

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
1050 First Street, N.E., Third Floor, Washington, DC 20002
(202) 698-3819 www.osse.dc.gov

OSSE
Office of Dispute Resolution
July 15, 2022

Parent, on behalf of Student,¹)	
Petitioner,)	
)	Hearing Dates: 6/16/22; 6/27/22
)	
)	Hearing Officer: Michael Lazan
District of Columbia Public Schools,)	Case No. 2022-0068
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 a Specific Learning Disability (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 April 18, 2022. The Complaint was filed by the Student’s parent (“Petitioner”). On April 29, 2022, Respondent filed a response. A resolution meeting was held on May 17, 2022. The matter was not settled. The resolution period expired on May 18, 2022.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

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

III. Procedural History

A prehearing conference was held on May 27, 2022. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order summarizing the rules to be applied in the hearing and identifying the issues in the case was issued on June 2, 2022.

The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioner was again represented by Attorney A, Esq. Respondent was again represented by Attorney B, Esq. This was a closed proceeding.

On June 27, 2022, Petitioner moved for a continuance, without objection. An order granting the motion was issued on June 28, 2022, extending the Hearing Officer Determination (“HOD”) due date to July 15, 2022. Hearings were held on June 16, 2022, and June 27, 2022.

During the proceeding, Petitioner moved into evidence exhibits P-1 through P-44 without objection. Respondent moved into evidence exhibits R-1 through R-15 without objection. Petitioner presented as witnesses, in the following order: Witness A, an occupational therapist (expert in occupational therapy); Petitioner; Witness B, a speech and language pathologist and assistive technology specialist (expert in speech and language pathology and assistive technology); and Witness C, an advocate (expert in special education as it relates to Individualized Education Program (“IEP”) programming). Respondent presented as witnesses: Witness D, a special education teacher (expert in special education as it relates to IEP programming). The parties presented oral closing statements at the end of testimony on September 27, 2022.

IV. Issues

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

1. Did Respondent fail to appropriately develop an IEP for the Student on or about April 16, 2020, and April 7, 2021? If so, did Respondent act in contravention of 34 C.F.R. Sect. 300.321(a)(1), 34 C.F.R. Sect. 300.320, 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), and related authority? If so, did Respondent deny the Student a Free Appropriate Public Education (“FAPE”)?

Petitioner contended that the April 16, 2020, IEP meeting for the Student did not include the Student’s parent, and that neither of the Student’s IEPs contained appropriate present levels of performance sections or appropriate goals, or sufficiently considered the Student’s need for assistive technology. For this claim, the burden of persuasion is on Respondent, if Petitioner presents a *prima facie* case.

2. Did Respondent fail to appropriately evaluate the Student in or about April, 2021? If so, did Respondent violate 34 C.F.R. Sect. 300.305 and related provisions? If so, did Respondent deny the Student a FAPE?

Petitioner contended that, during the Student’s triennial evaluation, the Student needed to be evaluated through a formal speech and language assessment, occupational therapy assessment, comprehensive psychological assessment (including an assessment of the Student’s writing), and an assistive technology assessment. For this issue, the burden of persuasion is on Petitioner.

As relief, Petitioner seeks compensatory education, a speech and language assessment, an occupational therapy assessment, a comprehensive psychological assessment, an assistive technology assessment, and a new IEP meeting to review the

assessments and make appropriate changes to the Student's IEP, including adding measurable goals and assistive technology.

V. Findings of Fact

1. The Student is an X-year-old who is currently eligible for services as a student with Specific Learning Disability. The Student is introverted and lacks confidence, and is academically well behind in all areas. Testimony of Petitioner; P-18-3-6. DCPS conducted a psychological evaluation of the Student in March, 2015, and issued a corresponding report on April 8, 2015. The evaluation concluded that the Student was significantly behind his/her peers in reading, writing, and math, including letter sounds, phonemic awareness, blending sounds, decoding words, and fluency. The evaluation also indicated that math was a relative strength for the Student. The evaluation recommended a speech and language consultation, strategies to address deficits such as memory, breaking work into smaller pieces, and providing immediate feedback to the Student. P-5.

2. A DCPS school psychologist conducted a Psychological Triennial Reevaluation of the Student on March 23, 2018, and issued a corresponding report on May 7, 2018. The reevaluation consisted of testing, a document review, and interviews with Petitioner, the Student, and the Student's special education teacher. The special education teacher reported that math was a strength for the Student, who worked well in small groups, and that reading was an area of growth, though, again, the Student worked better in small groups. The special education teacher indicated that the Student could be defiant and aggressive, though there were days that s/he did well behaviorally. The Student could appear to have a "laid back" attitude, but lacked confidence, which was

part of the reason why s/he worked better in small groups. The Student sometimes insulted his/her peers, but could also have positive interactions with peers. The Student told the psychologist that s/he did not like school because it was boring and some teachers “yell,” though the Student said that s/he likes “specials” classes and math. The Student also acknowledged that s/he was better at math than reading, and indicated a strong interest in sports. When asked what s/he would wish for if given three wishes, the Student said: to get out of his/her neighborhood, to get his/her mother a new house, and to help his/her grandmother with her bills. The psychologist reviewed report cards that indicated that the Student spent time in the hallways and manifested inattentiveness in class. An observation was attempted on two occasions, but both times the Student was out of place, in the hallway. Nevertheless, the Student was pleasant and attentive during testing, and appeared to try his/her best on all tasks. On the Woodcock-Johnson IV Tests of Achievement, Form B (“WJ-IV ACH”) the Student tested overall in the very low range in reading and math, and in the low range in writing. The evaluator recommended interventions such as manipulatives, visual aids, the use of a “vocabulary journal,” and repetition, among other things. P-6.

3. For the 2018-2019 school year, the Student attended Public School B. During this school year, the Student’s classroom incorporated behavior management systems, including token economy and individual reward systems. The Student was shy and timid, got frustrated easily, and often acted in concert with his/her sibling. The Student’s IEP that was written on May 2, 2018, and amended on June 21, 2018, described the Student as needing one-to-one instruction and said that the Student “shuts down” before s/he tries most activities. The IEP described the Student as in the below average

range in math and in the low range in reading, and recommended specialized instruction per week as follows: reading for five hours outside general education; written expression for one hour outside general education; math for four hours outside general education; mathematics for two hours inside general education; and written expression for two hours inside general education. The IEP contained “Area of Concern” sections with corresponding goals in reading, math, and written expression, and recommended “Other Classroom Aids and Services,” including small group intervention, one-to-one instruction “when available,” peer tutoring, extended response time, preferential seating, visual supports while learning new information, and related other interventions. P-14.

4. An IEP was written for the Student at an IEP meeting on May 1, 2019. This IEP indicated that the Student was at the third grade level in math, and referenced an i-Ready score of 440 in January, 2019. In reading, the Student was described as performing below grade level, and the IEP noted that the Student received a Lexile score of 529 on the Reading Inventory (“RI”) measure on February 4, 2019. That Lexile score indicated a fourth grade level, a significant improvement from the Student’s earlier kindergarten-level score (which was likely an underestimate due to the Student’s lack of engagement). The IEP indicated that the Student could write a simple sentence and compose one short paragraph, and did not have any behavioral concerns. The IEP again contained “Area of Concern” sections in in reading, math, and written expression, with corresponding goals, but this IEP was more focused than the earlier IEP on placing the Student in a general education setting. The IEP accordingly recommended that the Student receive weekly specialized instruction as follows: reading for five hours outside general education; math for five hours inside general education, and written expression

for two hours inside general education. “Other Classroom Aids and Services” were the same as in the prior IEP. P-15. This IEP was amended on October 1, 2019, to add transportation services. P-16-1; Testimony of Witness D.

5. The Student attended Public School A for the 2019-2020 school year. An IEP meeting was held for the Student on April 16, 2020. The Student’s parent did not attend. In mathematics, the IEP reported on i-Ready testing from September 5, 2019, when the Student scored 414, and from January, 2020, when the Student scored 433. The IEP noted that the Student was at the second grade level in mathematics, one grade level below the grade level that the earlier IEP reported. This IEP noted that the Student’s score on the RI measure increased slightly to 533, though s/he remained at the fourth grade level. The IEP stated that the Student had difficulty processing information, could write one simple sentence, and could compose one short paragraph. The IEP contained “Area of Concern” sections in reading, math, and written expression, and the language in the goals was almost entirely repeated from the May 1, 2019, IEP. There were no decoding goals in this IEP, but they may not have been needed because the school used the STARI curriculum, which included decoding work. This IEP recommended that the Student receive twenty-four hours of specialized instruction per week outside general education, with eight hours each for reading, written expression, and math, and with the same “Other Classroom Aids and Services” as the prior IEPs. This April, 2020, IEP was based on in-person assessments and observations. P-17; Testimony of Witness D.

6. Toward the end of the 2019-2020 school year, on the SRI testing measure, the Student scored at Lexile level 608 in reading, which was considered to be a third grade level. P-27-4.

7. The Student's IEP progress report for the first reporting period of the 2019-2020 school year indicated that, in reading, the two goals were "just introduced." The Student's written expression goal was not introduced, and no progress was made on the Student's "Transition-Post-Secondary Education and Training" goal. Other transition goals were not introduced. P-19. For the second and third reporting periods of the 2019-2020 school year, the Student was reported to be making little progress on any goals, because the Student did little to no work or homework and failed to show up at tutoring sessions offered by teachers. Nevertheless, in the first three reporting periods, the Student was said to be "progressing" on his/her academic goals. No progress was reported for the fourth reporting period, due to school closure as a result of the COVID-19 pandemic. P-20; P-21; P-22.

8. The Student's grades at Public School A for the 2019-2020 school year ranged from "A" to "F." The Student failed "math support" in the second and third terms, but received "B" grades in "reading workshop" in the third and fourth terms, for a final grade of "B-." In "Science of Technology," the Student received an "A" grade in term three and a "B+" final grade. In English, the Student received an "A" for the third term and a "B-" for a final grade. The Student also received a final grade of "B-" in "Science and World History and Geography: Ancient World." P-27.

9. The Student continued at Public School A for the 2020-2021 school year, during which instruction was provided virtually. The school offered direct virtual instruction to students on Mondays, Tuesdays, Thursdays, and Fridays. Wednesdays were reserved for "asynchronous" instruction, including office hours for students who

were struggling. Though the Student was struggling, the Student did not participate in the school's instruction on Wednesdays. Testimony of Witness D.

10. During the 2020-2021 school year of virtual instruction, it was rare that the Student participated in class. The Student would log in but keep his/her camera and microphone off, and s/he made little to no progress. It was difficult to know the Student's academic levels because the Student refused to participate, and sometimes s/he seemed not to understand the material. However, when the end of the term approached, the Student would submit an assignment or two that indicated that s/he understood the work. Teachers suspected that this work was actually the product of Petitioner. The school wanted to focus on the Student's weaknesses in reading. The Student's reading class offered work on fluency, decoding, and comprehension. The Student struggled to determine the meaning of words, had issues with persuasive argumentative writing with textual evidence, and was deemed to be at the "below basic" level in reading and writing. The Student was anxious that others would see his/her deficits in reading. The reading classes would involve a fluency routine, during which one student would go into a "private" breakout room with another student. Teachers knew that the Student would not partner with another student, so the teachers offered to partner themselves with the Student, but they had little success. During this school year, the Student could "maybe" copy the material s/he saw, but processing language and expressing him/herself through written expression was a struggle. DCPS focused on organizing the Student's thoughts by providing graphic organizers, small group instruction, modeling, exemplars, and the like. The Student did not resist as much in math, but the Student's difficulties in reading and writing hurt him/her in all subjects. The Student was offered one-to-one teacher

assistance in class “breakout rooms,” but s/he did not take advantage of the offer. During the school year, Witness D frequently reached out to Petitioner, who talked to DCPS staff regularly. DCPS staff felt that it was important to focus on “small wins” and on the Student’s self-esteem. R-9 at 110-111; Testimony of Witness D; Testimony of Petitioner.

11. Another IEP meeting was held for the Student on April 7, 2021. The Student’s parent attended this meeting and told the team that Public School A was not the right place for the Student. The staff at the school said that they did not have any more “pull-out” instruction to offer, and that the Student could manage in the classroom. Testimony of Petitioner. The DCPS members of the team felt that they did not need more evaluations to assess the Student and create a new IEP, and that the Student did not need assistive technology, at least in part because instruction was virtual at that time. No counseling was offered, and the team did not want to increase the Student’s specialized instruction hours because they wanted to try the program that was already in place. The team felt that it would have been a disservice to change what was in place without implementing it with fidelity. Testimony of Witness D.

12. The Student’s April 7, 2021, IEP indicated that the Student scored a 443 on the i-Ready test in math, at the third grade level. P-18-4. The IEP stated that the Student took the RI test on February 12, 2021, and scored 808, at the kindergarten level. P-18-5. The IEP said that the Student needed intensive instruction focusing on skills and concepts in math. The IEP again contained “Area of Concern” sections in reading, math, and written expression. The “Present Levels of Academic Achievement and Functional Performance” (“PLOPs”) sub-sections of the “Area of Concern” sections included goals in written expression that were copied from the earlier IEP. The Student’s specialized

instruction mandate remained unchanged, and the “Other Classroom Aids and Services” section of the IEP remained unchanged. P-18. The goals in the IEP were based on the eighth grade curriculum, as modified. Testimony of Witness D.

13. An Analysis of Existing Data (“AED”) document was created by DCPS on or about April 15, 2021. The document stated that, in math, the Student benefitted from intensive intervention focused on skills and concepts related to quantitative reasoning and representation, as well as instruction that connected understanding of algebraic representation, computation, and problem-solving skills. The document indicated that the Student needed small-group and one-to-one instruction in math, and that due to the Student’s lack of engagement, his/her skill set and progress could not be determined at that time. In reading, the document indicated that the Student was at a fourth grade level and benefitted from extensive scaffolding, silent reading practice, activities to develop fluent comprehension-based silent reading habits, and activities to develop academic vocabulary. The document mentioned the Student’s lack of belief in his/her ability to improve as a reader, and noted that the Student benefitted from small-group and one-to-one instruction in reading and writing. The document indicated that the Student was making no progress in reading and slow progress in writing. P-7.

14. The Student’s progress reports for the first reporting period of the 2020-2021 school year indicated progress in math, but no progress in reading or written expression. Transition goals were not introduced. P-23. For the second and third reporting periods, the Student made slow progress in math, but none in reading. The Student refused to participate in reading during the second reporting period. Transition goals were not introduced. P-24; P-25. For the fourth reporting period, the Student was

determined to be making slow progress in math, reading, and writing. No transition goals were introduced. P-26.

15. The Student's grades at Public School A during the 2020-2021 school year were lower than they were in the previous school year. The Student received numerous "F" grades in academic subjects, including in term one for "Concepts of US History and Geography: Growth and Conflict," for terms one and two in English, and for terms two and three in "math support." The Student also received a final grade of "F" in "math support." The report card indicated that in SRI testing on February 12, 2021, the Student was at the fourth grade level in reading. P-28.

16. For the 2021-2022 school year, the Student has been home-schooled. Testimony of Petitioner. On March 16, 2022, Respondent asked Petitioner for consent for an evaluation. P-41-4. In June, 2022, Witness C conducted an informal assessment of the Student. Witness C indicated that the Student reads at the kindergarten level, has difficulty with writing prompts, and can only write basic sentences without punctuation. Testimony of Witness C.

VI. Conclusions of Law

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.” D.C. Code Sect. 38-

2571.03(6)(A)(i). Accordingly, on the first issue in this case, relating to the appropriateness of the Student’s IEP and placement, the burden of persuasion is on Respondent if Petitioner presents a *prima facie* case. On the second issue, relating to evaluations, the burden of persuasion is on Petitioner.

1. Did Respondent fail to appropriately develop an IEP for the Student on or about April 16, 2020, and April 7, 2021? If so, did Respondent act in contravention of 34 C.F.R. Sect. 300.321(a)(1), 34 C.F.R. Sect. 300.320, 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), and related authority? If so, did Respondent deny the Student a FAPE?

Petitioner contended that the April 16, 2020, IEP meeting for the Student did not include the Student’s parent, and that neither of the Student’s IEPs contained appropriate present levels of performance sections or appropriate goals, or sufficiently considered the Student’s need for assistive technology.

The IEP is the “centerpiece” of the IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). In Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the Court explained that an IEP must be formulated in accordance with the terms of the IDEA and “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Id. at 204; Leggett v. Dist. of Columbia, 793 F.3d 59, 74 (D.C. Cir. 2015); 20 U.S.C. Sect. 1412(a)(5)(A). In Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), the Court held that an IEP must be reasonably calculated “in light of the child’s circumstances.” Id. at 999-1000. The Court also held that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for

their decisions, and that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001-1002.

April 16, 2020, IEP.

The IDEA requires a school district to ensure that an IEP team for a child with a disability includes the parent of the child, 34 C.F.R. Sect. 300.321(a). Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and scheduling the meeting at a mutually agreed on time and place. 34 C.F.R. Sect. 300.322(a). If neither parent can attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 34 C.F.R. 300.328 (related to alternative means of meeting participation). 34 C.F.R. Sect. 300.322(c).

The Student’s IEP in question does not reflect the parent’s participation or presence at the IEP meeting. However, Petitioner presented no clear testimony to support her claim that she did not participate in the IEP meeting on April 16, 2020, and Petitioner also did not clearly argue this point during closing argument. This Hearing Officer therefore finds that Petitioner did not present a *prima facie* case on this issue, which is dismissed.

An IEP must contain a “statement of measurable annual goals, including academic and functional goals” designed to “meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum,” and to meet “each of the child’s other educational needs that result from the child’s disability.” 34 C.F.R. Sect. 300.320(a)(2)(i).

Petitioner’s main contention here was that the goals in the Student’s IEP were improperly repeated. As Witness C testified, the April 16, 2020, IEP contained “Area of Concern” sections in reading, math, and written expression, and the language in the goals was almost entirely repeated from the May 1, 2019, IEP. DCPS pointed out that there is no statutory requirement that an IEP must change from school year to school year. J.B. by & through Belt v. D.C., 325 F. Supp. 3d 1, 16 (D.D.C. 2018). DCPS also contended, through Witness D, that repeated goals are not unusual, depending on a student’s level of mastery.

However, IEP goals should ordinarily reflect a student’s year-to-year progress, or lack thereof. Damarcus S. v. District of Columbia, 190 F. Supp. 3d 35, 52-53 (D.D.C. 2016) (“the wholesale repetition” of goals and objectives “indicates an ongoing failure to respond to [a student’s] difficulties”). Additionally, the IEP team must review goals yearly to determine whether the goals are still meaningful for the student. Belt, 325 F. Supp. 3d at 8 (rejecting goals claim because goals were modified once the student had made documented progress in certain areas). Here, therefore, since goals are repeated, Respondent is obligated to present a “cogent and responsive explanation” for its choice to repeat the goals. Respondent offered no such explanation, and indeed did not call any witness who was even at the April 16, 2020, IEP meeting.

Instead, Witness D indicated that it is wrong to provide students with new goals when the earlier goals were not mastered. However, this point of view does not take into account goals that have been shown to be inappropriate during the course of a school year. As Witness C pointed out, if a student has not mastered a goal, the goal should be kept only if the Student is making progress on the goal. The goals on the May 1, 2019, IEP resulted in no meaningful progress for the Student during the 2019-2020 school year. The Student's IEP progress report for the first reporting period of the 2019-2020 school year indicated that, in reading, the two goals were "just introduced." The Student's written expression goal and other transition goals were not introduced, and no progress was made on the Student's "Transition-Post-Secondary Education and Training" goal. For the second and third reporting periods of the 2019-2020 school year, the Student made little progress on any goals, because the Student did little to no work or homework and failed to show up at tutoring sessions offered by the teachers. The Student's test scores are consistent with this conclusion. According to standardized testing, the Student regressed one grade level in math, from third grade level to second grade level, and stayed at the fourth grade level in reading. DCPS suggested that it could do nothing because the Student was avoiding instruction, but the record suggests that the Student's school avoidance was at least in part a function of the Student's reluctance to read in front of others. Under the circumstances, DCPS should have redrafted the goals so that the Student would be more motivated, and the goals could be more attainable for the Student. It did not, and it therefore denied the Student a FAPE.

In regard to Petitioner's claims that the PLOPs in the IEP denied the Student a FAPE, there should be evidence and testimony in the record that the alleged issues with

PLOPs had an impact on the Student. Belt, 325 at 6 (rejecting FAPE claim based on PLOPs as procedural violation). Witness C contended that the Student's written expression PLOP was repeated from the May, 2019, IEP, which is true, but Petitioner did not explain how that affected the Student, and indeed Petitioner did not clearly address this issue during closing argument. Nor did Petitioner discuss this issue during her testimony. There is nothing in the record to suggest that the Student's education was impacted by the language in the PLOPs. These claims must therefore be dismissed.

Finally, with respect to assistive technology, Witness B, an expert in the field, suggested that the IEP should have recommended assistive technology such as text-to-speech software, as well as a laptop computer. There is no support in the record for the need for assistive technology beyond Witness B's testimony. To the contrary, the IEP provided for "read aloud" testing and classwork, which could take the place of text-to-speech software. There was also clear explanation showing why the Student needed a laptop computer to function academically during the 2020-2021 school year.

Additionally, there was no rebuttal of the testimony of Witness D, an expert in special education programming and placement, who said that the Student did not need assistive technology in the IEP because classes were conducted through videoconferencing during the 2020-2021 school year. While this Hearing Officer agrees that the Student should have been evaluated for assistive technology issues, see *infra*, this Hearing Officer cannot find, in this record, that the lack of assistive technology in the IEP was so material that it denied the Student a FAPE. Accordingly, while this Hearing Officer finds that DCPS denied the Student a FAPE by failing to provide the Student with appropriate goals in the April 16, 2020, IEP, all other claims relating to this IEP are dismissed.

April 7, 2021, IEP.

Petitioner appeared at this IEP meeting. During the meeting, goals were created that were distinct from the goals that were written in the April 16, 2020, IEP, except for the written expression goals, which were repeated. DCPS presented a witness who was at this meeting, Witness D, who testified that DCPS wanted to try the written expression goals again in person, since the Student did not participate well virtually. Witness D indicated that there was no opportunity to even try to implement the written expression goals during the virtual instruction of the 2020-2021 school year. Because the record suggests that the parties knew the April 7, 2021, IEP would likely be implemented during in-person instruction in the 2021-2022 school year, this Hearing Officer finds DCPS's argument to be reasonable in light of the changes made to the other goals.

Witness C also indicated that all of the goals in this IEP were generally inappropriate and not obtainable, but mainly emphasized that the baselines in the goals stayed the same. However, there is no requirement in the IDEA for IEPs to have baselines. Though repeated baselines may suggest an inadequate underlying program, it is not an IDEA violation to repeat baselines on an IEP. Petitioner also argued that the transition goals in the IEP were inappropriate, but there is no evidence in the record to support Petitioner on this point. While the transition goals may not have been implemented, there is no failure-to-implement claim in the Complaint. Finally, with respect to assistive technology, Petitioner made the same claims that were argued in connection to the April 16, 2020, IEP. Again, Witness B, an expert in the field, suggested that this IEP should have provided the Student with assistive technology, such as text-to-speech software and a laptop computer. However, as noted, there is no

corroborating evidence in the record, and this Hearing Officer finds it notable that the IEP provides for “read aloud” testing and classwork, which could take the place of text-to-speech software. There is also no clear, detailed explanation of why the Student needed a laptop for the 2021-2022 school year. Petitioner did not mention this issue during her testimony, and the Student did have a laptop at home, since s/he was able to log in to virtual instruction during the 2020-2021 school year. Petitioner’s claims relating to the April 7, 2021, IEP must therefore be dismissed.

2. Did Respondent fail to appropriately evaluate the Student in or about April, 2021? If so, did Respondent violate 34 C.F.R. Sect. 300.305 and related provisions? If so, did Respondent deny the Student a FAPE?

Petitioner contended that, during the Student's April, 2021, triennial evaluation, the Student needed to be evaluated through a formal speech and language assessment, occupational therapy assessment, comprehensive psychological assessment (including an assessment of the Student’s writing), and an assistive technology assessment.

Pursuant to 34 CFR 300.303 (a) and (b), a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 CFR 300.304 through 34 CFR 300.311 at least once every three years. The reevaluation should involve assessments in “all areas of suspected disability.” 20 U.S.C. Sects. 1414(b)(3)(B), (c)(1); 34 C.F.R. Sect. 300.304(c)(4). The child’s reevaluation must consist of two steps. First, the child’s evaluators must “review existing evaluation data on the child,” including any evaluations and information provided by the child’s parents, current assessments and classroom-based observations, and observations by teachers and other service providers. 34 C.F.R. Sect. 300.305(a)(1). Based on their review of that existing data, the evaluators must “identify what additional data, if any, are needed” to

assess whether the child has a qualifying disability and, if so, “administer such assessments and other evaluation measures as may be needed.” Sect. 300.305(a)(2), (c). The school district is required to “[u]se a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent.” Sect. 300.304(b). All the methods and materials used must be “valid and reliable” and “administered by trained and knowledgeable personnel.” Sect. 300.304(c)(1). Still, for there to be a finding of FAPE denial on this issue, a parent should show that the failure to evaluate resulted in a substantive harm to the student. Suggs v. District of Columbia, 679 F. Supp. 2d 43 (D.D.C. 2010).

There is no dispute that the Student’s April, 2021, reevaluation was a “triennial” reevaluation that is conducted every three years. Petitioner contended that, as part of this evaluation, a psychoeducational evaluation was required, as well as evaluations in regard to speech and language therapy, occupational therapy, and assistive technology. Petitioner pointed to the testimony of Witness C, an expert in special education as it relates to IEP programming, Witness B, an expert in speech and language pathology and assistive technology, and Witness A, an expert in occupational therapy.

Witness C pointed out, convincingly, that there was a wide scatter in the Student’s test scores in reading, which left DCPS in a state of confusion. Some of the Student’s scores were at the kindergarten level, and other scores were at the fourth grade level. Some of the Student’s work showed good comprehension of the material, and some of the work did not. Witness D testified that DCPS staff were not sure whether the Student or Petitioner did some of the work that was handed in. A psychoeducational evaluation

was therefore necessary for DCPS to resolve these inconsistencies and come to a basic understanding of the Student's academic levels and needs.

Witness B testified that the Student needed to be evaluated for speech and language and assistive technology because of the Student's issues with reading comprehension, decoding, and writing. Witness A, an expert in occupational therapy, testified that the Student needed to be evaluated for occupational therapy because, among other things, the Student had issues with behavioral concerns, perceptual reasoning, analyzing charts and graphs, visual perceptual skills, and fine motor/visual motor skills. DCPS did not call a speech and language pathologist or an occupational therapist in response to this testimony, which was credible.

Indeed, the record suggests that the April, 2021, triennial reevaluation did not consist of any evaluations. The Student's triennial reevaluation consisted entirely of an analysis of existing data. The failure to go beyond merely reviewing existing data can constitute a denial of FAPE if more information is needed to develop an appropriate IEP. James v. District of Columbia, 194 F. Supp. 3d 131, 142 (D.D.C. 2016) (the "Summary of Existing Data" document that the District of Columbia prepared in response to a guardian's request for an updated psychological assessment of a teenager with an intellectual disability did not fulfill the district's obligation to reevaluate the student). After Endrew F., it is especially important for school districts to be alert to indications that a student needs to be reevaluated, to ensure that the IEP continues to be reasonably calculated to enable the student to make progress that is appropriate in light of the circumstances. Questions and Answers on Endrew F. v. Douglas County Sch. Dist. Re-1, 71 IDELR 68 (U.S. Dep't of Educ. 2017). Given the Student's difficulties in

school during the 2020-2021 school year, and considering the persuasive testimony from Witness C, Witness B, and Witness A to the effect that these evaluations of the Student would improve his/her educational programming, Petitioner has met her burden to show that the failure to evaluate the Student denied the Student a FAPE in April, 2021.

RELIEF

As relief, Petitioner seeks compensatory education and evaluations. 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 confers broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.” 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).

As compensatory education, Petitioner seeks 529 hours of specialized instruction corresponding to the 2021-2022 school year. The Student was home-schooled during the 2021-2022 school year. Petitioner suggested that, if the Student were properly evaluated and programmed, Petitioner would have kept the Student in school during the 2021-2022 school year. However, the record is not clear on this point. Petitioner also seeks an additional 129 hours of compensatory education corresponding to the goals claims for the 2020-2021 school year. Petitioner backed these requests up with a formal compensatory education plan and testimony from Witness C.

This Hearing Officer agrees with Petitioner that an award of 129 hours of compensatory education is consistent with Reid and an appropriate remedy for the FAPE denial during the 2020-2021 school year. However, this Hearing Officer finds the request for 529 hours of compensatory education, corresponding to a school year in which the Student was home-schooled, to be excessive. It is not clear from the record that the Student would have even gone to a DCPS school if the Student had been evaluated properly. Accordingly, this Hearing Officer will award the Student a total of 250 compensatory education hours for the FAPE denial in this case.²

Petitioner also seeks an independent comprehensive psychological evaluation, speech/language evaluation, assistive technology evaluation, occupational therapy evaluation, and a Functional Behavior Assessment (“FBA”) for the Student. Except for the FBA, which was not an issue for the parties during the hearing, this Hearing Officer

² Petitioner also requested additional compensatory education upon completion of reevaluations, but did not provide authority to support this request, which appears to relate to the same time period as the instant compensatory education award. Breanne C. v. Southern York County Sch. Dist., 732 F. Supp. 2d 474, 488 (M.D. Pa. 2010) (warning against “double-dipping”).

agrees with Petitioner's position, as discussed in the analysis of Issue #2, and will order the evaluations for the Student, to be conducted by a qualified evaluator, with travel to and from the evaluation.

Finally, Petitioner seeks an additional three hours of specialized instruction per week in reading, writing, and math, over a 43-week period, to be added to the IEP. Petitioner contended that this additional instruction was necessary because the Student needs speech and language pathology, occupational therapy, and assistive technology in his/her IEP. But there was no challenge to the Student's specialized instruction mandate in the Complaint, and this Hearing Officer does not find the IEPs inappropriate because they lacked provisions for assistive technology. This request is therefore denied.

VII. Order

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

1. Petitioner is hereby awarded 250 hours of compensatory one-to-one tutoring, to be provided by a certified special education teacher at a reasonable and customary rate in the community, with reimbursement for travel to and from the site of the tutoring;
2. Petitioner is hereby awarded an independent comprehensive psychoeducational evaluation, speech and language evaluation, occupational therapy evaluation, and assistive technology evaluation of the Student, to be provided by qualified professional evaluators at a reasonable and customary rate in the community, with reimbursement for travel to and from the site of the evaluations ;
3. All other requests for relief are denied.

Dated: July 15, 2022

Hearing Officer Determination
Michael Lazan, Hearing Officer
Case # 2022-0068

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
OSSE Division of Specialized Education
[REDACTED]/DCPS
[REDACTED]/DCPS

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 days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. Sect 1415(i).

Dated: July 15, 2022

Michael Lazan
Impartial Hearing Officer