation. Considering the

Hearing Officer Determination

Case Nos. 2018-0309 & 2019-0003

substance of the speech-language evaluation as set forth in the Findings of Fact and discussed in Issue 1 and above, this Hearing Officer concludes that PCS's speech-language evaluation was appropriate, and that an IEE at public expense is therefore not required. *See Parker C. through Todd v. W. Chester Area Sch. Dist.*, 2017 WL 2888573, at *12 (E.D. Pa. July 6, 2017) ("a parent 'cannot simply argue that the evaluation was inappropriate because they disagree with its findings,'" *quoting L.S.*, 2007 WL 2851268, at *12).

ORDER

Parent has not prevailed on her issue in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief in Case No. 2018-0309 are **dismissed with prejudice**.

PCS has prevailed on its issue in this case. Accordingly, **it is hereby ordered** that PCS need not fund an IEE for Parent based on her disagreement with PCS's April 2018 speech-language evaluation. Any and all other claims and requests for relief in Case No. 2019-0003 are **dismissed with prejudice**.

A motion for continuance filed on 12/12/18 in Case No. 2018-0309 **is hereby denied as moot**.

IT IS SO ORDERED.

Dated in Caption

/s/ *Keith Seat*

Keith L. Seat, Esq.
Hearing Officer

NOTICE OF RIGHT TO APPEAL

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

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