

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
January 01, 2019

PARENT,
on behalf of STUDENT,¹

Petitioner,

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

Date Issued: January 1, 2019

Hearing Officer: Peter B. Vaden

Case No: 2018-0273

Hearing Dates: December 3, 10 and 12, 2018

Office of Dispute Resolution,
Rooms 112, 111 and 404
Washington, D.C.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In her due process complaint, Petitioner alleges that Respondent District of Columbia Public Schools (DCPS) has denied Student a free appropriate public education (FAPE) by not conducting timely comprehensive reevaluations, by not developing appropriate Individualized Education Programs (IEPs), by not updating Student’s Behavior

¹ Personal identification information is provided in Appendix A.

Intervention Plan (BIP) and by not fully implementing Student's IEP in the 2017-2018 school year.

Petitioner's Due Process Complaint, filed on October 22, 2018, named DCPS as respondent. The undersigned hearing officer was appointed on October 23, 2018. On November 6, 2018, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. The parties met for a resolution session on November 29, 2018 and were unable to resolve the issues in dispute.

The due process hearing was convened before the undersigned impartial hearing officer on December 3, 10 and 12, 2018 at the Office of Dispute Resolution in Washington, D.C. The first two days were held in person at the Office of Dispute Resolution. The third day of the hearing, December 12, 2018, was convened by telephone. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Petitioner's Counsel made an opening statement. Mother testified and called as additional witnesses PSYCHOLOGY ASSOCIATE, EDUCATIONAL ADVOCATE, INDEPENDENT SPEECH-LANGUAGE PATHOLOGIST, NONPUBLIC SCHOOL 1 PRINCIPAL and NONPUBLIC SCHOOL 2 ADMISSIONS DIRECTOR. DCPS called as witnesses DCPS SCHOOL PSYCHOLOGIST, ASSISTIVE TECHNOLOGY SPECIALIST, SPEECH-LANGUAGE PATHOLOGIST 1, DIRECTOR OF SPECIAL EDUCATION, SPECIAL EDUCATION TEACHER 2, OCCUPATIONAL THERAPIST, SCHOOL SOCIAL WORKER, SPEECH-LANGUAGE PATHOLOGIST 2 and SPECIAL EDUCATION TEACHER 1. Petitioner's Exhibits P-1 through P-70 were admitted into evidence

without objection. DCPS' Exhibits R-1 through R-65 were admitted into evidence without objection, except for Exhibit R-42 which was not offered. Exhibit R-66 was admitted over Petitioner's objection. Student's October 30, 2018 final IEP was admitted, over Petitioner's objection, as Hearing Officer Exhibit 1. Due to time constraints, counsel were invited to submit written closings in lieu of making closing arguments. DCPS' Counsel filed a written closing by email on December 14, 2018. Petitioner's Counsel filed a written closing statement on December 20, 2018.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issues for determination, as certified in the November 6, 2018 Prehearing Order, are:

- a. Whether DCPS failed to fully implement Student's IEP during the 2017-2018 school year from January to July 2018, by failing to provide all of Student's Behavioral Support Services;
- b. Whether DCPS failed to conduct a comprehensive triennial reevaluation of Student on or before March 23, 2018 by failing to conduct an occupational therapy evaluation, a speech and language evaluation, and a functional behavior assessment in a timely manner;
- c. Whether DCPS failed to develop an appropriate Individualized Education Program (IEP) and/or provide Student with an appropriate placement on or about March 23, 2018 in that the IEP did not include related services such as occupational therapy and speech and language services, due to DCPS' failure to conduct a comprehensive triennial reevaluation; in that despite Student's significant regression in reading and math, Student's Specialized Instruction Services were reduced by 30 minutes a week and the only additions added to the services was the option to type instead of writing under assistive technology and accommodations such as graphic organizers, teacher check-ins, sentence starters and word bank; in that the IEP lacked current present levels of performance information, in that what was reported for the area of Math was from 2017 not 2018 and none of the data from Student's recent evaluation was included; in that

for Reading, there was no information from Student's i-Ready results or indication of where Student was performing in connection to the common core curriculum, and similarly for Written Expression, there was not adequate information about Student's performance levels or where Student was functioning in connection to common core standards; and in that DCPS refused to place Student in a more restrictive setting.

d. Whether DCPS failed to provide Student with an appropriate IEP and/or an appropriate Educational Placement for or during the 2018/2019 school year, despite alleged decisions at IEP meetings on June 4, 2018 and September 28, 2018 and October 2018, in that DCPS failed to finalize the draft IEP that contained additional services for Student such as OT consult and assistive technology; DCPS refused to add speech and language services to Student's IEP; direct OT service were not added to the IEP; academic performance levels in the IEP were not updated and the draft IEP sent to the parent following the meeting has yet to be finalized for Student to begin receiving the additional services agreed upon;

e. Whether DCPS denied Student a FAPE by not timely updating and revising Student's Behavior Intervention Plan (BIP) since spring 2018.

For relief, the parent requests that DCPS be ordered to ensure that Student's IEP is amended to include updated performance information for Student, OT services and goals, 240 minutes of direct speech services per month and goals, an increase in Specialized Instruction Services and a more restrictive educational setting; that DCPS be ordered to place and fund Student in a separate day school with transportation; that DCPS be ordered to ensure that an updated behavior intervention plan is developed for Student and that Student be awarded compensatory education for denials of FAPE alleged in the complaint.

FINDINGS OF FACT

Prior Hearing Officer Determination

Student was the subject of a prior due process proceeding, Case No. 2017-0258, in which Impartial Hearing Officer Coles B. Ruff issued a Hearing Officer Determination on December 9, 2017 (the December 9, 2017 HOD). At the prehearing conference in the

present case, counsel agreed that I may adopt relevant findings of fact made by Hearing Officer Ruff. I adopt the following findings of fact from the December 9, 2017 HOD. (Exhibit P-62.)

a. On May 9, 2017, Student's former local education agency (LEA), PUBLIC CHARTER SCHOOL developed an IEP for Student that prescribed 25.5 hours per week of specialized instruction outside general education, and 240 minutes per month of behavioral support services outside general education.

b. Because Petitioner did not believe Student was making sufficient progress at Public Charter School, in August 2017, Petitioner enrolled Student in CITY SCHOOL 1, a DCPS public school, for the 2017-2018 school year. Student began attending City School 1 on August 22, 2017.

c. Within days of Student's beginning to attend City School 1, the school LEA representative informed Petitioner that City School 1 could not implement Student's IEP and that he would contact DCPS for DCPS to identify a school location for Student where the IEP could be implemented. The City School 1 LEA representative followed DCPS guidelines to obtain an expedited location of service for Student. On October 10, 2017, DCPS issued a letter to Petitioner informing her that the Specific Learning Support (SLS) program at CITY SCHOOL 2 had been identified as Student's location of service ("LOS") and could implement Student's IEP.

d. City School 2 has special education students who are provided a range of services up to 27.5 hours per week of specialized instruction outside general education. There are students in the SLS program who have IEPs that prescribe 25.5 hours per specialized instruction per week. None of the students with 25.5 hours of specialized instruction take a foreign language class.

In the December 9, 2017 HOD, Hearing Officer Ruff determined that DCPS had denied Student a FAPE by failing to provide a location of services at the start of the 2017-2018 school year that was capable of implementing Student's May 9, 2017 IEP, but that DCPS had met its burden of persuasion that City School 2, identified as Student's LOS on October 10, 2017, was an appropriate placement and location of service for Student for the 2017-2018 school year. Hearing Officer Ruff ordered DCPS to fund independent tutoring services for Student, as compensatory education for its failure to fully implement Student's IEP at the start of the 2017-2018 school year.

Additional Findings of Fact

After considering all of the evidence received at the December 2018 due process hearing in this case, as well as the argument and written submissions of counsel, my findings of fact are as follows:

1. Student, an AGE youth, resides in the District of Columbia with Mother.

Testimony of Mother.

2. Student is eligible for special education under the IDEA disability classification Multiple Disabilities, comprising Specific Learning Disability (SLD) and Other Health Impairment - Attention Deficit Hyperactivity Disorder (OHI-ADHD).

Exhibit R-29.

3. In January 2018, Student transferred from City School 1 to City School 2. Since the beginning of the 2018-2019 school year, Student has attended CURRENT SCHOOL, a DCPS public school.

4. On April 2, 2015, when Student was enrolled in Public Charter School (PCS), Student's PCS eligibility team determined that Student was eligible for special

education under the Specific Learning Disability (SLD) disability classification. Exhibit P-18.

5. On November 7, 2017, the City School 1 LEA Representative wrote Mother to request her written consent to conduct a comprehensive psychological reevaluation of Student. On November 8, 2017, Petitioner's Counsel responded by email to the City School 1 LEA Representative that Student's triennial reevaluation would be due by March 2018 and to inquire whether in addition to a psychological reevaluation, Student should receive a functional behavioral assessment (FBA) and speech and language and OT assessments. Exhibit P-56.

6. On February 5, 2018, City School 2 provided Prior Written Notice (PWN) to Mother that it would continue with the reevaluation process for Student, that DCPS would conduct a psychological evaluation and that its speech and OT staff would observe and participate in the next meeting. Exhibit R-25. By a PWN dated March 28, 2018, DCPS notified the parent that it was determined that additional testing of Student was needed for OT and Assistive Technology (AT). Exhibit R-30.

7. School Psychologist conducted a psychological reevaluation of Student in March 2018. She administered the Woodcock-Johnson Achievement Test, Fourth Edition (WJA-4) and the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2) rating scales. School Psychologist also reviewed Student's records, interviewed a teacher, interviewed Student and conducted a classroom observation. School Psychologist did not conduct a cognitive assessment because the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-4) had been administered in 2015 and Student's intellectual functioning should not have changed over this time. School Psychologist concluded that based on the WJA-4 scales, Student was appropriate for

eligibility under SLD and that although there was not a medical diagnosis on record, Student appeared to be appropriate for an educational classification/diagnosis of Attention Deficit-Hyperactivity Disorder and Student would meet OHI-ADHD criteria. Exhibit R-20, Testimony of School Psychologist.

8. At an eligibility team meeting on March 23, 2018, the City School 2 eligibility team determined that Student met criteria for special education eligibility as a student with Multiple Disabilities for OHI and SLD. The team also determined that additional testing was needed for OT and AT. Exhibit R-29

9. At an IEP team meeting, also on March 23, 2018, a draft IEP was proposed by City School 2. This IEP provided for 25 hours per week of Specialized Instruction outside general education and 240 minutes per month of Behavioral Support Services. The parent requested changes to the IEP including services for OT, AT and Speech and a more restrictive setting. The IEP team agreed to assess Student for OT and AT, but not for Speech. DCPS did not agree that there was enough data to support a more restrictive setting, because Student had shown progress at City School 2 and had only been in the self-contained SLS setting for 3 months. Exhibit R-34.

10. Speech-Language Pathologist 1 participated in the March 23, 2018 IEP team meeting. Speech-Language Pathologist 1 had conducted a formal observation of Student in the classroom and also observed Student less formally. Speech-Language Pathologist 1 also reviewed Student's special education records and obtained teacher feedback. Speech-Language Pathologist 1 observed that Student's language skills were pretty strong and that Student had the ability to comprehend and respond in in-class discussions. Her opinion was that speech was not an area of concern for Student. It was determined that there was not sufficient data to support a claim that Speech-Language

concerns affected Student's access to the general educational curriculum. At the March 23, 2018 IEP team meeting, DCPS did not agree to conduct formal speech testing because the school team members determined that the existing data did not show concerns in this area. Testimony of Speech-Language Pathologist 1, Exhibit R-34.

11. Following the March 23, 2018 IEP Team meeting, Educational Advocate sent an email "Dissent" to the City School 2 LEA Representative. Her concerns included, *inter alia*, the accuracy of present levels of performance for Math, Reading and Written Expression and the appropriateness of annual goals for Reading and Written Expression. In addition, Educational Advocate argued for more hours of Specialized Instruction in all classes and for a more restrictive setting to accommodate Student's off-task behaviors. The LEA Representative agreed to review the requested changes and finalize the IEP. The IEP was finalized on April 9, 2018. Exhibit P-50, Exhibit P-7, Testimony of Educational Advocate.

12. Both the May 9, 2017 PCS IEP and the April 9, 2018 City School 2 IEP, as well as the October 30, 2018 Current School IEP provide for Student to receive all services for Math, Reading and Written Expression outside the general education setting. Exhibits P-19, P-7, Hearing Officer Exhibit 1.

13. Assistive Technology Specialist conducted an AT assessment of Student in May 2018. She reported that interviews and record reviews highlighted Student's difficulty with handwriting tasks, especially a slow writing speed. She recommended, *inter alia*, that Student may benefit from speech-to-text and text-to-speech software as well as the trial of a tablet computer with worksheet accessibility, speech-to-text, word prediction and text-to-speech. Exhibit R-36.

14. Occupational Therapist conducted an OT assessment of Student in May

2018. She reported that Student has functional fine motor and some problems in overall sensory processing skills, that Student demonstrated below average visual perceptual and overall visual motor integration skills. Student's motor coordination was in the average range. With regard to sensory processing, Student demonstrated delays in the areas of social participation, hearing, balance and motion, and overall sensory processing. Occupational Therapist recommended, *inter alia*, that Student be provided preferential seating in close proximity to the teacher to foster attention, movement breaks to decrease inattention, decreased writing requirements and extended time to complete copying tasks. Exhibit R-37.

15. The City School 2 social worker conducted an FBA of Student in May 2018. Regarding Student's "problematic behavior," it was reported that Student did not come into class silently and if redirected, Student would get upset or frustrated (usually as a result of something that happened previously); that Student did not follow directions in an adequate amount of time; that Student did not turn in homework and that Student used "hate speech" when engaged in conflict with a peer, which would then create a disruptive environment. The City School 2 social worker posited that the functions of these behaviors were to get Student out of having to complete an undesired task and to secure time with a preferred adult. Exhibit P-25.

16. On May 9, 2018, Psychology Associate an Independent Educational Evaluation (IEE) comprehensive psychological evaluation of Student. This assessment included a battery of cognitive and educational tests and behavior rating scales. The assessor reported that testing of intellectual functioning showed a wide range of variability between intellectual domains to an extent rarely observed in same-aged peers, ranging from the Average to Extremely Low ranges; that Student's General Ability

Index (GAI) score of 86, in the Low Average range, was a more reliable estimate of Student's intellectual functioning than the full-scale IQ score. Of primary note was Student's processing speed abilities, which fell in the Extremely Low range of functioning and were significantly lower than Student's abilities in other domains. Student's cognitive profile suggested Student is prone to experience substantial difficulties with quickly and effectively processing visual information in a manner that is negatively impacting other intellectual domains. Academically, Student exhibited significant deficits that are much lower than expected given Student's age and grade level in many areas of reading, including basic reading, sounding out words, reading comprehension, and reading fluency. Similarly, Student showed significant deficits with written expression, with specific areas of difficulties being spelling and writing longer or more complex passages in a fluent and quick manner. Student showed adequate and age-anticipated abilities in mathematics. However, Student showed significant difficulties with completing academic tasks in a quick and efficient manner regardless of the type of task. Taken together with Student's impaired processing speed, Student's poor academic performance and reading difficulties are likely due to an inability to quickly and efficiently process simple information. The behavioral symptoms Student displayed and results of emotional testing measures suggests Student also meets criteria for Unspecified Depressive Disorder with Anxious Distress – Mild, which in children and adolescents could manifest in the form of irritability, feeling tense, impaired concentration, or restlessness. In addition, Student, Mother, and Student's English teacher reported Student expresses a significant level of negative self-appraisal, concerns about how others might view Student, and worries for the future. Overall, Student appeared to be exhibiting less disruptive and more appropriate behavior since

being at City School 2. Student also appeared to have an improved ability to effectively regulate emotions compared to past difficulties in other schools despite some continued difficulties. The assessor concluded that taken together, Student's then- current placement at City School 2 appeared to provide the appropriate environment to address Student's special education needs. The psychologist diagnosed Student with Specific Learning Disorder with Impairment in Reading (Word Reading Accuracy and Reading Rate/Fluency) - Severe; Specific Learning Disorder with Impairment in Written Expression (Spelling Accuracy and Organization of Written Expression) - Moderate; Unspecified Depressive Disorder with Anxious Distress – Mild; and Attention Deficit Disorder, Combined Presentation – Moderate. The assessor also recommended that Student receive a Speech and Language evaluation. Exhibit R-46.

17. On May 21, 2018, DCPS issued a funding authorization letter to Mother to obtain an independent educational evaluation (IEE) Speech and Language Evaluation of Student at DCPS' expense. Exhibit R-44.

18. At a meeting on June 4, 2018, a City School 2 multidisciplinary team reviewed the DCPS OT and AT assessments of Student and the FBA. The school representatives agreed to add OT and AT services to Student's IEP, but deferred doing so until Student's full IEP team could be convened to review the IEP. Because it was the end of the school year and Student would be transferring to Current School for the 2018-2019 school year, Student's IEP was not revised at City School 2. Exhibit P-4.

19. Student's overall performance score on the i-Ready Diagnostic measure in Math increased from 449 in August 2017, to 471 in January 2018, to 487 in May 2018. The "On Level" score range for Student's grade was 525 to 575. Exhibit P-37. Student's Reading Comprehension Assessment on the Reading Inventory test increased from 376

in August 2017 to 529 in January 2018, dropped to 503 in May 2018 and increased to 633 in August 2018. These reading comprehension scores were 5 to 6 years below grade level proficiency. Exhibits P-43, R-50.

20. On August 9, 2018, Petitioner's attorneys provided DCPS a copy of the IEE Speech and Language assessment of Student which was completed on July 20, 2018. Exhibits R-44, P-22.

21. On May 14, 2018, DCPS assigned Student to the Behavior and Education Support (BES) classroom at Current School for the 2018-2019 school year. Exhibit R-42. Since the beginning of the 2018-2019 school year, Student has been placed in the SLS classroom (not a BES classroom) at Current School. There are 12-13 students in the classroom taught by special education teachers and an aide. This is a very structured classroom where Student is provided small group instruction. Student is provided two reading intervention classes daily. Student's elective classes, include the Bach to Rap music class, are not provided in the SLS setting. Testimony of Director of Special Education, Testimony of Special Education Teacher 2, Exhibit P-39.

22. Student's transition to Current School is going well and Student is doing pretty well in the SLS program. Testimony of Director of Special Education. Student is one of the higher performers in the classroom. Student currently has no behavior issues in class. Student has a problem completing work but gets low B's and C's when work is turned in. Testimony of Special Education Teacher 2.

23. On September 28, 2018, the IEP team at Current School met to review Student's IEP. Mother, Petitioner's Counsel and Educational Advocate participated. Speech-Language Pathologist 2 told the IEP team that Student's vocabulary development could be addressed through instructional modifications and

accommodations and that Student did not require the “unique skill set” of a speech language pathologist. Mother’s representatives disagreed. Occupational Therapist recommended that Student be provided OT related services. The team also decided that Student’s IEP present levels of performance and behavior intervention plan (BIP) needed to be updated. Exhibit P-2.

24. Following the September 28, 2018 IEP team meeting, Student’s IEP was finalized on October 30, 2018. The revised IEP provided for 25 hours per week of Specialized Instruction outside general education, 240 minutes per month of Behavioral Support Services, 60 minutes per month of OT services and a tablet computer, with speech to text, text to speech and worksheet accessibility, as Assistive Technology. Hearing Officer Exhibit 1.

25. School Social Worker provides Student’s Behavioral Support Services at Current School. Student likes counseling. Student is pleasant, redirectable and easy to get along with. In the current school year, probably in early October, School Social Worker completed a behavior intervention plan (BIP) for Student. The gist of the BIP was to address Student’s current behavior, distractibility, slight immaturity and anxiety in large crowds. The updated BIP has not been reviewed by Student’s IEP team. Testimony of School Social Worker.

CONCLUSIONS OF LAW

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

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of

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

Analysis

- A. Did DCPS deny Student a FAPE by not including an OT evaluation, a Speech-Language evaluation and an FBA in Student's March 2018 triennial reevaluation?

In January 2018, Student transferred to City School 2. Student's last special education reevaluation had been completed in March 2015 at Public Charter School. By email of November 8, 2017, Petitioner's Counsel inquired whether Student's March 2018 triennial reevaluation should include Speech-Language and Occupational Therapy (OT) assessments and a functional behavioral assessment (FBA). At an eligibility team meeting on March 23, 2018, the City School 2 eligibility team determined that Student met criteria for special education eligibility as a student with Multiple Disabilities for OHI and SLD. The team also determined that additional testing was needed for OT and Assistive Technology (AT). DCPS did not agree to conduct speech testing because the school team determined that existing data did not show concerns in this area. In May 2018, DCPS conducted OT and AT assessments of Student as well as an FBA. On May 21, 2018, after receiving the recommendations of Student's IEE psychologist, DCPS issued a funding authorization letter to Mother to obtain an independent educational

evaluation (IEE) Speech and Language evaluation of Student. Petitioner contends that DCPS' March 2018 triennial reevaluation of Student was not comprehensive because there was no Speech-Language assessment and the OT and AT assessments and FBA were not conducted until May 2018. Mother has the burden of persuasion on this claim.

The IDEA requires that a special education reevaluation must occur at least once every three years, unless the parent and the public agency agree otherwise. *See* 34 CFR § 300.303. Generally, when a child has been evaluated for special education eligibility and the appropriateness of the agency'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). IDEA evaluations depend upon the exercise of professional judgment by the child's educators, which is entitled to a reasonable degree of deference. *Perrin on behalf of J.P. v. Warrior Run Sch. Dist.*, No. 4:13-CV-2946, 2015 WL 6746306 (M.D.Pa. Sept. 16, 2015), report and recommendation adopted *sub nom. Perrin v. The Warrior Run Sch. Dist.*, No. 13-CV-02946, 2015 WL 6746227 (M.D. Pa. Nov. 4, 2015), *citing County Sch. Bd. of Henrico County v. Z.P.*, 399 F.3d 298, 307 (4th Cir.2005).

Speech-Language Evaluation

With regard to Student's need for a Speech-Language evaluation in spring 2018, Speech-Language Pathologist 1 participated in the March 23, 2018 IEP team meeting. Speech-Language Pathologist 1 had observed Student in the classroom and obtained teacher feedback. Speech-Language Pathologist 1 observed that Student's language

skills were pretty strong and that Student had the ability to comprehend and respond in in-class discussions. Her opinion was that speech was not an area of concern for Student. School Psychologist also evaluated Student over two days in March 2018, interviewed Student and Student's teacher and conducted a classroom observation. School Psychologist testified that Student was chatty and very able to understand when told what to do. She testified that after evaluating Student, she would not have recommended a Speech-Language evaluation.

The psychologist who conducted the IEE comprehensive psychological reevaluation of Student in May 2018 did recommend that Student would benefit from a comprehensive speech and language evaluation to determine interventions to improve Student's reading abilities. Based on that recommendation, DCPS did authorize funding for the parent to obtain an IEE Speech-Language evaluation. The IEE recommendation was, of course, not available when the eligibility team at City School 2 met on March 23, 2018 for Student's triennial eligibility review. According due weight to the professional judgment of Speech Pathologist 1, School Psychologist and the school members of the Student's eligibility team, I find that Petitioner has not met her burden of persuasion that DCPS' March 2018 triennial reevaluation of Student was not adequate for want of a formal Speech-Language evaluation.

Occupational Therapy Evaluation

In her November 8, 2018 email to City School 1, Petitioner's Counsel inquired whether DCPS should conduct an Occupational Therapy (OT) evaluation of Student. On March 6, 2018, after Student had transferred to City School 2, Student's classroom teacher completed an OT Referral Checklist, reporting that Student's handwriting was slow and labored and that Student tired easily when writing. At the March 23, 2018

eligibility/IEP team meeting, Student's IEP team agreed that Student needed an OT evaluation. A DCPS Occupational Therapist conducted the evaluation and completed her assessment report on May 7, 2018. Petitioner's Counsel argues that this evaluation should have been performed earlier.

In *Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254 (D.D.C.2005), the Court explained that because the IDEA and its implementing regulations are silent about the time frame within which an agency must conduct a reevaluation, reevaluations should be conducted in a "reasonable period of time," or "without undue delay," as determined in each individual case. *Id.* at 259, *citing Office of Special Education Programs Policy Letter in Response to Inquiry from Jerry Saperstone*, 21 IDELR 1127, 1129 (1995). Considering that Student was the subject of the prior due process proceeding completed in December 2017, and that Student was only placed in the self-contained Specific Learning Support (SLS) classroom at City School 2 in January 2018, I find that City School 2's completing the OT referral checklist for Student in March 2018 and DCPS' conducting the OT evaluation in early May, following the March 23, 2018 eligibility meeting, was not an unreasonable period of time or undue delay. Parent has not met her burden of persuasion on this claim.

Functional Behavioral Assessment

Public Charter School conducted a functional behavioral assessment (FBA) of Student in the fall of 2016 and developed a behavior intervention plan (BIP) in May 2017. In the November 2017 email to City School 1, Petitioner's Counsel inquired about conducting another FBA of Student. A DCPS school social worker conducted a new FBA of Student on May 14, 2018. Inasmuch as Student's prior FBA was completed in the 2016-2017 school year and Student only transferred to City School 2 in January 2018, I

find that Petitioner has not met her burden of persuasion that DCPS' completing the new FBA in May 2018, after Student had been in the SLS classroom for four months, constituted an unreasonable period of time or undue delay.

- B. Did DCPS fail to fully implement Student's IEP during the 2017-2018 school year from January to July 2018, by failing to provide all of Student's Behavior Support Services?

In her due process complaint, Petitioner alleges that during the period Student was enrolled in City School 2, DCPS failed to implement Student's May 9, 2017 IEP provision for 240 minutes per month of Behavioral Support Services. Petitioner asserted that between January 2018 and July 2018, when Student was in the SLS classroom at City School 2, it was only documented that Student received five hours total of Behavioral Support Services. Petitioner holds the burden of persuasion on this claim.

In her testimony, Petitioner's expert, Educational Advocate, testified that she believed Student did not receive the IEP-specified Behavioral Support Services because the Related Services Service Trackers documented missed services. Special Education Teacher 1, who taught Student's SLS math and science class at City School 2 testified that to the best of her knowledge, Student was provided the Behavioral Support Services specified in Student's IEP. However, the DCPS Service Trackers indicate that Student received some 1,020 minutes of Behavioral Support Services from January through June 2018. This included 240 minutes of direct services allegedly provided on a class field trip on February 7, 2018. Assuming Student was in school for approximately five months during that period, Student should have received some 1,200 minutes of Behavioral Support related services. It appears, therefore, that DCPS provided approximately 85% of Student's IEP Behavioral Support Services during the period

Student attended City School 2.

In *Beckwith v. District of Columbia*, 208 F. Supp. 3d 34 (D.D.C. 2016), the court analyzed when a failure to fully implement an IEP results in a denial of FAPE:

To establish a deprivation of educational benefits, a moving party “must show more than a de minimis failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP.” *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir.2000) To meet this standard, a moving party need not prove that the student suffered “educational harm” because “the Court has no way of knowing how much more progress” a student might have made in the absence of a failure to implement. *Wilson v. Dist. of Columbia*, 770 F.Supp.2d 270, 275, 276 n. 2 (D.D.C.2011) (emphasis original). Generally, in analyzing whether a student was deprived of an educational benefit, “courts . . . have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.” *Wilson*, 770 F.Supp.2d at 275. For example, in *Sumter County School District 17 v. Heffernan*, the court held that a 33% gap of 60 minutes per day between the required and provided hours of applied behavioral analysis therapy was substantial. 642 F.3d 478, 486 (4th Cir.2011). On the other hand, in *Savoy v. District of Columbia*, the court held that a 3% gap of 10 minutes per day between the required and provided hours of specialized instruction was not substantial. 844 F.Supp.2d 23, 34–35 (D.D.C.2012).

Beckwith, supra, 208 F. Supp. 3d at 49.

In the present case, from January through June 2018, even crediting the social worker’s accompanying the February 7, 2018 class field trip as direct services, Student was provided only 85% of the minutes of Behavioral Support Services prescribed in Student’s IEP. It appears that Student was “shorted” some 180 minutes of services. Considering that Student was apparently provided no Behavioral Support Services between February 7, 2018 and April 4, 2017, a gap of almost two months, I find that this shortfall was a failure to implement a substantial provision of Student’s IEP and that Student was denied a FAPE as a result.

C. Did DCPS fail to develop an appropriate IEP and/or provide Student with

an appropriate placement on or about March 23, 2018 in that the IEP did not include related services such as occupational therapy and speech and language services, due to DCPS' failure to conduct a comprehensive triennial reevaluation; in that despite Student's significant regression in reading and math, Student's Specialized Instruction Services were reduced by 30 minutes a week and the only additions added to the services was the option to type instead of writing under assistive technology and accommodations such as graphic organizers, teacher check-ins, sentence starters and word bank; in that the IEP lacked current present levels of performance information, in that what was reported for the area of Math was from 2017 not 2018 and none of the data from Student's recent evaluation was included; in that for Reading, there was no information from Student's i-Ready results or indication of where Student was performing in connection to the common core curriculum, and similarly for Written Expression, there was not adequate information about Student's performance levels or where Student was functioning in connection to common core standards; and in that DCPS refused to place Student in a more restrictive setting?

Petitioner contends that the IEP developed by Student's IEP team at City School 2 at a meeting on March 23, 2018 and finalized on April 9, 2018, was inappropriate because of DCPS' alleged failure to conduct a comprehensive triennial reevaluation, the lack of OT or Speech-Language related services, a reduction in Specialized Instruction Services, out-of-date present levels of performance for academics and the failure to place Student in a more restrictive setting. DCPS maintains that the April 9, 2018 IEP was appropriate.

In *Moradnejad v. District of Columbia*, 177 F. Supp. 3d 260 (D.D.C. 2016), the Court adopted the Report and Recommendation of U.S. Magistrate Judge G. Michael Harvey, which explained how a court or a hearing officer must assess an IEP:

The Supreme Court explained in [*Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)] that a court's assessment of an IEP involves two inquiries:

First, has the State complied with the procedures set forth in the [IDEA]? And second, is the [IEP] developed through the [IDEA's] procedures [appropriate]? If these requirements are met, the State has complied with the obligations imposed

by Congress and the courts can require no more.

Moradnejad at 274-75. Petitioner does not allege that DCPS failed to comply with IDEA procedural requirements when Student's City School 2 IEP was developed. Therefore, I move to the second prong of the *Rowley* inquiry: Was the April 9, 2018 IEP appropriate for Student? DCPS holds the burden of persuasion on this issue.

In *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, ——— U.S. ———, 137 S.Ct. 988, 197 L.Ed.2d 335 (2017), the U.S. Supreme Court elaborated on the standard, first enunciated in *Rowley*, for what constitutes an appropriate IEP.

Discussing these decisions in *Z. B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir.

2018), the D.C. Circuit Court of Appeals explained that in *Endrew F.*, the Supreme Court

raised the bar on what counts as an adequate education under the IDEA. *Endrew F.* held that the Act requires education “reasonably calculated to enable a child to make progress in light of the child’s circumstances”—a standard that the Court described as “markedly more demanding than the ‘merely more than *de minimis*’ standard the Tenth Circuit had applied. . . . In requiring more than merely some “educational benefits,” *id.* at 77 (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)), the Court in *Endrew F.* stressed that “every child should have the chance to meet challenging objectives,” and that a student’s “educational program must be appropriately ambitious in light of his circumstances.” 137 S.Ct. at 1000.

Z. B., 888 F.3d at 517.

Substantively, the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances,” *Endrew F.*, 137 S.Ct. at 1001, even as it stops short of requiring public schools to provide the best possible education for the individual child, *Rowley*, 458 U.S. at 200, 102 S.Ct. 3034, or an education “equal” to that of non-disabled peers, *Endrew F.*, 137 S.Ct. at 1001; *Rowley*, 458 U.S. at 198-99, 102 S.Ct. 3034.

Z. B., 888 F.3d at 519.

The IDEA calls on public schools throughout the United States 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.” *Endrew F.*, 137 S.Ct. at 999

(emphasis in original). If there is a gap between the best education that money can buy at a private school for a student with disabilities and the free and appropriate education at a public school that the IDEA promises, one might justly hope to close that gap for all students. Meanwhile, what Congress has required is that public schools be “ambitious” for every child, giving each the opportunity to “meet challenging objectives.” *Id.* at 1000. Disabilities can be subtle and complex. They may require expertise to identify accurately.

Z. B., 888 F.3d at 528.

Applying the IDEA as interpreted in *Endrew F.*, we must ask whether, in developing the [contested IEP], the [education agency] adequately evaluated [the student’s] particular needs and offered her an IEP tailored to what it knew or reasonably should have known of her disabilities at the time. *See Endrew F.*, 137 S.Ct. at 999.

Z. B., 888 F.3d at 524.

The key inquiry regarding an IEP’s substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student’s needs at the time, the IEP it offered was reasonably calculated to enable the specific student’s progress. *See Endrew F.*, 137 S.Ct. at 999. . . . [T]hat standard calls for evaluating an IEP as of “the time each IEP was created” rather than with the benefit of hindsight. . . . At the same time, . . . evidence that post-dates the creation of an IEP is relevant to the inquiry to whatever extent it sheds light on whether the IEP was objectively reasonable at the time it was promulgated.

Z. B., 888 F.3d at 524 (internal quotations and citations omitted.)

Petitioner alleges that the April 9, 2018 IEP was inappropriate because it did not include OT or Speech-Language related services. With regard to Speech-Language services, at the March 23, 2018 IEP team meeting, DCPS Speech Pathologist 1, informed the team that she had made two classroom observations of Student, had reviewed Student’s records and had obtained feedback from Student’s English Language Arts (ELA) teacher. She told the IEP team that language had been one of Student’s strengths and that functional communication was not an issue for Student. The parent’s representatives requested Speech-Language services due to Student’s learning deficits that were reading-based. However, DCPS Speech Pathologist 1 advised the team that

DCPS does not use Speech-Language services to address reading deficits. I found Speech Pathologist 1 to be a credible witness.

Subsequently, in June 2018, the parent obtained an IEE Speech-Language evaluation of Student, which resulted in a recommendation of Speech-Language Pathology services. However, based on the information available to the March 23, 2018 IEP team, I find that DCPS has met its burden of persuasion that the IEP team determined correctly that Speech-Language services were not required to assist Student to benefit from special education. *See* 34 CFR § 300.34(a) (Definition of Related services); *A.B. v. District of Columbia*, No. CV 10-1283, 2012 WL 13041578, at 8 (D.D.C. Feb. 14, 2012), report and recommendation adopted, No. CV 10-1283, 2012 WL 13041526 (D.D.C. Mar. 7, 2012) (Adequacy or appropriateness of an IEP is evaluated based on the information available to the IEP team at the time of its formulation.)

At the March 23, 2018 IEP meeting, the IEP team decided that Student should have an OT evaluation to determine whether Student required OT services. At that point, Student had been at City School 2 for less than three months. Occupational Therapist conducted the OT assessment in May 2018 and the City School 2 MDT team agreed on June 4, 2018 that OT related services should be added to Student's IEP. Before adding additional IEP related services, the IEP team is required to identify what additional data are needed "to determine any additions or modifications to the special education and related services . . . needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum." *See* 34 CFR § 300.305(a)(2). I find that the March 23, 2018 IEP team acted appropriately in deferring its decision on whether Student required IEP OT services until it obtained the OT evaluation data.

Petitioner asserts that the April 9, 2018 IEP lacked current present levels of performance (PLOP) information. The Department of Education's special education regulations, consistent with § 614(d)(1)(A)(i)(I)(aa) of the IDEA, require that the IEP have a statement of a student's present levels of performance, to include how the student's disability affects the student's involvement and progress in the general education curriculum. *See* 34 CFR § 300.320(a)(1)(i); U.S. Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46579, 46662 (August 14, 2006).

In her hearing testimony, Petitioner's expert, Educational Advocate, opined that the PLOPs in the April 9, 2018 IEP were not up-to-date and were based upon old information. This may have been the case when the IEP team met to review the March 23, 2018 IEP draft. However, the IEP was revised after Educational Advocate sent in her "dissent" to the draft IEP. The PLOPs in the April 9, 2018 IEP describe Student's performance since transferring to the City School 2 in January 2018 and cite Student's scores on the January 2018² i-Ready diagnostic assessment, the January 2018 Scholastic Reading Inventory (SRI) and the Achievement Network (A-Net) assessment, Student's results on the Woodcock-Johnson Tests of Achievement and the BRIEF-2 administered in March 2018, Student's responses to a January 2018 Strengths and Difficulties Questionnaire and Student's classroom work and in-school presentation at City School 2. SLS Teacher, who taught Student at City School 2, testified that the PLOPs for Reading and Math were accurate. I find that DCPS has met its burden of persuasion that the PLOPs in the April 9, 2018 IEP were an adequate statement of Student's then-

² In a typographic error, that i-Ready diagnostic is dated January 12, 2017. The correct date is January 12, 2018. Exhibit P-7, p. 3, Testimony of Special Education Teacher 1.

present levels of academic achievement and Emotional/Social/Behavioral functioning.

Finally, with respect to the April 9, 2018 IEP, Petitioner asserts that the IEP was inappropriate because DCPS refused to place Student in a more restrictive setting and because the IEP Team reduced Student's Specialized Instruction Services from 25.5 to 25 hours per week. In the December 9, 2018 HOD, Hearing Officer Ruff determined DCPS had established that City School 2 was an appropriate placement and location of services for Student and the hearing officer expressly denied Petitioner's request to order DCPS to place Student in a nonpublic special education separate school. In light of the December 9, 2018 decision, absent a marked change in circumstances, Student's IEP team cannot be faulted for not changing Student's educational setting when Student had been at City School 2 for less than three months. *Cf. Capuano v. Fairfax Cty. Pub. Bd.*, No. 1:13-CV-00568-GBL, 2013 WL 5874605, at 5 (E.D. Va. Oct. 29, 2013) (Issue preclusion is applicable in IDEA cases where there has been "no material change in circumstances"). Moreover, Petitioner's expert, Psychology Associate, wrote in the May 19, 2018 IEE psychological evaluation report that Student's placement at City School 2 appeared to provide the appropriate environment to address Student's special education needs.

Apparently the change in Student's Specialized Instruction Services from 25.5 hours per week in the PCS IEP to 25 hours per week in the DCPS April 9, 2018 IEP reflects differences in the respective school bell schedules, rather than a decision to reduce Student's special education services. Both the May 9, 2017 PCS IEP and the April 9, 2018 City School 2 IEP provided for Student to receive all services for Math, Reading and Written Expression outside the general education setting. I find that changing Student's Specialized Instruction from 25.5 to 25 hours per week (6 minutes

per day) did not make the April 9, 2018 IEP inappropriate. In sum, I conclude that DCPS has met its burden of persuasion that the April 9, 2018 IEP was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. *See Andrew F.*, 137 S.Ct. at 1001.

- D. Did DCPS fail to provide Student with an appropriate IEP and/or an appropriate Educational Placement for or during the 2018/2019 school year, despite alleged decisions at IEP meetings on June 4, 2018 and September 28, 2018 and October 2018, in that DCPS failed to finalize the draft IEP that contained additional services for Student such as OT consult and assistive technology; DCPS refused to add speech and language services to Student's IEP; direct OT service were not added to the IEP; academic performance levels in the IEP were not updated and the draft IEP sent to the parent following the meeting has yet to be finalized for Student to begin receiving the additional services agreed upon.

For the 2018-2019 school year, Student enrolled in Current School where Student is now in the Grade SLS classroom. On September 28, 2018, the IEP team at Current School met to review Student's IEP. The revised IEP was finalized on October 30, 2018. The October 30, 2018 IEP provides for 25 hours per week of Specialized Instruction outside general education, 240 minutes per month of Behavioral Support Services, 60 minutes per month of OT services and, as Assistive Technology, a Tablet device with speech to text, text to speech and worksheet accessibility.

Some of the Petitioner's claims about the 2018-2019 IEP – finalizing the IEP and lack of OT services and Assistive Technology – were resolved in the October 30, 2018 final IEP. Also, in the final IEP, Student's PLOPs were updated based on Student's short tenure at Current School. Parent continues to assert that Student's IEP is inappropriate and that Student needs a more restrictive educational setting as well as Speech-Language Pathology services.

At the due process hearing, both sides offered expert witness testimony as to

Student's requirement for Speech-Language pathology services. Petitioner's expert, Independent Speech-Language Pathologist, evaluated Student in June 2018. Her testing showed that Student has significant vocabulary delays and difficulty with "sentence assembly." Student's core scores on the Clinical Evaluation of Language Fundamentals, Fifth Edition (CELF-5) were in the Low range. Student's receptive language index fell in the Severely Low range. Independent Speech-Language Pathologist testified that Student had very low expressive abilities and was functioning significantly low for Student's age in receptive language skills. She opined that these deficits have an impact on Student's ability to communicate in class as well as to progress in reading. Independent Speech-Language Pathologist recommended that Student receive 240 minutes per month of Speech-Language Pathology related services.

DCPS' expert, Speech-Language Pathologist 2, reviewed the IEE Speech-Language assessment. She also made classroom observations and obtained input from three of Student's Current School teachers. All of the teachers agreed that Student struggled to follow spoken directions and with remembering what was said. Two of the teachers rated self-expression as a strength for Student, but the third teacher reported that Student struggled with this. Speech-Language Pathologist 2 concluded that Student presented with moderate Language Disorder, but that Student's weakness in this area could be addressed with accommodations and modifications to the curriculum and did not require the unique skill set of a speech-language pathologist.

The parent's expert has worked as a school speech-language pathologist for many more years than Speech-Language Pathologist 2. Moreover, the criteria for eligibility cited by Speech-Language Pathologist 2 – whether a child's weakness could be addressed with classroom accommodations and modifications and whether the child

requires the unique skill set of a speech-language pathologist – does not conform to the standard for Speech-Language Pathology related services in the IDEA, namely, whether such services are required to assist the student to benefit from special education. *See* 34 CFR § 300.34(a). I find that DCPS has not shown that Student does not need IEP Speech-Language Pathology related services.

I also find that the October 30, 2018 IEP is not appropriate because it does not provide for all of Student's academic instruction outside of general education. In the December 9, 2017 HOD, Hearing Officer Ruff found that City School 2 was an appropriate educational placement for Student, because, among other reasons, students in the SLS program were not placed with general education students in elective courses. Special Education Teacher 2 testified that at Current School, Student's elective classes are not provided in the SLS setting. This is a less restrictive setting than was determined to be appropriate by Hearing Officer Ruff.

Courts in the District have held that the student's IEP team must discuss the student's specific least restrictive environment (LRE) and that the IEP is required to include at least a brief description of the child's LRE. *See, e.g., Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 121 (D.D.C. 2018). There was no evidence at the due process hearing that Student's IEP team discussed or approved changing Student's educational placement from the full-time self-contained program described in the December 9, 2017 HOD. I conclude that due to the failure of the Current School IEP team to address Student's readiness for placement with nondisabled peers in elective classes and to the omission Speech-Language Pathology related services, DCPS has not met its burden of persuasion that the October 30, 2018 IEP was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances." *See*

Endrew F., supra, 137 S.Ct. at 999. This was a denial of FAPE.

E. Did DCPS deny Student a FAPE by not timely updating and revising Student's Behavior Intervention Plan (BIP) since spring 2018?

Petitioner's last claim is that DCPS has denied Student a FAPE by not updating and revising Student's behavior intervention plan (BIP) since spring 2018. An LEA's failure to complete an FBA and BIP, when warranted, will constitute a denial of a FAPE. *See, e.g., Long v. District of Columbia*, 780 F.Supp.2d 49, 61 (D.D.C.2011). In May 2018, the social worker at City School 2 completed an updated FBA of Student. At the September 28, 2018 IEP team meeting at Current School, the IEP team agreed that Student's BIP should be updated. School Social Worker testified, without rebuttal, that he updated the BIP in October 2018. I find that School Social Worker's updating Student's BIP in October 2018, after Student had time to adjust to the new school, was not untimely. Petitioner has not met her burden of persuasion on this claim.

Remedy

In this decision, I have determined that DCPS denied Student a FAPE by not fully implementing Student's IEP Behavioral Support Services at City School 2 and by failing to ensure that the Current School October 30, 2018 IEP is appropriate for Student. For the failure to implement all of Student's Behavioral Support Services, the Petitioner requests an award of compensatory education. The D.C. Circuit pronounced in *B.D. v. District of Columbia*, 817 F.3d 792 (D.C. Cir. 2016), that if a hearing officer concludes that the school district denied a student a FAPE, he has "broad discretion to fashion an appropriate remedy, which may include compensatory education." *Id.* at 800. Educational Advocate recommended that Student be awarded 20-30 hours of counseling for "failure to implement more than 80% of [Student's] required BSS

services” and for failure to update Student’s BIP. However, my finding is that City School 2 failed to implement approximately 15 percent – not 80 percent– of Student’s Behavioral Support Services and that DCPS did timely update Student’s BIP.

Accordingly, I will award Student 5 hours of compensatory education counseling services, that is, approximately one-fifth of the compensatory education counseling recommended by Educational Advocate. I will also order DCPS to provide 12 hours of additional Speech-Language Pathology services as compensatory education for having refused to include speech services in Student’s October 30, 2018 IEP.

Petitioner also requests that DCPS be ordered to fund Student’s enrollment at a nonpublic special education school. The District may be required to pay for private school placement if no suitable public school is available. *See, Q.C-C. v. District of Columbia*, 164 F. Supp. 3d 35, 52 (D.D.C. 2016) (Where private school is the only potential placement in the record that could satisfy student’s needs, an order to fund nonpublic placement is warranted.)

In this case the evidence does not show that the SLS classroom at Current School is not appropriate for Student, but that the October 30, 2018 IEP is inappropriate for want of self-contained instruction for all classes and for the failure to provide Speech-Language Pathology related services. Petitioner’s expert, Psychology Associate, recommended that Student should be in a highly-structured classroom with a lot of individual attention from the teachers. The SLS classroom at Current School offers this setting. I find that the appropriate remedy to address the shortcomings in the October 30, 2018 IEP is to order that the IEP be revised.

ORDER

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

ORDERED:

1. Within 15 school days of the date of this decision, DCPS shall convene Student's IEP team to review and revise Student's IEP in accordance with this decision and 34 CFR § 300.320, *et. seq.* DCPS shall ensure that the revised IEP provides for all instruction, including elective classes, to be delivered outside the general education setting. DCPS shall also ensure that the revised IEP includes at least 240 minutes per month of Speech-Language Pathology related services;
2. As compensatory education for the denials of FAPE in this case, not later than 10 school days after the date of this decision, DCPS shall provide to the parent funding authorization to obtain 5 hours of individual counseling and 12 hours of Speech-Language Pathology services for Student at the rates approved by the D.C. Office of the State Superintendent of Education (OSSE) and
3. All other relief requested by the Petitioner herein is denied.

Date: January 1, 2019

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

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

cc: Counsel of Record
Office of Dispute Resolution
OSSE - SPED
DCPS Resolution Team