District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parent, on behalf of Student,[1]	)	
Petitioner,	)	
	)	
v.	)	
	)	
	)	**Hearing Officer: Michael Lazan**
	)	**Case No.: 2018-0274**
District of Columbia Public Schools,	)	
	)	
Respondent.	)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student who is currently eligible for services as a student with Speech and Language Impairment (the "Student").

A Due Process Complaint ("Complaint") was received by District of Columbia Public Schools ("DCPS" or "Respondent") pursuant to the Individuals with Disabilities Education Act ("IDEA") on October 23, 2018. On November 1, 2018, Respondent filed a response. The resolution period expired on November 22, 2018.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title

[1] Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

III. Procedural History

On November 20, 2018, this Hearing Officer held a prehearing conference. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on November 27, 2018, summarizing the rules to be applied in this hearing and identifying the issues in the case. On January 6, 2019, a continuance order was issued at the request of Petitioner, extending the due date for the Hearing Officer Determination to January 26, 2019.

There was one hearing date: January 7, 2019. This was a closed proceeding. Petitioner was represented by Attorney A, Esq. Respondent was represented by Attorney B, Esq. Petitioner moved into evidence Exhibits 1-61. There were no objections. Exhibits 1-61 were admitted. Respondent moved into evidence Exhibits 1-31. There were no objections. Exhibits 1-31 were admitted.

Petitioner presented as witnesses: herself; Witness A, an advocate; Witness B, a psychologist; and Witness C, a pediatrician. Respondent presented as witnesses: Witness D, a teacher; and Witness E, a teacher. At the end of testimony on January 7, 2019, the parties presented closing arguments.

IV. Issues

As identified in the Prehearing Conference Summary and Order and in the Due Process Complaint, the issues to be determined in this case are as follows:

1. Did Respondent fail to provide the Student with an appropriate Individualized Education Program ("IEP") and Behavior Intervention Plan ("BIP") in

October, 2017, and September, 2018? If so, did Respondent violate 34 CFR Sect. 300.324, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did Respondent deny the Student a Free and Appropriate Public Education ("FAPE")?

Petitioner contended that the IEPs should have provided the Student with more specialized instruction, in particular more direct instruction. Petitioner also contended that the IEPs did not provide sufficient behavior support services, that the Student required a behavior plan, and that the IEPs should have reflected the assessments discussed in Issue #2, below.

2. From October, 2017, to present, did Respondent fail to assess the Student in all areas of suspected disability? If so, did Respondent violate 28 U.S.C. Sect. 1414(b)(3) and 34 C.F.R. Sect. 300.304(c), 300.303(a)(2), and related provisions? If so, did Respondent deny the Student a FAPE?

Petitioner contended that Respondent failed to conduct a Functional Behavior Assessment ("FBA"), speech and language assessment, occupational therapy assessment, and psychological assessment.

3. Did Respondent fail to provide Petitioner with educational records? If so, did the Local Educational Agency ("LEA") violate 34 CFR Sect. 300.501 and related provisions? If so, did Respondent deny the Student a FAPE?

V. Findings of Fact

1. The Student is an X-year-old who is currently eligible for services as a student with Speech and Language Impairment. The Student has expressive and receptive deficits in speech, and is well below grade level in reading, writing, and math.

The Student cannot write his/her name correctly, does not know many letter sounds, can only read numbers 1-10, and cannot complete addition without a prompt. Testimony of Witness A; Testimony of Witness B; Testimony of Witness C; Testimony of Witness D; Testimony of Witness E.

2. The Student is quiet in school and, although not defiant, can sometimes be off-task and have difficulty with multi-step instructions. The Student also has issues with absences and lateness. The Student requires repetition and cueing to be able to pay attention in class. Testimony of Witness D; Testimony of Witness E; P-20.

3. For pre-kindergarten, the Student attended School A, a DCPS public school. Teachers at School A indicated that the Student needed extra help with work. Petitioner therefore asked School A staff for additional help in math, reading, and writing. This additional help was not provided to the Student, but an IEP was created for the Student in November, 2016. In a section entitled "Communication," this IEP stated that the Student presented with below-average speech intelligibility and moderately delayed receptive and expressive language skills. It also stated that the Student sometimes used three- to five-word sentences and needed modeling and significant promptings to use words. In a section called "Other Classroom Aids and Services," the IEP included recommendations for a variety of accommodations, including attempting to get the Student's attention before giving directions, getting physically close to the Student when providing instruction, using gentle prompting and hand signals to get the Student to be attentive, encouraging the Student to make eye contact, using a "reduced rate" when presenting audio-visual materials, providing additional repetition, incorporating physical movement to enhance learning, and providing additional time

between phrases to allow the Student to process the information. The IEP provided for three speech and language goals, and recommended two hours per month of speech-language pathology. R-17; Testimony of Petitioner.

4. The Student continued at School A for the 2017-2018 school year, but teachers at School A continued to indicate that the Student needed extra help with work. The Student was not provided with any meaningful extra help with work at this time. Testimony of Petitioner.

5. The Student's IEP team met again in October, 2017. The resultant IEP contained a section called "Communication" that used the exact same language as the "Communication" section of the November, 2016, IEP. The October, 2017, IEP also contained a section called "Other Classroom Aids and Services" that used the exact same language as the "Other Classroom Aids and Services" section of the November, 2016, IEP. The later IEP also continued to provide the Student with two hours of speech-language pathology per month, and three speech and language goals. P-5; P-7; P-8.

6. The Student's School A report card for the 2017-2018 school year stated that the Student was "significantly below" grade level in reading in every term, "significantly below" level in math for every term except the first term, and "approaching grade level" in writing for three of the four terms. The Student's reading was deemed to be "developing" in several areas, including in identifying the main subject of information for a text with support. The report card also indicated that the Student was absent for twenty-eight days. P-25.

7. On July 9, 2018, Petitioner requested the Student's entire academic file, including all attendance records, report cards, progress reports, and multidisciplinary meeting notes, from School A. P-56-1.

8. For the 2018-2019 school year, the Student changed schools to School B, a DCPS elementary school, which is the school the Student was attending on the date of the hearing. The Student was placed in a general education classroom with approximately twenty-one other children. The Student received "general education" small group instruction with approximately five other students during the day for twenty minutes, with an additional forty minutes of small group instruction on Fridays. Testimony of Petitioner; Testimony of Witness D; Testimony of Witness E.

9. At or about the start of the 2018-2019 school year, the Student's academic skills were still very limited. The Student could identify only twelve lowercase letters and letter sounds, and recognize only numbers one through ten (and only with prompts). "i-Ready" testing, which assesses a student's math skills, measured the Student at the second percentile in math. P-18-1; P-15-3.

10. Thus far in the 2018-2019 school year, the Student has had difficulty with instruction in general education classes. Unlike the Student's other classmates, the Student still cannot read, perform addition, or write his/her name. The Student has been more attentive during small group instruction, which benefits the Student. The Student's attendance has been inconsistent, hampering progress. Testimony of Witness D; Testimony of Witness E; P-29-2; P-15-3.

11. An IEP team met on behalf of the Student in September, 2018. At this meeting, Petitioner expressed that the Student was below level academically and required

educational testing. Petitioner felt the Student had a learning disability, and noted that she had expressed concern about this at the Student's previous school. Petitioner also presented a letter from the child's pediatrician noting issues with the Student's reading, writing, math, fine motor skills, attention, and articulation skills. Also at the meeting, the Student's teachers reported that the Student was not paying attention, was easily distracted, needed frequent redirection, had difficulty recognizing and writing numbers, struggled with word problems, and could not read. P-29; Testimony of Petitioner.

12. An IEP was then created for the Student. Again, in a section called "Communication," the September, 2018, IEP used the exact same language as the October, 2017, and November, 2016, IEPs. Again, the latest IEP provided the exact same language regarding "Other Classroom Aids and Services" as in the October, 2017, and November, 2016, IEPs. And again, the September, 2018, IEP provided the Student with three speech and language goals, and recommended two hours per month of speech-language pathology. P-5-2.

13. In October, 2018, the parties had another meeting to review the Student's school program and evaluations ("AED meeting"). At this meeting, Petitioner expressed concerns about Student's lack of progress and mastery, and requested comprehensive evaluations of the Student, including an FBA. Respondent agreed to conduct a psychological evaluation and an occupational therapy evaluation. Teachers at the AED meeting reported that the Student was still working on letter recognition and having difficulty recognizing numbers and counting past ten. The Student sometimes left class early and failed to return homework to school. The team indicated that the Student's attendance and vision should be monitored. The team also indicated that it did not have

enough information to determine the Student's present levels of academic achievement, developmental needs, educational needs, special education needs, and whether modifications to the Student's program and related services were needed to meet the goals set forth in the IEP. P-27-2-3; P-29; Testimony of Witness A.

14. Witness B, a psychologist, met the Student on November 4, 2018, for an evaluation, during which the Student was so anxious s/he could not "get off the chair" to play with the toys. The testing made it clear that the Student's academic levels were very low. After this evaluation, Petitioner's advocate sent a dissent letter to Respondent pointing out, among other things, that Respondent's evaluation of the Student did not include any social, emotional, or behavioral assessments and did not seek information about the Student's adaptive functioning. Testimony of Witness A; P-42.

15. The Student's first-term report card for the 2018-2019 school year revealed that the Student was considered to be on the "basic" level in all domains of reading, writing, and math. No comments about the Student were included on this report card, which indicated that the Student was absent for seven days during this time period. R-21.

16. A Comprehensive Psychological Evaluation conducted by DCPS, dated December 7, 2018, found that the Student had a second-percentile composite intelligence index of 69 on the Reynolds Intellectual Assessment Scales, 2nd Edition. The Woodcock-Johnson Tests of Achievement, 4th Edition, found that the Student's scores were in the extremely low range in broad reading and broad written language, with scores in the low range in broad math. P-11.

17. In December, 2018, after an eligibility meeting, Respondent issued a Prior Written Notice indicating that the Student was eligible for services only because of a Speech-Language Impairment and not because of a Specific Learning Disability, mainly because the Student did not meet the criteria for learning disability through the discrepancy model. P-10-1.

18. In "DIBELS" testing from the beginning of the 2017-2018 school year through the beginning of the 2018-2019 school year, the "TRC" indicator showed that the Student started below the "PC" level, increased to the "RB" level, then, at the start of the 2018-2019 school year, regressed back to the "PC" level. P-13.

VI. Conclusions of Law

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

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

> Where there is a dispute about the appropriateness of the child's individual educational program 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.

D.C. Code Sect. 38-2571.03(6)(A)(i).

Since Issue #1 involves a challenge to IEPs, the burden of persuasion is on Respondent with respect to that issue. Through the testimony of Petitioner and Witness A, Petitioner clearly presented a *prima facie* case on Issue #1, and Respondent did not argue otherwise. Issue #2 and Issue #3 do not involve a direct challenge to the Student's IEP, program, and/or placement. On these issues, Petitioner bears the burden. Schaffer v. Weast, 546 U.S. 49 (2005).

1. Did Respondent fail to provide the Student with an appropriate IEP and BIP in October, 2017, and September, 2018? If so, did Respondent violate 34 CFR Sect. 300.324, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did Respondent deny the Student a FAPE?

Petitioner contended that these IEPs should have provided the Student with more specialized instruction, in particular more "direct" instruction. Petitioner also contended that the IEPs did not provide sufficient behavior support services, that the Student required a behavior plan, and that the IEPs should have reflected the assessments discussed in Issue #2, below.

The main role of a hearing officer is to determine if an IEP developed through the Act's procedures is reasonably calculated to enable the child to receive additional benefits. Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982). The IEP should be both comprehensive and specific and targeted to a student's "unique needs." McKenzie v. Smith, 771 F.2d 1527, 1533, D.C. Cir. (1985); N.S. ex rel. Stein v. District of Columbia, 709 F.Supp.2d 57, 60 (D.D.C. 2010); 34 CFR Sect. 300.320(a)(2)(B) (the IEP must contains goals that meet each of the child's educational needs that result from the child's disability); 34 CFR Sect. 300.324(a)(1)(iv) (the IEP must address the academic, developmental, and functional needs of the child).

In S.S. ex rel. Shank v. Howard Road Academy, 585 F.Supp.2d 56, 66-67 (D.D.C. 2008), the Court found that the measure and adequacy of an IEP decision must be determined as of the time it was offered to the student. Citing to circuit court decisions, the Court found that an IEP should be judged prospectively to avoid "Monday morning quarterbacking." See Thompson R2-J Sch. Dist. v. Luke P., 540 F.3d 1143, 1149 (10th Cir. 2008); Adams v. Oregon, 195 F.3d 1141, 1149 (9th Cir. 1999); Carlisle Area Sch. v. Scott P., 62 F.3d 520, 530 (3d Cir. 1995); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990).

In 2017, the Supreme Court addressed a split amongst the circuit courts regarding what the IDEA means when it requires school districts to provide an "appropriate" level of education to children with disabilities. Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-I, 137 S. Ct. 988 (2017). In Endrew F., the Court held that an IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Id. at 1001. The Court made clear that the standard is "markedly more demanding than the 'merely more than *de minimis*' test applied by many courts." Id. at 1000.

Since Petitioner credibly contended that the Student was struggling in reading, writing, and math by October, 2017, Respondent bears the burden to show that the October, 2017, IEP was, nevertheless, appropriate. However, Respondent presented little in the way of testimony relating to the October, 2017, IEP, which was written at School A. Neither of Respondent's witnesses were from School A or at the IEP meeting in October, 2017. Minutes and reports from that meeting were not introduced into evidence by Respondent. Additionally, though Respondent's primary argument was that the

Student's attendance issues led to the decision to decline to provide specialized instruction, Respondent did not submit attendance records relating to the 2016-2017 school year, the school year that preceded the October, 2017, IEP.

Petitioner, on the other hand, presented uncontested testimony that the Student was struggling in all academic subjects during the 2017-2018 school year. Petitioner's assertions were consistent with the testing of the Student, which indicated that the Student had serious academic issues that needed to be addressed through specialized instruction. For instance, the Student's most recent testing, in December, 2018, which was conducted by Respondent, found that the Student was in the "extremely low" range in broad reading, the "low" range in broad math, and the "extremely low" range in broad writing. Petitioner was correct that the October, 2017, IEP should have provided the Student with specialized instruction (and that the IEP should have been based on more recent assessments of the Student's reading, writing, and math levels [see Issue #2, below].).[2]

The same issues were raised with the September, 2018, IEP. Respondent again contended that the Student's attendance issues caused his/her problems in school, and Respondent did call witnesses who taught the Student during the 2018-2019 school year at School B. However, neither of these witnesses testified that the Student's extremely low academic levels were solely, or even largely, a function of his/her attendance[3] issues.

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[2] Petitioner appeared to concede that no behavioral support services were needed in October, 2017, through the testimony of Witness A, who indicated that the Student's behaviors started to impede the curriculum only in October, 2018.

[3] Respondent was right to point out that Petitioner had not acted responsibly to ensure this Student went to school every single day. Petitioner argued that the Student was asthmatic, but did not submit support documentation indicating that the Student had asthma issues that were so severe that s/he should have missed even one day of school as a result. To the contrary, the letter from the Student's pediatrician did not even hint at the Student having an issue with asthma.

Witness D indicated that the Student needed "lots of repetition and cueing" and small group instruction. When asked if the Student had difficulty with reading, writing, and numbers, Witness E dramatically exclaimed, "Oh yes!" This testimony was consistent with the testimony of the Student's pediatrician and Witness B, who testified that the Student's scores were so low that s/he might be intellectually disabled. It is relevant to note that the Student did attend class for approximately 150 days during the 2017-2018 school year, and did attend pre-kindergarten classes in the years before that.

Parenthetically, Respondent's refusal to provide the Student with specialized instruction may have been a function of Respondent's view that there was no "severe discrepancy" between the Student's intellectual test scores and achievement test scores. R-6. However, a school district's duty to provide a FAPE to an *already eligible student* extends to any services that such student may need "to make progress appropriate in light of the child's circumstances," even if the necessary services are not directly related to that student's eligibility category. Endrew F., Id. at 1001.[4] As the Supreme Court stated in Endrew F.: "(a)n IEP is "not a form document. It is constructed only after careful

[4] Respondent's finding that the Student could not be eligible for services solely as a student with a Specific Learning Disability was not convincing. Respondent's analysis of the Student's learning disability relied too much on the discrepancy model to be valid. A helpful discussion can be found in Davis v. District of Columbia Public Schools, 244 F.3d 27 (D.D.C. 2017), where Judge James E. Boasberg found that the severe-discrepancy formula may not be the sole determinant of whether a child has a speech and learning disability. See also V.M. ex rel. B.M. v. Sparta Twp. Bd. of Educ., No. 12-892, 2014 WL 3020189, at *20 (D.N.J. July 3, 2014); M.B. ex rel. J.B. v. S. Orange/Maplewood Bd. of Educ., No. 09-5294, 2010 WL 3035494, at *8 (D.N.J. Aug. 3, 2010; and Letter to Prifitera, 48 IDELR 163 (OSEP 2007). As OSEP stated in Letter to Prifitera: "information from discrepancy, RTI and other alternative procedures is just one component of an overall comprehensive evaluation" because a school "'cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services'.") (quoting 71 Fed. Reg. at 46,648). As stated by the Ninth Circuit Court of Appeals, scientific research has established that the severe discrepancy model is not necessarily a good indicator of whether a child has a learning disability and that "reliance on the 'severe discrepancy model' tends to under-identify children with below average intelligence and is often seen as unreliable, invalid, easily undermined, and harmful because it delays early treatment." Michael P. v. Dep't of Educ., 656 F.3d 1057, 1060–61 (9th Cir. 2011) (internal citations omitted) (emphasis added).

consideration of the child's present levels of achievement, disability, and potential for growth." Id. at 999.

Finally, with respect to whether the September, 2018, IEP should have included behavioral support services or a BIP, no witnesses with personal knowledge testified that the Student was experiencing significant behavioral issues during the 2017-2018 school year, and Witness D and Witness E indicated that the Student's behaviors were in fact manageable in the classroom. Witness D and Witness E also testified that the Student could sometimes be easily distracted, but indicated that general education interventions such as redirection could address this issue. Both teachers indicated that the Student's main issues were academic in nature. As a result, the record does not support the claim that the Student required behavioral support services or a BIP in the September, 2018, IEP.[5]

2. From October, 2017, to present, did DCPS fail to assess the Student in all areas of suspected disability? If so, did DCPS violate 28 U.S.C. Sect. 1414(b)(3) and 34 C.F.R. Sect. 300.304(c), 300.303(a)(2), and related provisions? If so, did DCPS deny the Student a FAPE?

Petitioner contended that DCPS failed to conduct an FBA, speech and language assessment, occupational therapy assessment, and psychological assessment.[6]

A school district is required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining (i) whether the child is a child with a disability, and (ii) the content of the child's individualized education

[5] After the September, 2018 IEP, Witness B evaluated the Student. Witness B credibly testified that, during her evaluation of the Student, the Student was very anxious, suggesting that evaluations are now needed on the question of whether the Student requires behavioral support services.

[6] At the hearing, Petitioner did not clearly argue that Respondent failed to respond to Petitioner's request to evaluate.

program, including information related to enabling the child to be involved and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities. The school district should not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child, and use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 28 U.S.C. Sect. 1414(b)(2); 34 C.F.R. Sect. 300.304(b). The LEA must provide a student with an evaluation if requested by a parent and there has been no evaluation of the student in the prior year. 34 CFR Sect. 300.303(a)(2); 34 CFR Sect. 300.303(b)(1).

During pre-school, the Student's teachers told Petitioner that the Student needed extra help. The teacher statements were corroborated by the Student's report card from the 2017-2018 school year, which stated that the Student was "below basic" in reading during each term. The Student also tested very poorly on Respondent's annual testing for general education students, with particularly low scores on DIBELS and i-Ready testing. Yet no formal, norm-referenced psychological testing was conducted on the Student until the Due Process Complaint was filed in this case. As suggested by Witness A, Witness B, and Witness C, the Student should have been provided with comprehensive psychological testing by October, 2017, and Respondent also should have conducted a speech and language evaluation of the Student at that time. Though the Student received speech and language therapy per the IEP of November, 2016, there is nothing in the record to establish that the Student was ever formally evaluated for speech and language issues prior to the evaluation in May, 2018.

Petitioner also contended that the Student should have been tested for occupational therapy services in October, 2017. However, the record does not establish that Respondent should have suspected that the Student presented with fine motor issues prior to the October, 2018, "AED" meeting, where Respondent agreed to test the Student for occupational therapy issues. No occupational therapist was called by Petitioner on this issue, even though Petitioner had the burden to show that the Student needed an occupational therapy evaluation. In fact, Witness B, who recently evaluated the Student, did not mention that the Student required an occupational therapy evaluation.

Additionally, Petitioner argued that the Student should have been assessed with respect to social and emotional issues, including an FBA and social and emotional testing through a psychological evaluation. The record is not clear on whether this ordinarily well-behaved Student required social and emotional testing prior to October, 2018 (or an FBA). Though Petitioner bears the burden on this issue, Petitioner did not call any witnesses from School A to support the contention that the Student's behavior was problematic during this time period, and the record has little documentation establishing that the Student presented with behavioral concerns prior to October, 2018. As noted, neither Witness D nor Witness E felt that the Student had any major behavioral concerns in school, and each came across credibly.

Accordingly, this Hearing Officer finds that Respondent denied the Student a FAPE by failing to conduct a comprehensive psychological evaluation of the Student from October, 2017, to December, 2018, and by failing to conduct a speech and language evaluation of the Student from October, 2017, to May 30, 2018, the date of Respondent's speech and language evaluation of the Student.

3. Did Respondent fail to provide Petitioner with educational records? If so, did the LEA violate 34 CFR Sect. 300.501 and related provisions? If so, did Respondent deny the Student a FAPE?

20 U.S.C. Sect. 1232g(a)(1)(A) requires that educational agencies grant parents access to the educational records of their children no more than forty-five days after the request. The IDEA regulations provide in pertinent part: "(t)he parent of a child with a disability must be afforded, in accordance with the procedures of Sects. 300.613 through 300.621, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child." 34 CFR 300.501(a).

Through her attorney, Petitioner requested a wide variety of educational records in or about July, 2018, and again in October, 2018, and then again in November, 2018. While Witness A testified that these records requests were not satisfied, none of Petitioner's witnesses explained how the records issue had any substantive impact on the Student's education or on this litigation. Kruvant v. District of Columbia, 99 Fed. App'x. 232, 233 (D.C. Cir. 2004). Moreover, Petitioner did not present any authority to support this claim, which must be dismissed.

RELIEF

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to "grant such relief as [it] determines is appropriate." School Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confer broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be

"appropriate." 20 U.S.C. Sect. 1415(i)(2)(C)(iii). Under the theory of compensatory education, courts and hearing officers may award "educational services to be provided prospectively to compensate for a past deficient program." Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F.Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to craft an award tailored to the unique needs of the disabled student"). A Petitioner need not "have a perfect case" to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F.Supp. 201 (D.D.C. 2011). Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

As supported by testimony and a plan from an expert in "Special Education Programming and Eligibility," Petitioner seeks 150 hours of specialized tutoring in reading, writing, and math as a result of the FAPE deprivation from October, 2017, through the present. Given that this young Student has not made meaningful progress in reading, writing, or math for well over a year, this is a reasonable request, proportionate with the period of deprivation, and should be granted.

Petitioner also seeks 104 hours of speech and language therapy as compensatory education. Though Petitioner did not call a speech and language therapist to testify in this regard, and though Petitioner did not allege that the Student's IEPs unfairly denied

the Student speech and language services, Respondent did fail to evaluate the Student in speech and language during the 2017-2018 school year, suggesting that the Student's speech and language mandate might have been inappropriate. The Student shall accordingly receive twenty hours of compensatory speech and language therapy.

Additionally, Petitioner seeks twenty hours of compensatory "play therapy" and access to student records, but Respondent did not deny the Student a FAPE with respect to social and emotional issues or student records.

Lastly, Petitioner seeks: 1) a new evaluation for the Student, and 2) an order for the IEP team to meet again and create a new program based on the new evaluation. Respondent completed a comprehensive psychological evaluation in December, 2018, but testimony at the hearing made it clear that the Student should now be tested for adaptive skills and social and emotional issues. Since Respondent recently completed speech and language testing and occupational therapy testing, no other testing is necessary at this time, other than testing to determine the Student's adaptive skills and social and emotional issues.

VII. Order

As a result of the foregoing, the following is ordered:

1. The Student shall receive 150 hours of compensatory tutoring, to be provided by an experienced special education teacher, at a usual and customary rate in the community;

2. The Student shall receive twenty hours of compensatory speech and language pathology, to be provided by a qualified professional, at a usual and customary rate in the community;

3. The Student shall be comprehensively evaluated for social and emotional difficulties, and for adaptive skills, by March 31, 2019;

4. The IEP team shall meet by April 15, 2019, to review the new assessments and provide the Student with an appropriate program consistent with the findings of this decision;

5. Petitioner's other requests for relief are denied.

Dated: January 26, 2019

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Petitioner's Representative: Attorney A, Esq.
Respondent's Representative: Attorney B, Esq.
OSSE Division of Specialized Education
Contact.resolution@dc.gov

VIII. Notice of Appeal Rights

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 USC §1415(i).

Date: January 26, 2019

Michael Lazan
Impartial Hearing Officer