

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

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

OSSE
Office of Dispute Resolution
June 21, 2019

<i>Student</i> , ¹)	Case No.: 2019-0116
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 6/21/19
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
Public Charter School (“ <i>PCS</i> ”),)	Hearing Date: 6/13/19
Respondent.)	ODR Hearing Room: 423
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because Student had been provided an Individualized Education Program (“IEP”) that lacked needed direct speech-language services. PCS responded that the IEP was appropriate.

Subject Matter Jurisdiction

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

Procedural History

Following the filing of the due process complaint on 4/30/19, the case was assigned to the undersigned on 5/1/19. Respondent filed a response on 5/10/19, which did not challenge jurisdiction. The resolution meeting occurred on 5/6/19, but did not resolve the dispute or shorten the 30-day resolution period, which ended on 5/30/19. A final decision in

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

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this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 7/14/19.

The due process hearing took place on 6/13/19 and was open to the public. Petitioner was represented by *Petitioner’s counsel*. PCS was represented by *Respondent’s counsel*. Petitioner was present for the entire hearing.

Petitioner’s Disclosures, submitted on 6/6/19, contained documents P1 through P24, which were admitted into evidence without objection. Respondent’s Disclosures, submitted on 6/6/19, contained documents R1 through R35, which were also admitted into evidence without objection.

Petitioner’s counsel presented 2 witnesses in Petitioner’s case-in-chief (*see Appendix A*):

1. *Educational Advocate* (qualified without objection as an expert in Special Education and IEP Development)
2. *Private Speech-Language Pathologist* (qualified without objection as an expert in Speech-Language Pathology)

Respondent’s counsel presented 4 witnesses in Respondent’s case (*see Appendix A*):

1. *Special Education Coordinator* at PCS
2. *School Speech-Language Pathologist* at PCS
3. *Special Education Teacher* at PCS
4. *Consulting Speech-Language Pathologist* (qualified without objection as an expert in Speech-Language Pathology; permitted to listen to the direct testimony of Private Speech-Language Pathologist by leave of the undersigned pursuant to the Office of Dispute Resolution *Standard Operating Procedures Manual* 2018 (“SOP”) § 409.H)

At the conclusion of Petitioner’s case-in-chief, Respondent’s counsel made an oral motion for a directed verdict, asserting lack of sufficient evidence to make out a case for compensatory education. The undersigned denied the motion based on the evidence presented and recent case law suggesting that insufficient evidence of compensatory education would not result in a directed verdict.

The issue to be determined in this Hearing Officer Determination is:

Issue: Whether PCS denied Student a FAPE by failing to provide an appropriate IEP from 10/4/17 through 9/19/18, due to insufficient speech-language services. *Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*

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The relief requested by Petitioner is:

1. A finding that Student was denied a FAPE.
2. PCS shall provide compensatory education for any denial of FAPE.
3. Any other just and reasonable relief.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact² are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.³ Student is *Age*, *Gender* and in *Grade* at PCS, where Student has attended for a few years.⁴ Student is an "energetic" learner who "loves to ask 1,001 questions."⁵

2. IEPs. Student has been eligible for special education and related services based on the classification of Specific Learning Disability ("SLD") for a few years, qualifying in both reading and math.⁶ Student's first IEP with speech-language services was the 10/5/16 IEP which was amended on 2/15/17 to add 30 minutes/month of speech-language pathology consultation services.⁷

3. The 10/4/17 IEP at issue in this case provided for 10 hours/week of specialized instruction outside general education (7.5 for reading and 2.5 for math) and another 5 hours/week of specialized instruction for math inside general education, along with 120 minutes/month of occupational therapy outside general education and 30 minutes/month of speech-language pathology consultation services.⁸ The 10/4/17 IEP stated that Student had age-appropriate communication skills and could engage in reciprocal conversation with

² Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

³ Educational Advocate.

⁴ P10-1; Educational Advocate.

⁵ Special Education Teacher.

⁶ R32-1; P9-1,3,4; P10-1.

⁷ R27-1,10.

⁸ P9-9.

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peers and staff; mild difficulty with phonological awareness skills could negatively impact Student's ability to read and write.⁹

4. Student's 9/19/18 IEP noted that Student would continue to benefit from speech-language related services to access the curriculum and improve academics; speech-language was added as an area of concern with detailed information from a recent speech-language evaluation and inclusion of 3 goals.¹⁰ Student's 9/19/18 IEP provides for 15 hours/week of specialized instruction outside general education (7.5 reading, 7.5 math), along with 30 minutes/week of occupational therapy outside general education and 30 minutes/week of direct speech-language pathology services outside general education.¹¹

5. Cognitive. The Wechsler Intelligence Scale for Children – Fifth Edition (“WISC-V”) in a 7/13/15 comprehensive psychological evaluation concluded that Student's Full Scale IQ (“FSIQ”) was 86, in the Low Average range; the FSIQ was later determined to be in error and corrected to be 70.¹² The WISC-V in the 8/31/18 psychoeducational reevaluation concluded that Student's FSIQ was 73, with Average processing speed (98) and working memory (85), but significant difficulty with auditory working memory, verbal comprehension (76), visual spatial (75), and fluid reasoning (72).¹³ With FSIQ scores of 70 and 73, an adaptive behavior addendum was completed; Student did not meet the criteria for ID, so continues to receive services based on SLD.¹⁴

6. Achievement. Since Student was retained in an early grade, Student's achievement scores normed on age are significantly worse than those normed on grade in the Wechsler Individual Achievement Test – Third Edition (“WIAT-III”) in Student's 5/12/15 educational evaluation; based on grade norms, Student is mostly Low Average and Average.¹⁵ The WIAT-III in the 8/31/18 psychoeducational reevaluation indicated that Student's oral language was in the Low range, while reading, writing and math skills were Extremely Low and 2 or more grade levels behind Student's Grade.¹⁶

7. Student's NWEA MAP scores in reading are inconsistent, with an increase of 6 RIT points in 2015/16 (Fall to Spring), followed by a decrease of 5 points in 2016/17, no change in 2017/18, and an increase of 24 points in 2018/19.¹⁷ Considering only Winter to Spring 2017/18, Student's MAP scores regressed.¹⁸ Student recently had “tremendous” growth in reading, with Fountas & Pinnell (“F&P”) results increasing about 2 years from beginning-

⁹ P9-2.

¹⁰ P10-2,10,11,12,13,14,15.

¹¹ P10-17.

¹² P4-4,7; R11-1 (error resulted from using all 10 subtests, rather than 7 standard subtests); P20-1.

¹³ P7-4,10,13.

¹⁴ R11-1,3.

¹⁵ P5-2,4.

¹⁶ P7-6,10,14.

¹⁷ R3-1.

¹⁸ P19-1; Educational Advocate (services not enough for progress).

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of-year to end-of-year in 2018/19.¹⁹ Student earned very good grades in 2017/18, with a GPA of just over 3.5.²⁰ Student's grades were good in 2018/19, with GPAs ranging from 3.0 second quarter to 3.4 fourth quarter.²¹

8. Behavior. Teachers reported that Student did not display any behavioral concerns at school in the 7/13/15 comprehensive psychological evaluation.²² Behavior ratings from the BASC-3 in the 8/31/18 psychoeducational reevaluation showed average scores in most areas.²³

9. 2016 Speech-Language Evaluation. A 11/28/16 speech-language evaluation of Student conducted by School Speech-Language Pathologist did not contain final recommendations beyond waiting for the team to determine whether speech-language services were needed at school.²⁴ Student's general education and special education teachers did not have concerns about Student's speech or language skills.²⁵ Student exhibited certain weaknesses in phonological awareness, which impacted reading skills.²⁶ On the OWLS II, Student's written expression and written language composite (which included written expression and reading comprehension) were both Deficient with a percentile rank of 1% and 2%.²⁷

10. School Speech-Language Pathologist acknowledged errors on a chart showing the Clinical Evaluation of Language Fundamentals-5 ("CELF-5") results which stated that "7s" on 3 tests were Average when they should have been Below Average; School Speech-Language Pathologist credibly asserted that her recommendation and any conclusions drawn from the tests were made based on the scaled score rather than the interpretations.²⁸ School Speech-Language Pathologist stated at the 12/19/16 review of the speech-language evaluation that she was not recommending direct speech-language services as there were only mild difficulties that could be addressed by the special education teacher and consultation services.²⁹ Counsel for Petitioner on 12/19/16 did not agree that Student did not need direct services, but nonetheless recommended consultation services, which were added by IEP amendment as noted above.³⁰

¹⁹ Special Education Teacher.

²⁰ R2-1,2 (GPA of 3.5 is equivalent to half "As" and half "Bs"); Educational Advocate (Student got good grades).

²¹ R1-1 (GPA for year not available).

²² P4-7.

²³ P7-8,10.

²⁴ P6-1,10.

²⁵ P6-2.

²⁶ P6-4; Consulting Speech-Language Pathologist.

²⁷ P6-9.

²⁸ School Speech-Language Pathologist; P6-6; Private Speech-Language Pathologist.

²⁹ R9-1; P16-1.

³⁰ P16-1.

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11. Speech-Language Decision for 2017 IEP. On 10/2/17, Educational Advocate stated to the PCS team that Parent and his legal team believed that Student needed direct speech-language services rather than consultation services to improve phonic skills, vocabulary and reading.³¹ At the 10/4/17 IEP team meeting, School Speech-Language Pathologist noted that Student had only a mild delay; Student had been receiving 30 minutes/month of consultation services to work on phonological awareness and made gains where there had been weakness; School Speech-Language Pathologist recommended continuing with 30 minutes/month of consultation and none of the team members disagreed; direct service was not required.³² Special Education Coordinator didn't recall anyone disagreeing with what was proposed in that IEP meeting; School Speech-Language Pathologist would have recommended direct speech-language services if they were warranted.³³ Special Education Coordinator thought that the team, including Educational Advocate and Parent, was in agreement with 30 minutes/month of speech-language consultation services when leaving the 10/4/17 IEP meeting.³⁴

12. Educational Advocate's IEP meeting notes state that she asked about direct speech-language services due to language delay; Parent stated a desire for more focus on reading rather than speech-language services; the "team decision" was to continue with 30 minutes/month of speech-language consultation, with no dissent indicated.³⁵ Educational Advocate did not object to the 10/4/17 IEP at the IEP meeting; Educational Advocate acknowledged that she did not express disagreement until sending a dissent letter on 7/10/18 and couldn't explain not taking action in 2017.³⁶

13. If there had been disagreement at the 10/4/17 IEP meeting, PCS would have tried to sort it out promptly; parents' concerns are taken very seriously by PCS.³⁷ Special Education Coordinator did not receive any notice of disagreement until the letter of dissent from Educational Advocate in 7/2018.³⁸ Upon receiving the dissent letter, Special Education Coordinator promptly contacted Educational Advocate to schedule a meeting to try to come to agreement with Parent and attorney.³⁹ PCS formally responded to the 7/10/18 dissent

³¹ P17-2; R26-1 (PCS notes indicate that Petitioner's counsel "[w]anted to know" if Student needed direct speech-language services rather than consultation).

³² School Speech-Language Pathologist; R25-1.

³³ Special Education Coordinator; R9-1.

³⁴ Special Education Coordinator.

³⁵ P18-1; Educational Advocate (her testimony confirmed Parent's position, but she added that she didn't "100%" agree with Parent's position and didn't "100%" agree with the team decision); P18-3 (Student's special education teacher noted that a new tier 3 reading intervention, System 44, would begin the next day).

³⁶ Educational Advocate (own notes from IEP meeting do not indicate any disagreement); P21-2.

³⁷ Special Education Coordinator.

³⁸ *Id.*

³⁹ *Id.*

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letter on 7/19/18 seeking to “amicably” resolve the concerns raised; direct speech-language services began soon after reevaluation.⁴⁰

14. 2018 Speech-Language Reevaluation. Educational Advocate requested an independent educational evaluation (“IEE”) for speech-language due to concern that speech-language deficits had an impact on lack of progress in reading and that consultation services were not sufficient.⁴¹ Petitioner agreed to PCS conducting the reevaluation, which PCS attempted to do promptly but was unable to obtain Parent’s written consent; PCS finally obtained mother’s consent and quickly completed the reevaluation.⁴² The 9/4/18 speech-language evaluation of Student conducted by School Speech-Language Pathologist recommended an “increase” in direct speech-language services to focus on written language skills and generalization of phonological awareness skills.⁴³ Student’s teachers reported in the reevaluation that Student was completely intelligible in the classroom; Student’s overall language skills grew from 2016 to 2018 as shown by the growth scale values, which confirmed that the results on the CELF-5 were notably higher in 2018 than in 2016; Student had no direct speech-language services by that point.⁴⁴ The 2018 reevaluation noted that Student continued to demonstrate growth and maintenance of phonological awareness skills during 2017/18 through individual practice with the clinician; reading comprehension and structured writing skills were below average.⁴⁵

15. Student’s Speech-Language Services. Student’s IEPs provided consultation services prior to the 9/19/18 IEP; consultation often involved School Speech-Language Pathologist working directly with Student, and sometimes Student’s teacher, for 30 minutes once a month; School Speech-Language Pathologist would provide modeling for the teacher or would co-teach with the teacher.⁴⁶ Consultation was appropriate as School Speech-Language Pathologist supported Student’s teacher; there is no evidence of missing speech-language services.⁴⁷ School Speech-Language Pathologist noted that Student’s phonetic awareness skills improved in 2017/18.⁴⁸

16. Private Speech-Language Pathologist testified that it is hard to make up time with speech-language services; Private Speech-Language Pathologist was surprised direct services didn’t follow the 2016 speech-language evaluation and would have included goals

⁴⁰ R20-1; Educational Advocate.

⁴¹ P19-3; Educational Advocate.

⁴² Special Education Coordinator; R17-1,2; P21-2; R19-1.

⁴³ P8-1,11; School Speech-Language Pathologist (confirmed in 9/19/18 IEP meeting); P20-3; R14-2; Private Speech-Language Pathologist (agreed with direct services).

⁴⁴ School Speech-Language Pathologist; P8-1,3,7; P6-6.

⁴⁵ P8-9,11.

⁴⁶ School Speech-Language Pathologist; P13-6 (9/15/17); P13-5 (10/25/17); P13-4 (11/16/17); P13-3 (12/15/17); P12-1 (1/23/18); P12-3 (2/21/18); P12-4 (4/25/18); P12-6 (5/7/18); R6-1 (6/6/18); R5-21 (8/20/18); P14-8 (9/10/18).

⁴⁷ Consulting Speech-Language Pathologist.

⁴⁸ P19-2 (triennial review meeting on 6/12/18).

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based on phonological awareness, written expression, and vocabulary.⁴⁹ Private Speech-Language Pathologist testified that direct speech-language services might have resulted in more progress by Student, but she couldn't be certain.⁵⁰ Private Speech-Language Pathologist never met or observed Student.⁵¹ Educational Advocate was at PCS at least 6 times for meetings concerning Student, but never sought to observe Student in the classroom.⁵² Special Education Coordinator observed Student in the classroom at least once a week and considered Student to usually be available for classroom learning.⁵³

Conclusions of Law

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

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

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

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

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. at 1001. The Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support

⁴⁹ Private Speech-Language Pathologist.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Educational Advocate.

⁵³ Special Education Coordinator.

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

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

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

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

Issue: *Whether PCS denied Student a FAPE by failing to provide an appropriate IEP from 10/4/17 through 9/19/18, due to insufficient speech-language services. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a prima facie case on this issue based on expert testimony, shifting the burden of persuasion to PCS, which met its burden of showing that the speech-language services in Student’s IEP at issue were appropriate.

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The applicable legal standard for analyzing the appropriateness of the IEP at issue was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. *See also Z.B. v. Dist. of Columbia*, 888 F.3d 515, 517 (D.C. Cir. 2018); *Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be “reasonably calculated to produce meaningful educational benefit”). The measure and adequacy of the IEP is determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). Moreover, the analysis is not about achieving a perfect IEP, but one reasonably calculated to enable Student to make appropriate progress. *Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA “stops short of requiring public schools to provide the best possible education”). The appropriateness of Student’s IEP is analyzed by considering the specific concern raised by Petitioner, which is considered below.⁵⁴ *See* 34 C.F.R. § 300.320(a)(4); *Honig*, 484 U.S. at 311.

Petitioner asserts in this case that the related service of speech-language pathology was required to assist Student, a child with a disability, to benefit from special education, and that direct speech-language services – not simply consultation services – were required. *See* 34 C.F.R. §§ 300.34(a),(c)(15). The issue is whether, in the absence of direct speech-language services, Student’s 10/4/17 IEP was still reasonably calculated to enable Student to make appropriate progress in light of Student’s circumstances and that Student was nonetheless able to access the curriculum to advance toward meeting Student’s annual goals pursuant to 34 C.F.R. § 300.320(a)(4). *See Damarcus S.*, 190 F. Supp. 3d 35; *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013).

Here, the 11/28/16 speech-language evaluation of Student conducted by School Speech-Language Pathologist found certain weaknesses in phonological awareness, but School Speech-Language Pathologist did not recommend direct speech-language services as there were only mild difficulties that she said could be addressed by the special education teacher and consultation services. Student’s IEP team agreed to provide speech-language services to Student for the first time by amending Student’s IEP on 2/15/17 to add 30 minutes/month of speech-language pathology consultation services.

The specific issue in this case is whether the IEP team made an appropriate decision when Student’s IEP was next considered on 10/4/17 to provide speech-language consultation services rather than direct speech-language services. Educational Advocate stated to the PCS team on 10/2/17 that Parent and his legal team believed that Student needed direct rather than consultation services to improve phonic skills, vocabulary and reading. But when the team convened for the key 10/4/17 IEP meeting, School Speech-

⁵⁴ A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. No specific procedural violations were alleged in this case.

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Language Pathologist explained that Student had only a mild delay and that Student had made gains in phonological awareness by receiving 30 minutes/month of consultation services, so recommended continuing with 30 minutes/month of speech-language consultation services in Student's IEP. School Speech-Language Pathologist and Special Education Coordinator confirmed that none of the team members disagreed with speech-language consultation for Student. Special Education Coordinator understood that the entire team, including Educational Advocate and Parent, was in agreement with 30 minutes/month of speech-language consultation services at the end of the 10/4/17 IEP meeting.

Educational Advocate's 10/4/17 IEP meeting notes state that she did ask about direct speech-language services due to language delay, but that Parent stated a desire for more focus on reading rather than speech-language services, and the "team decision" was to continue with 30 minutes/month of speech-language consultation rather than direct services. There was no indication of dissent. Educational Advocate testified at the hearing that she didn't "100%" agree with the team decision, but acknowledged that she did not express disagreement until sending a dissent letter on 7/10/18, after the school year in issue. Educational Advocate couldn't explain not taking action to dissent in 2017. It appears to the undersigned that viewed prospectively – as it should be – the 10/4/17 IEP was apparently considered appropriate by Parent and advocate.

If there had been disagreement at the 10/4/17 IEP meeting, PCS would have tried to sort it out promptly, for PCS takes parents' concerns very seriously, as Special Education Coordinator credibly testified. Indeed, upon receiving the dissent letter, Special Education Coordinator promptly contacted Educational Advocate to schedule a meeting to try to work things out with Parent and counsel; a 7/19/18 letter from PCS followed.

Educational Advocate requested a speech-language IEE on 6/12/18 due to concern that speech-language deficits had an impact on lack of progress in reading and that consultation services were not sufficient. Petitioner then agreed to PCS conducting the reevaluation, which PCS quickly completed on 9/4/18 after finally obtaining parental permission. Based on the reevaluation, School Speech-Language Pathologist recommended direct speech-language services to focus on written language skills and generalization of phonological awareness skills. However, Student's teachers reported in the reevaluation that Student was completely intelligible in the classroom. In addition, Student's overall language skills grew notably from 2016 to 2018 as shown by the growth scale values, even though Student had received no direct speech-language services.

The 2018 reevaluation noted that Student continued to demonstrate growth and maintenance of phonological awareness skills during 2017/18 through individual practice with the clinician. Even though Student was to receive only consultation speech-language services, the services took the form of School Speech-Language Pathologist working directly with Student, and sometimes Student's teacher, for 30 minutes once a month, as School Speech-Language Pathologist provided modeling for the teacher or would co-teach with the teacher, so the teacher could continue to work with Student over the rest of the month. Student actually received a good portion of the services Petitioner sought.

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Petitioner argued that Student's strong growth in reading in 2018/19 was the result of Student receiving 30 minutes/week of direct speech-language services in 2018/19 and that Student would have had significant growth in reading in 2017/18 if only PCS had provided direct services. This argument is unpersuasive given that Student has an SLD in reading for which Student is receiving 7.5 hours/week of specialized instruction in reading – 15 times the amount of Student's direct speech-language services – along with new reading programs that may well have made the difference. Moreover, Student's speech-language needs were different in 2017/18 and 2018/19, and the evidence shows that Student received the work with phonological awareness that Student needed in 2017/18 and improved in the 2018 speech-language evaluation.

Given all the evidence above, this Hearing Officer concludes that PCS has met its burden of demonstrating that consultation speech-language services were appropriate for Student for the period in issue and that even with only consultation services Student's 10/4/17 IEP was sufficient for Student to make appropriate progress in light of Student's circumstances and that with speech-language consultation Student was able to access the curriculum to advance toward meeting Student's annual goals.

ORDER

Petitioner has not prevailed on the claim in this case. Accordingly, any and all claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.
Hearing Officer

NOTICE OF RIGHT TO APPEAL

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

Copies to:

Counsel of Record (Appendix A, by email)

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