

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

OSSE
Office of Dispute Resolution
February 05, 2024

PETITIONER, on behalf of STUDENT, ¹)	
)	
Petitioner,)	Date Issued: February 3, 2024
)	
v.)	Hearing Officer: Peter B. Vaden
)	
)	Case No: 2023-0189
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Dates: January 23, 24,
Respondent.)	25 and 26, 2024
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (PARENT) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the Parent alleges that Respondent District of Columbia Public Schools (DCPS) denied her child a free appropriate public education (FAPE) in the 2021-2022 and 2022-2023 school years by failing to comprehensively evaluate the child and by offering inappropriate Individualized Education Programs (IEPs).

¹ Personal identification information is provided in Appendix A.

Petitioner's due process complaint, filed on September 29, 2023, named DCPS as respondent. The undersigned hearing officer was appointed on October 2, 2023. On October 17, 2023, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. On October 24, 2023, the parties met for a resolution session and were unable to resolve the issues in dispute.

On December 12, 2023, the hearing officer granted Petitioner's unopposed continuance request to extend the final decision due date in this case from December 13, 2023 to February 9, 2024.

With the Parent's consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. The hearing, which was open to the public, was convened before the undersigned impartial hearing officer on January 23, 24, 25 and 26, 2024. Parent appeared online for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL. Spanish language interpretation was provided for the Parent. For the testimony of the Parent, a consecutive interpreter was provided. The remainder of the hearing was interpreted simultaneously.

Counsel for Petitioner made an opening statement. Parent testified and called EDUCATIONAL ADVOCATE 1, INDEPENDENT SPEECH-LANGUAGE PATHOLOGIST (Independent SLP), EDUCATIONAL ADVOCATE 2 and OCCUPATIONAL THERAPIST as additional witnesses. DCPS called as witnesses DCPS SPEECH-LANGUAGE PATHOLOGIST (DCPS SLP), SCHOOL SOCIAL WORKER and SPECIAL EDUCATION

DIRECTOR. Petitioner's Exhibits P-1 through P-71 were admitted into evidence, with exception of Exhibits P-7, P-8, P-65 and P-66 which were withdrawn. Exhibits P-9, P-11 and P-12 were admitted over DCPS' objections. DCPS' Exhibits R-1 through R-4, R-6, R-19, R-21 through R-24, R-29, R-34 through R-41, R-47 through R-56 and R-58 through R-62 were admitted into evidence without objection. Exhibit R-33 was admitted over Petitioner's objection. On January 26, 2024, after the taking of the evidence was completed, counsel for the respective parties made oral closing arguments. There was no request to submit written closings.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issues for determination, set out in the October 21, 2023 Amended Prehearing Order, are:

A. Whether DCPS denied Student a free and appropriate public education (FAPE) by failing to timely and comprehensively evaluate Student during his/her triennial evaluation on or about November 23, 2022, as a result of DCPS' failure to conduct a comprehensive psychological evaluation that measured the student's cognitive and social/emotional functioning, as well as an Occupational Therapy reevaluation, an Assistive Technology reevaluation and a speech and language reevaluation.

B. Whether DCPS denied Student a FAPE by failing to provide Student with appropriate IEPs from December 2, 2021² to present (including the November

² Petitioner's due process complaint alleges that Student's December 2021 IEP was developed on December 12, 2021. It appears that the actual IEP date was December 2,

30, 2022 IEP) because the IEPs provided inappropriate post-secondary transition plans not based on results of assessment; did not provide Student with appropriate supports to address Student's deficits in all areas of need, including most math, reading and writing goals and/or Present Levels of Performance (PLOPs) being repeated verbatim; inadequate description of Student's academic present levels in reading, writing, math, and behavior; baseline levels not specific enough; a lack of continuity in encouraging progress; reduction in speech and language services and the November 30, 2022 IEP was not based on sufficient evaluative data.

For relief, Petitioner requests that the hearing officer order DCPS as follows:

DCPS shall be ordered to timely conduct, or fund, and review an Occupational Therapy evaluation, a speech and language evaluation, and an Assistive Technology evaluation, a Comprehensive Psychological Evaluation which includes an assessment of Student's cognitive and social/emotional functioning, as well as to include Parent input on the student's adaptive functioning; DCPS shall reconvene the Multidisciplinary/IEP team to review, revise and/or amend the IEP as appropriate based upon the updated data from the aforementioned evaluations. DCPS shall be ordered to fund compensatory education for the student for the alleged denials of FAPE.

Petitioner asserts reservation of right to request additional compensatory education upon completion of the requested evaluations.

FINDINGS OF FACT

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

1. Student, an AGE youth, resides with his/her parents in the District of Columbia. Testimony of Mother. Student is a "child with a disability," as defined by the IDEA, as having Autism (Autism Spectrum Disorder). Exhibit P-24.

2. In psychological testing beginning in 2012, Student was found to display

2021. See Exhibit P-23.

many features of Autism Spectrum Disorder (ASD). Other diagnoses in Student's history include Apraxia and Attention Deficit - Hyperactivity Disorder (ADHD). Exhibit P-15.

3. Student is currently enrolled in CITY SCHOOL 3. Student attended several DCPS schools, including CITY SCHOOL 2, before entering City School 3 at the start of the 2021-2022 school year. In pre-kindergarten, Student was initially found eligible for special education services with a disability determination of Developmental Delay. In January 2014, Student's new eligibility determination, Autism, was made. Exhibit P-19. Prior to the 2019-2020 school year, Student attended CITY SCHOOL 1, where he/she received most of his/her academic support in a small self-contained classroom for students experiencing communication and educational difficulties. Exhibit P-14.

4. In November 2015, an independent Assistive Technology (AT) specialist conducted an AT assessment of Student. In his review report, this assessor reported his opinion that Student was presently making gains supported through related services and available supplemental aids, service, and accommodations; that Assistive Technology was not needed at the time for Student to access print/reading materials, compose written work, modify behaviors that may interfere with Student's curricula, communicating, or ambulating throughout his/her classroom environment; that Student may benefit from continued access to classroom computers; that Student may benefit from additional exposure to keyboarding during OT in order to increase his/her

rate of production and that allowing Student to continue to access visual supports and graphic organizers may support his/her gains in composition, organization, and the production of classwork. Exhibit P-11.

5. For Student's December 2019 special education triennial reevaluation, DCPS conducted a Speech-Language Pathology reevaluation, an OT reevaluation, and a psychological triennial reevaluation. Exhibits P-14, P-15 and P-16.

6. Student's December 8, 2020 City School 2 IEP, as amended on April 5, 2021, identified Mathematics, Reading, Written Expression, Communication/Speech & Language, Emotional/Social/Behavioral Development and Motor Skills/Physical Development as IEP areas of concern for Student. The IEP provided for Student to receive Specialized Instruction for 22.5 hours per week. For Related Services, the IEP provided for Student to receive 240 minutes per month of Speech-Language Pathology, 90 minutes per month of OT and 120 minutes per month of Behavioral Support Services. All services were to be provided outside of the general education setting. Student would have inclusion with typically developing peers for specials classes and lunch. The April 5, 2021 IEP team determined that Student did not require AT or a dedicated aide. The IEP team determined that Extended School Year (ESY) services were required for Student. Exhibit P-22.

7. Student entered City School 3 at the start of the 2021-2022 school year. The City School 3 IEP team met for the annual review of Student's IEP on December 2, 2021. The December 2, 2021 IEP identified Mathematics, Reading, Written Expression,

Communication/Speech & Language, Emotional/Social/Behavioral Development and Motor Skills/Physical Development as IEP areas of concern for Student. The IEP provided for Student to receive Specialized Instruction, outside general education for 22.5 hours per week. For Related Services the IEP provided for Student to receive 180 minutes per month of Speech-Language Pathology, 120 minutes per month of OT and 120 minutes per month of Behavioral Support Services. All services were to be provided outside of the general education setting. Student would have inclusion with typically developing peers for specials classes and lunch. The December 2, 2021 IEP team determined that Student did not require AT, a dedicated aide or ESY services. Exhibit P-23.

8. For the Post-Secondary Transition Plan (PSTP) in the December 2, 2021 IEP, Student was administered the Casey Life Skills Education HS Assessment, the O'Net Interest Profiler and the Casey Life Skills Assessment for Independent Living. On the Casey education assessment, Student's highest scores were in the Relationships and Community domains. On the O'Net employment assessment, Student's highest score was in the Investigative domain. The PSTP stated that upon completion of high school, Student would live at home with the family, participate in community learning and employment training services and work in a supported employment program. For transition services, the PSTP provided for 5 hours per year of vocational training, 5 hours per year of Job Readiness Instruction and 5 hours per year of training on independent living skills. Exhibit P-23.

9. In November 2022, PSYCHOLOGY INTERN conducted a Psychological Triennial Reevaluation of Student. Prior to this assessment, the multidisciplinary team (MDT) at City School 3 determined there was sufficient data regarding Student's present levels of performance to continue educational programming. For her evaluation, Psychology Intern made a 20 minute classroom observation and utilized a records review, staff reports, the Adaptive Behavior Assessment System, 3rd Edition (ABAS-3) rating scales (completed by SPECIAL EDUCATION TEACHER) and the Woodcock-Johnson Tests of Academic Achievement-IV (WJ-IV ACH) administered by Special Education Teacher. Based on the teacher's ABAS-3 responses, Psychology Intern reported that Student's profile indicated an overall adaptive behavior score in the low average range. Within the Conceptual domain, Student's Communication (speech, language and listening skills needed for communication) rated as average. Functional Academics (basic reading, writing, and math skills needed for daily, independent functioning) were rated as average; and Self-Direction (skills needed for independence, responsibility, and self-control, including starting and completing tasks, and following directions) were viewed as below average. Within the Social domain, Student's Social skills (skills needed for interacting with other people and showing and recognizing emotions) and Leisure skills (skills needed for engaging in recreational activities, including playing with others and following rules in games) both rated as below average. Within the Practical domain, Student's Community Use (skills needed for functioning in the community) emerged as being low. Remaining skill areas were endorsed as

age-appropriate or average, including Self-Care (skills needed for personal care including eating, dressing, bathing, toileting, grooming, and hygiene), Health & Safety (skills needed to follow safety rules and for protection of health), and School Living (skills needed for basic care of the home or school setting, including cleaning, straightening, taking care of belongings, food preparation, and performing chores). Student's overall educational achievement, as estimated by the WJ-IV ACH, was in the low to very low range. Psychology Intern also reported that according to information documented in DCPS' Special Education Data System (SEDS), Student had strong receptive and expressive skills, speech and reading comprehension skills. In math, Student had good number sense, and was able to use a calculator to perform the required functions on math tasks. Student had good listening skills, and could follow multi-step directions to complete a variety of tasks. Psychology Intern recommended that Student should continue to have an IEP under the ASD classification to address deficits in the areas of verbal and nonverbal reasoning and working memory, as well as vulnerabilities in academic weaknesses in reading, mathematics and written expression; that Student should continue to build his/her adaptive skills by focusing on building the skills needed for independence, responsibility and self-control; and that Student may benefit from direct social skills instruction, including teaching of social skills and social cognition that is integrated into the academic curriculum and throughout the school day. Exhibit R-48.

10. For Student's Communication/Speech & Language needs, the City School

3 MDT team relied on DCPS SLP's progress reports and observations. For Emotional, Social & Behavioral Development, the MDT team relied on classroom observations and anecdotal data. For Motor Skills/Physical Development, the MDT team relied on DCPS' Occupational Therapist report and Student's work samples. Exhibit P-20.

11. At a meeting on November 30, 2022, the City School 3 eligibility team determined that Student continued to meet special education eligibility requirements under the Autism category. The team determined that Student's disability impacts his/her participation in the general education curriculum in Mathematics; Communication/Speech & Language; Reading, Emotional Social and Behavioral Development; Written Expression; Motor Skills and Physical Development. Exhibit R-50. There was no evidence at the due process hearing that, at the time of the triennial reevaluation, the Parent or any meeting participant thought additional assessments of Student were needed or dissented from the eligibility determination.

12. The City School 3 IEP team met for the annual review of Student's IEP on November 30, 2022. The November 30, 2022 IEP identified Mathematics, Reading, Written Expression, Communication/Speech & Language, Emotional/Social/Behavioral Development and Motor Skills/Physical Development as IEP areas of concern for Student. The IEP provided for Student to receive Specialized Instruction, outside general education, for 22.5 hours per week. For Related Services, the IEP provided for Student to receive 180 minutes per month of Speech-Language Pathology, 120 minutes per month of OT and 90 minutes per month of Behavioral Support

Services. Student would continue to have inclusion with typically developing peers for specials classes and lunch. The November 30, 2022 IEP team determined that Student did not require AT or a dedicated aide. The team decided that ESY services were required for the provision of FAPE. Exhibit P-24.

13. For the PSTP in the November 30 2022 IEP, Special Education Teacher administered the CITE Learning Styles Inventory and the O'Net Interest Profiler. On the Learning Style Inventory, Student scored highest in Social Group – meaning that Student needs to do important learning with someone else. On the O'Net profiler, Student's highest score was in the Artistic domain – meaning that Student would do well with jobs/careers that involve creativity. The transition plan stated that upon completion of high school, Student would work in a supported employment program in the computer field; continue to live at home with the family; and participate in community learning and employment training services. For transition services, the November 30, 2022 PSTP provided 5 hours per year of vocational training, 5 hours per year of Job Readiness Instruction and 5 hours per year of training in independent living skills. Exhibit P-24.

CONCLUSIONS OF LAW

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

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Parent in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the child's IEP or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

ANALYSIS

I.

November 23, 2022 Reevaluation

– Did DCPS deny Student a FAPE by failing to timely and comprehensively evaluate Student during his/her triennial evaluation on or about November 23, 2022, as a result of DCPS' failure to conduct a comprehensive psychological evaluation that measured Student's cognitive and social/emotional functioning, as well as an OT reevaluation, an AT reevaluation and a speech and language reevaluation.

For DCPS' triennial reevaluation of Student in November 2022, DCPS conducted limited formal assessments. These included Psychology Intern's abbreviated psychological reevaluation without a formal cognitive assessment, records reviews and observations by the speech-language, behavioral support and OT providers. For her

evaluation, Psychology Intern made a brief classroom observation and utilized a records review, staff reports, the ABAS-3 adaptive rating scales and the Woodcock-Johnson educational assessment. Psychology Intern recommended that Student should continue to have an IEP under the ASD classification to address his/her deficits in academics, adaptive skills and social skills. For Student's speech and language needs, the MDT team relied on DCPS SLP's progress reports and observations. For Emotional, Social & Behavioral Development, the MDT team relied on classroom observations and anecdotal data. For Motor Skills/Physical Development, the team relied on the DCPS' Occupational Therapist's report and Student's work samples.

At a meeting on November 30, 2022, the City School 3 eligibility team determined that Student continued to meet IDEA special education eligibility requirements under the Autism category. The team determined that Student's disability impacted his/her participation in the general education curriculum in Mathematics; Communication/Speech & Language; Reading; Emotional, Social and Behavioral Development; Written Expression and Motor Skills and Physical Development. Prior to the November 2022 reevaluation, the City School 3 MDT team determined there was sufficient data regarding Student's PLOPs to continue his/her educational programming.

In her hearing testimony, Parent's expert, Educational Advocate 2, opined that DCPS' November 2022 triennial reevaluation was not sufficiently comprehensive because for the psychological evaluation, there was no formal cognitive assessment; only

one informant completed the ABAS-3 adaptive behavior rating scales and Student's social-emotional functioning was not assessed.

Generally, when a child has been evaluated for special education eligibility and the appropriateness of the LEA's evaluation is at issue, the hearing officer must consider whether the agency adequately gathered functional, developmental and academic information about the child's needs to determine the content of the IEP in all areas of suspected disability and that the evaluation was sufficiently comprehensive to identify all of the child's needs. 20 U.S.C. §§ 1412(a)(6)(B), 1414(b)(1-3); 34 C.F.R. § 300.304(b)(1-3), (c)(4, 6). Federal IDEA law and regulations do not impose any specific requirements on the content of a psychological evaluation. *See Richardson v. District of Columbia*, 273 F. Supp. 3d 94, 100. *See, also, Hill v. District of Columbia*, No. 14-CV-1893 (GMH), 2016 WL 4506972, *18 (D.D.C. Aug. 26, 2016) ("In fact, the IDEA lacks specific parameters regarding the content of psychological evaluations, or for that matter, of other evaluations.")

In this case, Student had a full-time placement in DCPS CES classrooms, as a child on the autism spectrum, since at least the 2018-2019 school year at CITY SCHOOL

1. There was no evidence at the due process hearing that at the time of the November 22, 2022 eligibility determination meeting, the Parent or any participant thought additional assessments of Student were needed or dissented from the team's eligibility determination. The first complaint about the November 2022 reevaluation apparently surfaced in the Parent's September 29, 2023 due process complaint. I find that

Petitioner did not meet her burden of persuasion that at the time of the November 2022 triennial reevaluation, Student's MDT/IEP teams did not have adequate functional, developmental and academic information to determine Student's eligibility or the special education content of his/her IEP.

As to OT needs, Petitioner's expert in occupational therapy and assistive technology, Occupational Therapist, opined that based on progress reports in 2022, Student's progress on IEP goals for Motor Skills/Physical Development, specifically writing speed, was slow. Occupational Therapist opined that because of Student's slow progress since the 2019 special education reevaluation, Student needed an updated OT evaluation in 2022. Occupational Therapist also opined that because Student was transitioning to a higher level in school, DCPS should have considered an Assistive Technology (AT) reevaluation. DCPS did not call a witness to rebut Occupational Therapist's testimony and I found his opinions credible. I conclude that Petitioner met her burden of persuasion that the November 2022 triennial reevaluation was not sufficiently comprehensive for want of a OT reevaluation and an AT assessment.

The failure to conduct a sufficiently comprehensive special education reevaluation is a procedural violation of the IDEA. *See, e.g., I.T. ex rel. Renee T. v. Department of Educ.*, 2012 WL 3985686, 16 (D.Haw., Sept. 11, 2012). *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012). 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 C.F.R. § 300.513(a)(2). In this case, I find that DCPS' failure to conduct an OT reevaluation and an AT assessment of Student as part of the November 2022 reevaluation impaired the Parent's opportunity to participate in the decision-making process. This was a denial of FAPE.

II.

IEP Appropriateness

Did DCPS deny Student a FAPE by failing to provide Student with appropriate IEPs from December 2, 2021 to present (including the November 30, 2022 IEP) because the IEPs provided inappropriate post-secondary transition plans not based on results of assessment; did not provide Student with appropriate supports to address Student's deficits in all areas of need, including most Math, Reading and Writing goals and/or PLOPs being repeated verbatim; inadequate description of Student's academic present levels in reading, writing, math, and behavior; baseline levels not specific enough; lack of continuity in encouraging progress; reduction in speech and language services and because the November 30, 2022 IEP was not based on sufficient evaluative data.

The Parent alleges that City School 3's IEPs for Student, developed on December 2, 2021, October 14, 2022 and November 30, 2022, were inappropriate because the IEP transition plans were inappropriate; the IEPs did not provide Student with appropriate supports in all areas of need; academic goals and PLOPs were allegedly repeated verbatim; PLOPs and baselines were inadequate; "lack of continuity in encouraging progress" and, in the November 30, 2022 IEP, speech and language services were inappropriately reduced. DCPS responds that the IEPs were appropriate at the time

each program was developed.

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

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

Middleton at 128.

Procedural Compliance

The Parent alleges that DCPS’ November 30, 2022 IEP was not based sufficient evaluative data. This is a procedural compliance issue. To comply the IDEA’s procedural requirements, a local education agency (LEA) must ensure that each child with a disability is appropriately evaluated before developing his/her IEP. *See* 34 C.F.R. § 300.304(b). In the preceding section, I found that the Parent met her burden of persuasion that DCPS’ November 2022 reevaluation of Student was inadequate because it did not include an OT reevaluation and an AT assessment. In light of this finding, it follows that DCPS failed to comply with the IDEA’s procedural requirements in developing the November 30, 2022 IEP. The Parent did not claim that DCPS did not comply with IDEA procedures in developing the prior IEPs.

Turning to the second, substantive, prong of the *Rowley* IEP inquiry, were City

School 3's December 2, 2021, October 14, 2022 and November 30, 2022 IEPs appropriate for Student? In *A.D. v. Dist. of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570, (D.D.C. Mar. 8, 2022), U.S. District Judge Beryl Howell explained the IDEA's FAPE requirement:

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

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

I find that Petitioner made a *prima facie* showing, through the testimony of her expert witnesses, that the December 2, 2021 and November 30, 2022 IEPs were inadequate. Therefore, DCPS holds the burden of persuasion on the appropriateness of these IEPs.

Petitioner's expert witness, Educational Advocate 1, opined that the December 2,

2021 and November 30, 2022 IEPs provided inappropriate PLOPs, baselines, and annual goals as well as inadequate PSTPs. With regard to PLOPs and annual goals, the IDEA requires that every IEP include—

- (1) A statement of the child’s present levels of academic achievement and functional performance, including—
 - (i) How the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); . . .
- (2)
 - (i) A statement of measurable annual goals, including academic and functional goals designed to—
 - (A) 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
 - (B) Meet each of the child’s other educational needs that result from the child’s disability.

See 34 C.F.R. § 300.320(a).

The IEP Team’s determination of how the child’s disability affects the child’s involvement and progress in the general education curriculum is a primary consideration in the development of the child’s annual IEP goals. Section 300.320(a)(1)(i), consistent with section 614(d)(1)(A)(i)(I)(aa) of the [IDEA], requires the statement of a child’s present levels of performance in the IEP to include how the child’s disability affects the child’s involvement and progress in the general education curriculum. This directly corresponds with the provision in § 300.320(a)(2)(i)(A) and section 614(d)(1)(A)(i)(II)(aa) of the Act, which requires the IEP to include measurable annual 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.

U.S. Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46540, 46662 (August 14, 2006).

Educational Advocate 1 testified that the PLOPs in the December 2, 2021 and the November 30, 2022 IEP were vague, confusing and incomplete. However, all that is required of PLOPs is a statement of the student's present levels of academic achievement and functional performance and to include how the child's disability affects the child's involvement and progress in the general education curriculum. I find that the PLOPs in the December 2, 2021 and November 30, 2022 IEPs meet that level. For example, in the December 2, 2021 IEP, the PLOPs for Mathematics, Reading and Written Express tell the reader, in part,

Mathematics – Student is developing skills and utilizing strategies that will help build and scaffold skill retention in math computation and math reasoning skills. Student demonstrates grade level functional math skills at the target level. Student can combine coins and bills in at least (3) different combinations to create values up to \$5.00, and can state the time on clocks up to the 5-minute, 1-minute interval, with 80% accuracy. Student demonstrates calculation and computation at the progressing level. Student demonstrates an understanding of place value for the ones, tens, tenths places. Student's disability of autism affects how verbal language, oral and written, is used and understood, resulting in difficulty with making meaning of words in context. This impacts access to math-related instruction, and tasks such as learning and using new math vocabulary, identifying and using multiple strategies to solve problems and identifying key information to solve problems. Student's disability impacts reasonable and meaningful progress in the general education curriculum and learning environment in math computation, math reasoning and functional math skills.

Reading – Student demonstrates comprehension at the emerging level. Student continues to develop skills and strategies that will help him/her build and scaffold skill retention in reading and reading comprehension. Student demonstrates concepts of print at the target level. During a shared reading, Student distinguishes between letters, words, and sentences by eye-tracking, pointing to the spoken words to the text on each page, for 4 out of 5 opportunities. Student's disability affects how verbal language, oral and written, is used and understood, resulting in difficulty with making meaning of words in

context. This impacts access to reading-related instruction, and tasks such as phonics and decoding fluency, understanding figurative language and multi-meaning vocabulary, making inferences and identifying themes. Student's disability impacts reasonable and meaningful progress in the general education curriculum and learning environment within the areas of comprehension and fluency.

Written Expression – Student demonstrates writing fluency at the target level. Student can write 30 total words after 1 minute of story contemplation and 3 minutes of writing, with supports. Student continues to develop skills and strategies that will help build and scaffold skill retention in written expression. Student spells at the target level. Student demonstrates organization of ideas at the progressing level. Student can create a sentence and give multiple details in response to prompts. Student's disability impacts reasonable and meaningful progress in the general education curriculum and learning environment within the areas of organization of ideas, capitalization and punctuation.

See Exhibit P-23 (not verbatim). I find that these PLOPs, as well as the PLOPs in the November 30, 2022 IEP, on their face, meet the IDEA's requirement to state Student's present levels of academic achievement and functional performance in Mathematics, Reading and Written Expression and to describe how Student's disability affects his/her involvement and progress in the general education curriculum.

Educational Advocate 1's assertion that IEP baselines are a prerequisite for each annual goal misstates IDEA requirements. The Act requires that IEPs include PLOPs, but does not require baselines. *See Lathrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 424-25 (8th Cir. 2010) (Plaintiff has not cited any case in which any court has read such an implied requirement for baseline data into the law.)

As to the IEP annual goals, Educational Advocate reasons that the annual goals must be informed by the PLOPs and for her, it was difficult to make a connection

between the IEP PLOPs, baselines and annual goals. Again, Educational Advocate appears to demand a higher standard than required by the IDEA. In its *Assistance to States* guidance the Department of Education addressed a commenter's request that the IDEA regulations should require a child's present levels of performance to be "aligned" with the child's annual goals. The Department explained that the IEP must include measurable annual 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. However, the Department declined to mandate that PLOPs be "aligned" with the annual goals. *See Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. at 46662. Even though Educational Advocate 1 found it difficult to "make a connection" between the IEP PLOPs, baselines and annual goals, that does not mean that the annual goals were inadequate.

It is also not correct that most Math, Reading and Writing goals and/or Present Levels of Performance (PLOPs) were repeated "verbatim" from the December 2, 2021 IEP to the November 30, 2022, as alleged in the due process complaint. While there is some overlap, the November 30, 2022 IEP was completed after the November 2022 triennial reevaluation, and the November 30, 2022 IEP PLOPs incorporate data from that reevaluation. The Written Expression section of the November 30, 2022 IEP is largely repeated from the prior IEP, but that was not the case of the other IEP areas of concern.

Perfection is not required in IEP drafting. *See, Z. B. v. Dist. of Columbia*, 888

F.3d 515 (D.C. Cir. 2018) (IDEA calls on public schools to provide a free, appropriate education. Congress has not committed to educational perfection: “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. citing* Endrew F., 137 S.Ct. at 999 (emphasis in original). *See, also, e.g., O.O. ex rel. Pabo v. District of Columbia*, 573 F. Supp. 2d 41, 53, 56 (D.D.C. 2008) (IEP does not have to be drafted perfectly.) If Educational Advocate has attended the December 2, 2021 and November 30, 2022 IEP team meetings, it is likely that she could have collaborated on improvements to the IEP PLOPs and annual goals, but the City School 3 IEP teams did not have the benefit of her input when the IEPs were drafted. I find that the PLOPs and annual goals in Student’s December 2, 2021 and November 30, 2022 IEPs were, on their face, reasonable and met, at least, the IDEA’s minimum standards for IEP content.

With regard to Student’s special education services and educational placement, for both the December 2, 2021 and November 30, 2022 IEPs, Student was placed in the full-time City School 3 CES program. Petitioners’ experts did not opine that the CES educational placement, or the program’s special education services were not appropriate for Student.

Petitioner’s speech expert, Independent SLP, opined that the decision of the December 2, 2021 IEP team to reduce Student’s speech and language services from 240 minutes to 180 minutes per month was inappropriate because, at the time of the IEP meeting, Student was meeting speech and language goals with less than 50% accuracy.

DCPS' expert, DCPS SLP, explained in his testimony that he had recommended the reduction in speech and language services, because Student had demonstrated progress toward his/her speech and language goals, and because pulling a student out of the CES classroom takes time away from academics and social skill development. DCPS SLP opined that the prior City School 2 IEP provision for 240 minutes per month of speech-language services was unusual and too much for students at Student's level at City School 3.

Independent SLP never met Student or observed him/her at school. Nor had this expert spoken to Student's teachers or service providers or participated in Student's IEP meetings. DCPS SLP, who had been Student's speech and language provider since September 2021, had much more familiarity with Student's speech and language needs. I found DCPS SLP to be the more credible speech and language witness and I conclude that DCPS met its burden as to the appropriateness of the IEP teams' decisions to provide for 180 hours of Speech-Language Pathology in the December 2, 2021 and November 30, 2022 IEPs.

With regard to the Post-Secondary Transition Plans in the December 2, 2021 and November 30, 2022 IEPs, the Parent's expert, Special Education Advocate 1, testified to her concern that there was an alleged lack of alignment between Student's transition assessment results and the transition plans' goals and services. For transition services, the IDEA requires that beginning not later than the first IEP to be in effect when the child turns 16, and updated annually thereafter, the IEP must include—

(1) Appropriate measurable postsecondary 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 C.F.R. § 300.320(b). Transition services means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes (i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Id., § 300.43(a). It is up to each child's IEP team to determine the transition services that are needed to meet the unique transition needs of the child. *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. at 46668.

In the December 2, 2021 IEP, the PSTP states, *inter alia*, that based on the Casey education assessment, Student's highest scores were in the Relationships and Community domains. On the O'Net employment assessment, Student's highest score was in the Investigative domain. Post-Secondary Transition goals included for Student to participate in community learning and employment training services and to obtain

work in a supported employment program in the “IT field.”

For the November 30, 2022 IEP PSTP, Student was administered the CITE Learning Styles Inventory and the O’Net Interest Profiler. The IEP states that for Post-Transition goals, Student will participate in community learning and employment training services and will work in a supported employment program in the computer field.

For transition services for post-secondary education and training and for employment, to meet Student’s PSTP goals set out in the respective IEPs, both IEPs provided for Student to receive 5 hours per year of vocational training and 5 hours per year of job readiness instruction, both in “DCPS/Community.” Educational Advocate 1 opined that the provision of 10 hours per year of transition services for training and employment in these IEPs was not appropriate to allow Student to progress toward the identified transition goals. DCPS did not call a witness to rebut this opinion. I conclude that DCPS did not meet its burden of persuasion that the 10 hours per year of training and employment transition services provided in the December 2, 2021 IEP and the November 30, 2022 IEP were reasonably calculated to assist the Student to reach the transition goals stated in the respective IEPs.

Remedy

In this decision, I have determined that Petitioner established that DCPS denied Student a FAPE by not conducting OT and AT reevaluations for Student’s November 2022 triennial special education reevaluation and DCPS failed to meet its burden that

the PSTP services in the December 2, 2021 and November 30, 2022 IEPs were appropriate. For relief, the Parent requests that I order DCPS to conduct updated evaluations of Student and award appropriate compensatory education.

For compensatory education, Educational Advocate 1, proposed an award to include supplementing Student's 2022 triennial reevaluation, with an updated psychological evaluation, an OT reevaluation, a speech/language reevaluation and an AT reevaluation.

When a [hearing officer] finds that a school district has denied a student a FAPE under the IDEA, "it has 'broad discretion to fashion an appropriate remedy,' which can go beyond prospectively providing a FAPE, and can include compensatory education." *B.D. v. District of Columbia*, 817 F.3d 792, 798 (D.C. Cir. 2016) (quoting *Boose v. District of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015)).

Based on my findings in this decision, I will order DCPS to conduct appropriate OT and AT reevaluations of Student. This is without prejudice to the right of Petitioner to request DCPS to conduct comprehensive psychological and speech and language reevaluations of Student, if warranted. *See* 34 C.F.R. § 300.303 (Public agency must ensure that a reevaluation of each child with a disability is conducted if the child's parent requests a reevaluation, provided that such reevaluation may occur not more than once a year, unless the parent and the public agency agree otherwise.) I will also order DCPS to ensure that Student's IEP team reviews his/her IEP and revises the IEP, as appropriate, to address OT, AT and other special education and related services needs, informed by the reevaluations. DCPS must also ensure that Student's IEP is

revised to provide appropriate PSTP services.

For compensatory special education and related services, Educational Advocate recommended that Student be awarded 288 hours of tutoring and 36 hours of additional speech/language services. These proposed compensatory services do not correlate to the denials of FAPE found in this decision and I decline to order to order compensatory tutoring or speech and language services.

Educational Advocate also recommended that the Parent's right to request additional compensatory education be reserved, to await the results of the reevaluations. If based on the results of the OT and AT reevaluations, the IEP team, with the input of the Parent and her representatives, decides Student requires increased OT services and AT tools, the IEP team shall consider whether compensatory education is warranted for DCPS' omission to provide these augmented services in the December 2, 2021 and November 30, 2022 IEPs. In addition, the IEP team shall determine if Student was harmed by the IEP teams' providing only 10 hours per year of training and employment transition services in the respective 2021 and 2022 IEPs and whether additional transition services are needed to compensate for any harm.

ORDER

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

ORDERED:

1. Within 20 school days of the date of this order, subject to obtaining parental consent, DCPS, shall conduct a comprehensive occupational therapy reevaluation of Student and an assistive technology reevaluation. DCPS shall also

give due consideration to any request by the Parent to conduct such other assessments as may be needed to determine Student's IDEA disability, educational needs, present levels of academic achievement and related developmental needs and post-secondary transition needs. *See* 34 CFR § 300.305(a). Upon completion of the assessments, DCPS shall promptly convene Student's IEP team to review and revise, as appropriate, Student's IEP, to include, without limitation, consideration of OT services, AT tools and the Post-Secondary Transition Plan;

2. If based on the reevaluations ordered in this decision, the IEP team, decides Student requires increased OT services and AT tools, the IEP team shall consider whether compensatory education is appropriate for DCPS' omission to provide these augmented services in Student's December 2, 2021 or November 30, 2022 IEPs. In addition, the IEP team shall consider whether Student was harmed by the IEP teams' providing only 10 hours per year of training and employment transition services in the respective 2021 and 2022 IEPs and whether compensatory education is needed to remedy such harm and

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

Date: *Date in Caption*

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.