

**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
March 07, 2023

<i>Student</i> , ¹)	Case No.: 2022-0205
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 3/7/23
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates (using Microsoft Teams):
("DCPS"),)	3/2/23 & 3/3/23
Respondent.)	
)	

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") due to DCPS's failure to conduct needed assessments and provide appropriate Individualized Education Programs ("IEPs"). DCPS responded that there were no IDEA violations or denials of FAPE. A transportation issue was settled with the Office of the State Superintendent of Education ("OSSE") and withdrawn from the case; OSSE was dismissed from the case on 2/27/23.

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 A30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

Following the filing of the due process complaint on 11/28/22, the case was assigned to the undersigned on 11/29/22. Respondent DCPS filed its response on 12/9/22. A

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student's gender are omitted.

Hearing Officer Determination

Case No. 2022-0205

resolution session meeting between DCPS and Petitioner was held on 12/9/22. The 30-day resolution period for Petitioner and DCPS ended on 12/28/22. A final decision in this matter must be reached as to DCPS no later than 45 days following the end of the resolution period, as extended by a 35-day continuance, which requires a Hearing Officer Determination (“HOD”) by 3/18/23.

A prehearing conference was held on 2/3/23 and the Prehearing Order was issued that same day, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 3/2/23 and 3/3/23 and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in the hearing.

Documents and Witnesses

Petitioner’s Disclosure, submitted on 2/23/23, contained documents P1 through P45, all of which were admitted into evidence without objection. Respondent’s Disclosure, also submitted on 2/23/23, contained documents R1 through R44, of which R4, R6-R14, R21-R25, R27, R29-R31, R33-R39, and R41-R43 were offered and admitted into evidence without objection.²

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 as Related to IEP Development)
2. Parent

Respondent’s counsel presented 3 witnesses in Respondent’s case (*see* Appendix A):

1. *Occupational Therapist* (qualified without objection as an expert in School-Based Occupational Therapy (“OT”))
2. *Assistive Technology (“AT”) Specialist* (qualified without objection as an expert in AT)
3. *LEA Representative* (qualified without objection as an expert in Special Education Programming and Planning)

Petitioner’s counsel submitted no rebuttal evidence.

² Citations herein to the parties’ documents are identical except that Petitioner’s documents begin with a “P,” while Respondent’s documents begin with an “R,” followed by the exhibit number and then a “p” (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

Hearing Officer Determination

Case No. 2022-0205

Issues and Relief Requested

The issues³ to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to conduct a comprehensive and timely evaluation by including (a) an occupational therapy (“OT”) assessment, and/or (b) an assistive technology (“AT”) assessment. (*Petitioner has the burden of persuasion on this issue.*)

Issue 2: Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP by (a) adjusting reading goals that have not changed from 12/12/20 to 4/8/22, and/or (b) increasing ESY services that were decreased without adequate data on 4/8/22. (*Respondents have the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*)

The relief⁴ requested by Petitioner is:

1. A finding that Student was denied a FAPE.
2. DCPS shall amend Student’s IEP to provide for an increase of ESY services.
3. DCPS shall conduct or fund (a) an occupational therapy assessment, and (b) an assistive technology assessment.
4. DCPS shall provide or fund compensatory education for any denials of FAPE.⁵
5. Any other just and reasonable relief.

Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact⁶ are as follows:

³ A third issue was withdrawn with prejudice by Petitioner at the due process hearing as a result of the settlement with OSSE, which was: “Whether DCPS and/or OSSE denied Student a FAPE during 2021/22 and 2022/23 by failing to provide appropriate and reliable transportation services as required by Student’s IEP.”

⁴ As a result of the settlement with OSSE, Petitioner withdrew requests for relief in paragraphs numbered 4, 5, and 6 in the Prehearing Order, which were: “4. Within 3 days, DCPS/OSSE shall arrange for transportation services for Student.”; “5. DCPS/OSSE shall reimburse Parent for mileage (per GSA guidelines) and any out-of-pocket expenses incurred in providing interim transportation for Student.”; and “6. DCPS shall excuse any absences by Student as a result of transportation failures.”

⁵ At the due process hearing, Petitioner omitted OSSE from this request for relief.

⁶ 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

Hearing Officer Determination

Case No. 2022-0205

1. Background. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁷ Student is *Age*, *Gender*, and in *Grade* during 2022/23⁸ at *Public School*.⁹ Student is very diligent, tries Student's best, is not easily frustrated, has made significant progress, is fully engaged and academically self-confident.¹⁰

2. A comprehensive psychological evaluation of Student on 3/4/21 stated that Student had received services as a student with a Speech or Language Impairment ("SLI"), but met the criteria of a student with a Learning Disability.¹¹ Student's disability classification was then shifted from SLI to Specific Learning Disability ("SLD").¹² Based on the Reynolds Intellectual Assessment Scales, 2nd Ed. ("RIAS-II"), Student achieved a Composite Intelligence Index in the moderate below average range (74).¹³ The Woodcock-Johnson IV Tests of Achievement ("WJ-IV ACH") measuring academic functioning found Student was Very Low on 6 of 9 clusters/subtests.¹⁴ Student's grades in 2021/22 increased from Term 1 to 3.¹⁵ Student's grades in 2022/23 increased from Term 1 to 2.¹⁶ Student's Middle of Year ("MOY") 2022/23 iReady in reading increased one year from Beginning of Year ("BOY"), from 476 to 504, and was only 1 year below Grade.¹⁷

3. IEPs. Student's 12/11/20 IEP provided 2.5 hours/week of specialized instruction inside general education and a total of 6 hours/week of specialized instruction outside general education, along with 180 minutes/month of Speech Language Pathology ("SLP") outside general education, and concluded that Student did not need an AT device; Student was not eligible for ESY.¹⁸

4. Student's 3/12/21 IEP provided 2.5 hours/week of specialized instruction inside general education and a total of 7.5 hours/week of specialized instruction outside general education, along with 240 minutes/month of SLP outside general education, and concluded that Student did not need an AT device; Student was eligible for ESY, with 30 minutes/day for each reading, math and written expression.¹⁹

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.

⁷ Parent.

⁸ All dates in the format "2022/23" refer to school years.

⁹ *Id.*

¹⁰ LEA Representative.

¹¹ P6p83,109.

¹² P20p257; P23p265.

¹³ P6p100,109.

¹⁴ P6p103-04.

¹⁵ P34p468.

¹⁶ P35p473-76.

¹⁷ P32p430.

¹⁸ P8;133,134,142,145.

¹⁹ P9p147,148,157,160,162.

Hearing Officer Determination

Case No. 2022-0205

5. Student's 3/10/22 IEP provided 2.5 hours/week of specialized instruction inside general education and a total of 10 hours/week of specialized instruction outside general education, along with 240 minutes/month of SLP outside general education and 120 minutes/month of SLP inside general education; Student was eligible for ESY, with 30 minutes/day for each reading, math and written expression.²⁰ Student's 3/10/22 IEP stated that Student would benefit from AT that would allow dictation, such as speech to text and text to speech technology, which could be implemented with Student's device, and also pursue an AT consult.²¹

6. A 3/29/22 amendment to Student's IEP changed Student's ESY services from 30 minutes/day per area to 2 hours/week for reading and math and 1 hour/week for written expression.²² The reduction in written expression was because Student's AT (with speech to text and text to speech) was implemented, so less writing support was needed.²³ A 4/8/22 amendment to Student's IEP (adding a calculation device as an accommodation) repeated that ESY services were 2 hours/week for reading and math and 1 hour/week for written expression, rather than 30 minutes/day per area.²⁴

7. ESY. Educational Advocate asserted that the time in ESY was reduced from 30 minutes/day per subject, which she calculated as 2.5 hours/week, assuming ESY was Monday through Friday, to only 2 hours/week per subject.²⁵ ESY is 4 days/week.²⁶ Student was eligible but did not attend ESY in 2021 or 2022.²⁷

8. Repeated Reading Goal. Student's 12/11/20 IEP provided 4 reading goals, one of which was to retell 3 key details from the beginning, middle and end of a grade level literary story with guiding questions.²⁸ Student's reading goals were discussed as a team and were appropriate.²⁹ Student's 3/12/21 IEP provided 3 reading goals, one of which repeated retelling 3 key details from the beginning, middle and end of a grade level literary story with guiding questions.³⁰ Student's 3/10/22 IEP again provided 3 reading goals, one of which again repeated retelling 3 key details from the beginning, middle and end of a grade level literary story with guiding questions.³¹ The reading goal was repeated twice in a 15 month period; there were no concerns about other goals being repeated.³²

²⁰ P10p165,175,178,180.

²¹ P10p166; LEA Representative.

²² R4p48,63; R7p97 (Parent's consent to amendment).

²³ LEA Representative.

²⁴ P11p183,195,198; LEA Representative.

²⁵ Educational Advocate.

²⁶ LEA Representative.

²⁷ R10p104; P17p236-39; LEA Representative; Educational Advocate.

²⁸ P8p137.

²⁹ LEA Representative.

³⁰ P9p152.

³¹ P10p169.

³² Educational Advocate.

Hearing Officer Determination

Case No. 2022-0205

9. LEA Representative credibly testified about the important elements of the repeated reading goal and that Student continued to work on it.³³ Goals can be repeated appropriately if there is progress, but not yet mastery.³⁴ Student was progressing on the repeated IEP reading goal in all 4 Reporting Periods of 2021/22; the repeated goal was “not introduced” in the first 2 Reporting Periods of 2022/23.³⁵

10. OT Assessment. An independent OT assessment of Student was conducted on 2/8/19 and concluded that Student should receive 60 minutes/week of OT services to address visual motor integration, visual perceptual skills, attention and refined fine motor skills; a vision follow up was recommended.³⁶ DCPS’s 4/3/19 formal review of the independent OT assessment concluded that Student’s vision needed to be checked and a reevaluation should be conducted afterwards.³⁷ Student received an OT reevaluation with new prescription glasses on 5/9/19, which yielded average results, so OT services were not recommended.³⁸

11. Another OT evaluation had not been requested and Occupational Therapist explained that the passage of time is not a sufficient basis for conducting a reevaluation when services are not being provided.³⁹ Student’s IEP team agreed on an OT screening of Student as a next step, so an OT observation of Student was conducted on 4/22/22, which also reviewed writing samples, interviewed teachers and concluded that there were “no OT concerns at all” for Student.⁴⁰ Student has access to AT writing tools for any concerns about spacing or legible writing; direct OT services are not needed now and would not benefit Student.⁴¹ An AED meeting was held on 1/15/21; Parent agreed to a psychological evaluation, but did not request OT or AT assessments.⁴²

12. AT Assessment. AT is considered each year for children with IEPs; an AT assessment is not required for making decisions if data is available; the IEP team can instead request a consultation or collaboration on the need for AT, and did so here.⁴³ The school team submitted an AT technology consultation request to support Student in written expression.⁴⁴ AT Specialist prepared an AT Consultation Summary suggesting, among other things, that speech to text and text to speech be used by Student, beginning with a trial to see if they were effective.⁴⁵ If Student did not benefit from the suggested technology,

³³ LEA Representative.

³⁴ Occupational Therapist.

³⁵ P16p228; P19p251).

³⁶ P5p77,80.

³⁷ Occupational Therapist; R29p225,228.

³⁸ Occupational Therapist; R30p229-30,234.

³⁹ Occupational Therapist.

⁴⁰ Occupational Therapist; R31p236-37; R39p314.

⁴¹ Occupational Therapist.

⁴² Occupational Therapist; R22p173-77.

⁴³ AT Specialist; LEA Representative; R39p314.

⁴⁴ R27p201; AT Specialist.

⁴⁵ R27p201-06; AT Specialist.

Hearing Officer Determination

Case No. 2022-0205

then additional tools could be explored.⁴⁶ Student did not need an AT assessment, as the needed tool was identified and there were no IEP team concerns.⁴⁷

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.'" *Endrew 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." *Endrew 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(14); *Endrew 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." *Endrew F.*, 137 S. Ct. at 1001. The Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support 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

⁴⁶ AT Specialist.

⁴⁷ *Id.*

Hearing Officer Determination

Case No. 2022-0205

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 local education agency (“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 v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at *3 (D.D.C. 2018).

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).

Issue 1: *Whether DCPS denied Student a FAPE by failing to conduct a comprehensive and timely evaluation by including (a) an occupational therapy assessment, and/or (b) an assistive technology assessment. (Petitioner has the burden of persuasion on this issue.)*

Petitioner failed to meet her burden of persuasion on this issue. The importance of assessing students in all areas of suspected disability was emphasized in *Z.B.*, 888 F.3d at 518, *quoting* 20 U.S.C. § 1414(b)(3)(B). The D.C. Circuit Court explained in *Z.B.*, at 524, that failing to conduct adequate assessments is a procedural violation that could have substantive effects by preventing the IEP team from obtaining necessary information about the student. *See also Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60-61 (D.D.C. 2011) (“in the absence of necessary and appropriate evaluations the district cannot develop a program that is tailored to the student’s unique needs and reasonably calculated to enable [the student] to receive educational benefits” (citation omitted)); 34 C.F.R. § 300.304(c)(4). The need for OT and AT assessments raised by Petitioner is considered in turn.

Hearing Officer Determination

Case No. 2022-0205

(a) Occupational Therapy. An independent OT assessment of Student was conducted on 2/8/19 and concluded that Student should receive 60 minutes/week of OT services to address visual motor integration, visual perceptual skills, attention and refined fine motor skills, although a vision follow up was recommended. On 4/3/19, DCPS conducted a formal review of the independent OT assessment, concluding that Student's vision needed to be checked and then a reevaluation should be conducted. Student received the OT reevaluation with new prescription glasses on 5/9/19, which yielded average results, so OT services were not needed.

Student has not received another OT assessment since 2019, but Occupational Therapist convincingly explained that the passage of time is not a sufficient basis for conducting a reevaluation when services are not being provided. However, Student's IEP team agreed on an OT screener as a reasonable step, so an OT observation of Student was conducted on 4/22/22, which also reviewed writing samples, interviewed teachers and concluded that there were "no OT concerns at all" for Student. Further, Student has access to an AT writing tool – specifically speech to text – for any concerns about spacing or legible writing. Thus, the undersigned concurs with DCPS's expert that direct OT services are not needed and another assessment would not benefit Student at this time.

(b) Assistive Technology. AT is to be routinely considered each year for children with IEPs, but an AT assessment is not required for decision-making if data is available. Instead, the IEP team can request a consultation or collaboration on the need for AT. Here, the school team submitted an AT technology consultation request to support Student in written expression. AT Specialist prepared an AT Consultation Summary suggesting, among other things, that speech to text and text to speech technology be used by Student, beginning with a trial to see if they were effective tools. If Student did not benefit from the suggested technology, then additional tools could be explored. Thus, the undersigned agrees that Student did not need an AT assessment, as the needed tool was identified and there were no IEP team concerns.

Issue 2: *Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP by (a) adjusting reading goals that have not changed from 12/12/20 to 4/8/22, and/or (b) increasing ESY services that were decreased without adequate data on 4/8/22. (Respondents have the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner barely established a *prima facie* case concerning Student's IEPs through testimony and documents, shifting the burden to DCPS, which met its burden of persuasion.

The applicable legal standard for analyzing the appropriateness of the IEPs at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether they were "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. As the U.S. Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* "raised the bar on what counts as an adequate education under the IDEA," requiring more than "merely some" educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be "reasonably calculated to produce meaningful

Hearing Officer Determination

Case No. 2022-0205

educational benefit”). The measure and adequacy of the IEPs are determined as of the time they were offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at *12 (D.D.C. 2021); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student’s IEPs is analyzed by focusing on the specific concerns raised by Petitioner, which are considered in turn.⁴⁸ *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(a) Repeated Goal. IEPs are required to contain measurable annual goals pursuant to 34 C.F.R. § 300.320(a)(2). While carrying over the same goals from year to year may indicate failure to make meaningful progress, *see Endrew F.*, 137 S. Ct. at 994, lack of progress is not necessarily the fault of the IEPs. In the circumstances here, with only repetition of a single goal that was convincingly explained, Student’s IEPs survive challenge.

Here, Student’s 12/11/20 IEP provided 4 reading goals, one of which was to retell 3 key details from the beginning, middle and end of a grade level literary story with guiding questions. That goal was repeated twice – a few months later in the 3/12/21 IEP and then a second time in the 3/10/22 IEP. LEA Representative credibly testified about the important elements of the reading goal that made it worth repeating. Indeed, goals can be repeated appropriately if there is progress, but not yet mastery, which was the situation here. Nor were concerns raised about any other goals being repeated. For these reasons, the undersigned finds no violation here.

(b) Extended School Year. ESY is necessary to provide FAPE under 34 C.F.R. § 300.106(a) when the benefits a disabled child gains during a regular school year will be “significantly jeopardized” if the child is not provided with an educational program during the summer months. *Johnson v. Dist. of Columbia*, 873 F. Supp. 2d 382, 386 (D.D.C. 2012), *quoting MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 537-38 (4th Cir. 2002); *see also S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 68-69 (D.D.C. 2008) (adopting standard from *MM*). The point of ESY is not to provide additional resources or to maximize programming, but to provide FAPE.

Here, Petitioner’s claim is simply that ESY was decreased without adequate data on 4/8/22, when ESY was reduced from 30 minutes/day per subject (which Educational Advocate calculated as 2.5 hours/week, assuming that ESY was Monday through Friday) to 2 hours/week per area. However, ESY is only 4 days/week, so there was no decrease by changing from 30 minutes for 4 days to 2 hours/week. There was in fact a decrease in written expression from 2 hours/week to 1 hour/week that was persuasively explained as being based on the support Student was receiving from the addition of the AT speech to text tool. In any case, even if Educational Advocate had been correct, there was no impact or

⁴⁸ 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. Certain procedural concerns are discussed herein.

Hearing Officer Determination

Case No. 2022-0205

harm, for Student did not attend ESY in 2022 despite being eligible. The undersigned thus concludes there is no violation here.

ORDER

Petitioner has not prevailed on either issue in this case. Accordingly, **it is hereby ordered** that 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:

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