

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, NE, 3rd Floor
Washington, DC 20002

PARENT,
on behalf of STUDENT,¹

Date Issued: March 7, 2024

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2023-0237

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Online Video Conference Hearing

Respondent.

Hearing Dates: February 1, February 29 and
March 5, 2024

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (MOTHER) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (“DCMR”). In her due process complaint, Petitioner alleges that Student has been denied a free appropriate public education (FAPE) by Respondent District of Columbia Public Schools’ (DCPS) failure to provide for Speech and Language and Occupational Therapy services in Student’s initial Individualized Education Program (IEP).

Petitioner’s Due Process Complaint, filed on December 5, 2023, named DCPS as Respondent. The undersigned hearing officer was appointed on December 6, 2023. On

¹ Personal identification information is provided in Appendix A.

December 19, 2023, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. On January 4, 2024, the parties met for a resolution session and were unable to resolve the issues in dispute.

A one-day due process hearing was originally scheduled for February 1, 2024. With consent of the parent, the hearing officer hosted and recorded the due process hearing online, using the Microsoft Teams video conference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on February 1, 2024. Mother appeared online for much of the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL. After the first witness testified, due to Petitioner's Counsel's health issues, the hearing was suspended and continued to February 29, 2024. After the presentation of the evidence on February 29, 2024, at the request of the Petitioner's Counsel, I scheduled oral closing arguments for March 5, 2024. To accommodate the extended hearing schedule, by order issued February 13, 2024, I granted Petitioner's unopposed request to extend the final decision due date to March 15, 2024.

Counsel for Petitioner made an opening statement. Petitioner testified and called as additional witnesses INDEPENDENT OCCUPATIONAL THERAPIST (Independent OT) and INDEPENDENT SPEECH-LANGUAGE PATHOLOGIST (Independent SLP). DCPS called as witnesses DCPS SPEECH-LANGUAGE PATHOLOGIST (DCPS SLP), DCPS OCCUPATIONAL THERAPIST (DCPS OT) and

CASE MANAGER. Petitioner's Exhibits P-1 through P-8 were all admitted into evidence without objection. DCPS' Exhibits R-2, R-5 through R-13, R-15 and R-16 were admitted into evidence without objection. On March 5, 2024, a hearing officer exhibit, Hearing Officer 1, was admitted into evidence without objection. On March 5, 2024, counsel for the respective parties made oral closing arguments. Neither party requested leave to file written closings.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and 5A DCMR § 3049.1.

ISSUES AND RELIEF SOUGHT

The issue for determination in this case, as certified in the December 19, 2023 Prehearing Order, are:

Did DCPS deny the Student a FAPE by developing an inappropriate IEP on November 6, 2023, which did not provide the related services of speech and occupational therapy.

For relief, Petitioner requests that the hearing officer:

- 1) Order DCPS to add Speech and Language and OT related services to Student's IEP and convene an IEP meeting to discuss and determine the amount of compensatory services Student is owed;
- 2) In the alternative, order DCPS to fund additional independent Speech-Language and OT evaluations and upon receipt of these evaluations, convene an Eligibility/IEP meeting to determine the amount of related services Student requires and the amount of compensatory services Student is owed and
- 3) Retain jurisdiction of this case for the purposes of determining compensatory

education due.

FINDINGS OF FACT

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

1. Student, an AGE child, is a resident of the District of Columbia. Student has been determined eligible for special education under the Other Health Impairment (OHI) disability classification. Exhibit R-7.

2. Student attended Pre-K 3 at a District of Columbia public charter school, where he/she received special education services due to a Speech Delay/Impairment. When Student reached Kindergarten, he/she was exited from special education services. Exhibit P-5.

3. Since 1st Grade, Student has attended CITY SCHOOL, a DCPS public school. Exhibit P-5.

4. In spring 2023, Student was referred for an initial evaluation for special education services by parent request. The City School multidisciplinary team (MDT) noted that there were concerns with Student's mathematical achievement and coping skills. In spring 2023, a DCPS school psychologist conducted a comprehensive psychological evaluation of Student. She reported in her April 1, 2023 Comprehensive Psychological Evaluation Report, *inter alia*, that on the Woodcock-Johnson Tests of Cognitive Abilities - Fourth Edition (WJ-IV Cog), Student's overall cognitive abilities

were in the Low range (General Intellectual Ability = 78). Academically, Student displayed overall reading and writing skills which were in the Average range. Student's performance on math computation tasks was in the Very Low range (Calculation = 61). The Behavior Assessment System for Children, Third Edition (BASC-3) rating form completed by a teacher indicated that Student displayed global behavioral, social and emotional challenges. Student's BASC-3 T-scores were clinically significant for Aggression (76), Anxiety (92), Depression (102), Atypicality (88), Withdrawal (70), Adaptability (25), Social Skills (28), and Functional Communication (28). Student's BASC-3 profile indicated clinically significant problems on the Internalizing Problems composite (70), and Attitude to Teachers (85) and Interpersonal Relations (29) content scales. The DCPS school psychologist wrote that caution should be taken when interpreting the BASC-3 forms because of raters' invalid response styles in an inordinately negative fashion. Exhibit R-6.

5. In July 2023, a psychological reevaluation was completed by an independent psychologist, diagnosing Student with Generalized Anxiety Disorder and Specific Learning Disorder with impairment in mathematics. Exhibit P-5.

6. On July 14, 2023, Independent OT conducted a comprehensive OT evaluation of Student. She was unable to observe Student in the classroom or to obtain input from educators at City School. Based on her evaluation, Independent OT reported, *inter alia*, that Student demonstrated gross motor skills within functional limits, and also demonstrated several "areas for growth", including visual-perception,

visual-motor, fine motor, postural control and planning/organizational skills; that Student demonstrated consistently below-average performance with visual-motor tasks; that Student's largest barrier to completing work in the general education setting was his/her anxiety and motor coordination deficits, performing within the Low range on motor coordination tasks. Independent OT recommended in her July 14, 2023 written report that Student receive OT services at school for 45 minutes per week, outside of the general education classroom, to address goals in fine motor, visual perception, oculomotor, executive functioning, sensory processing, attention, and written communication. Exhibit P-4.

7. On August 16, 2023, Independent SLP conducted an independent speech-language pathology evaluation of Student. In her written report, Independent SLP reported, *inter alia*, that based on her evaluation, Student presented with scores in the Average range for receptive vocabulary, expressive vocabulary, articulation, core language, receptive language, expressive language, language memory, and language content. Independent SLP wrote that Student's pragmatic language was found to be within the Low range and Student exhibited a profile of relative language strengths and weaknesses across subtests, specifically deficits with sequencing and recognizing word relationships, which required direct facilitation to remediate. She recommended that Student be provided with 120 minutes per month of school based, direct speech-language services to work on word associations, sequencing, and pragmatic language difficulties. Exhibit P-2.

8. On September 27, 2023, DCPS SLP reviewed Independent SLP's August 16, 2023 speech-language evaluation of Student. DCPS SLP also observed Student in the classroom and interviewed his/her teacher. In her written report, DCPS SLP reported that the speech-language deficits reported by Independent SLP did not negatively impact Student's ability to communicate effectively within the classroom; that Student's voice, fluency, and oral mechanism were strengths as they were found to be within normal limits for his/her age and gender; that per her own interview with Student's teacher and her classroom observation, Student had been able to participate within the classroom, communicate intelligibly with no exhibited difficulties with producing sounds, interact with peers, raise his/her hand to answer questions in class, follow along with a large group activity given an adapted assignment, and communicate his/her wants and needs within the classroom; that Student was able to respond to greetings, have proper body orientation, follow social cues for contributing to conversations, respond to Wh- questions, and use appropriate communication skills within the educational setting. DCPS SLP concluded that overall, Student's receptive and expressive language, articulation, voice/fluency and pragmatics/social skills were not impacting his/her ability to communicate effectively within the classroom. DCPS SLP endorsed the classroom teacher's report that Student's difficulties in class appeared to come from emotional regulation and "shut downs" rather than speech and language deficits. Exhibit P-3.

9. On September 27, 2023, DCPS OT reviewed Independent OT's July 14, 2023 occupational therapy evaluation of Student. As part of her review, DCPS OT interviewed Student's teacher and conducted a classroom observation. In her written report, DCPS OT reported, *inter alia*, that according to the classroom teacher, Student's academic strengths were seen when Student was engaged with a lesson and Student did a good job at participating during engaging lessons and following along; that Student's biggest struggles seemed to be shutting down and getting frustrated when things felt hard; that the classroom teacher reported that it was hard to know what Student was capable of, especially in writing, because he/she "gives up easily"; that DCPS OT had observed Student's writing aversion, especially when he/she had to write more than two sentences; and that she was able to read Student's writing but noticed it presented with mixed casing. DCPS OT observed that during writing, Student presented with a left-handed quadrupod grasp; that Student was able to copy words from a far point; that when redirected to draw an image at the bottom of the page, he/she did so; that when classroom instructions were given to write words onto the text, Student did it without one-to-one assistance; and that Student was able to highlight a passage appropriately that was projected on the board. Exhibit P-5.

10. The City School special education eligibility team met on October 6, 2023 and determined that Student was eligible for special education as a child with an Other Health Impairment (OHI). In the October 6, 2023 initial eligibility determination report, it was reported that Student's disability impacted their participation in the

general education curriculum in Academic - Mathematics and Emotional, Social and Behavioral Development. Exhibit R-7.

11. In an October 9, 2023 Prior Written Notice (PWN) to the parent, DCPS gave notice that Student had been determined not to qualify for speech-language or OT services. The notice stated that results from Student's independent speech and language evaluation showed that he/she was average and/or within normal limits in all areas (receptive language, expressive language, articulation, fluency, vocabulary, oral motor skills, fluency, etc.), which indicated Student showed strengths across all of the areas formally and informally assessed, aside from pragmatics; that Student's pragmatic skills could be severely impacted by his/her anxiety, but these areas were not impacting his/her ability to communicate effectively or to access the academic/educational setting. Regarding occupational therapy, the PWN stated that the eligibility team agreed that Student did not qualify for OT services based on DCPS' OT's classroom observation and Student's overall Average range score on the Test of Visual Perceptual Skills (TVPS). The PWN reported that on the TVPS subtests, visual discrimination, visual memory, visual spatial relationship, visual form constancy, visual sequential memory, visual figure ground and visual closure were within normal range. Exhibit R-8.

12. The City School IEP team met on November 3, 2023 to develop Student's initial IEP. Mother participated in the meeting by telephone. Mathematics and Social, Emotional & Behavioral Development were identified as IEP areas of concern for Student. For Social-Emotional, the IEP team stated that, based on the child's BASC-3

self-report of personality online, his/her School Problems composite scale fell in the At-Risk range; his/her Attitude to Teachers fell in the Clinically Significant classification range; his/her Internalizing Problems composite scale, Atypicality, Locus of Control and Social Stress scores fell in the Clinically Significant classification range. Student reported having difficulty establishing and maintaining close relationships with others and reported being isolated and lonely. Student's T scores on Anxiety and Depression fell in the At-Risk classification range. Student's T score on Sense of Inadequacy, 70, fell in the Clinically Significant classification range. Exhibit Hearing Officer 1.

13. In a November 6, 2023 PWN, DCPS gave notice to the parent that it intended to implement the November 3, 2023 IEP for Student. The PWN stated that an outside professional [sic] had recommended Speech and OT services for Student. The PWN gave notice that the IEP team had evaluated assessments by the DCPS school psychologist, occupational therapist, and speech pathologist, and observations of Student and that DCPS' speech pathologist and occupational therapist were not recommending speech-language or OT services for Student based on their assessments. Exhibit P-1.

14. Following the IEP meeting, Case Manager has been providing two hours of push-in services for mathematics, twice weekly, to Student in the regular education classroom. Case Manager also provides push-in services in Student's classroom twice a week for ELA support, although Student does not receive IEP support for ELA.

Testimony of Case Manager.

15. As of the date of the due process hearing, Student was progressing on all IEP goals, but had the most trouble with fractions. Student was doing well in reading. Student was not having speech issues in class, except that when upset, he/she would not talk. Student was able to complete at least a 5-paragraph essay, but it took him/her several days to complete it. Testimony of Case Manager.

16. Student's January 2024 scores on the i-Ready diagnostic standardized assessment was 439 in Math. This was an increase of 69 points over the beginning of the year (BOY), but still two years below grade level. Student's score for Reading was 580, an increase of 90 points over BOY, and one year below grade level. Exhibits R-12, R-13.

CONCLUSIONS OF LAW

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

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by the local education agency, in this case DCPS, the agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall

establish a *prima facie* case before the burden of persuasion falls on the agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

Analysis

Did DCPS deny Student a FAPE by developing an inappropriate IEP on November 6, 2023, which did not provide the related services of speech and occupational therapy?

Petitioner's claim in this case is that DCPS' initial IEP for Student, developed on November 3, 2023² was inappropriate because the IEP did not offer Student related services for speech-language or occupational therapy (OT). DCPS denies that Student required these related services on his/her IEP. Through her expert witnesses, Petitioner established a *prima facie* case that Student needed IEP speech-language and OT services. Therefore, DCPS holds the burden of persuasion on the appropriateness of the November 3, 2023 IEP without these services.

U.S. Magistrate Judge Zia Faruqi explained how a hearing officer must assess an IEP in *N.G. v. District of Columbia*, No. 20-CV-2777-TJK-ZMF, 2022 WL 188403 (D.D.C. Jan. 20, 2022), *report and recommendation adopted*, No. CV202777TJKZMF, 2022 WL 969964 (D.D.C. Mar. 31, 2022):

When evaluating an IEP, a [hearing officer] must determine whether: (1) "the State complied with the procedures set forth in the [IDEA]," *Bd. Of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 206

² In her complaint, Petitioner alleged that the IEP was developed on November 6, 2023, but it appears that the IEP meeting was convened on November 3, 2023. *See* Exhibit P-1.

(1982) and (2) the IEP was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances,” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

Id., 2022 WL 969964 at *1. In this case, Petitioner has not alleged a procedural violation by DCPS. Therefore, I turn to the second prong of the *Rowley/Endrew F.* inquiry. Was the November 3, 2023 IEP, without speech-language or OT related services, appropriate for Student?

A FAPE, includes special education and “Related Services,” defined as supportive services, including speech-language pathology and occupational therapy, “as are required to assist a child with a disability to benefit from special education”. 34 C.F.R. § 300.34(a); *Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 121 (D.D.C. 2018).

“Related services are only required to the extent that such services are necessary to enable the child to benefit from special education. Related services, as with any other service in an IEP, are determined on an individual basis by the child’s IEP team.”

Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46,540, 46,663 (Aug. 14, 2006).

Here it should be noted that neither Petitioner not DCPS offered the completed November 3, 2023 IEP into evidence. Petitioner offered an IEP watermarked “Draft” (Exhibit P-1), which DCPS’ witness, Case Manager, testified was the IEP that was in place for Student, even though it was marked Draft. However, this document is not a completed IEP. Notably, it does not identify what special education or related services

would be provided to Student. *See* 34 C.F.R. § 320(a)(4) (IEP must include a “statement of the special education and related services and supplementary aids and services . . . to be provided to the child”.) On March 5, 2024, DCPS’ Counsel emailed the hearing officer and Petitioner’s Counsel a document which DCPS’ Counsel believed was the final version of the November 3, 2023 IEP (Hearing Officer Exhibit 1). However, that version likewise omitted what special education and related services would be provided to Student.

Based on the testimony of Case Manager and the draft IEP, I find it is probable that the November 3, 2023 IEP provided annual goals for Mathematics and Emotional, Social & Behavioral Development and that the IEP team decided that Student would be provided 4 hours per week of Specialized Instruction for mathematics in the general education setting, as well as unspecified Behavioral Support Services. In this proceeding, Petitioner’s claim is limited to the alleged inappropriateness of the IEP team’s decision to omit Speech-Language and OT services in the initial IEP for Student. It is undisputed that the November 3, 2023 IEP did not provide for Speech-Language or OT related services.

Occupational Therapy

Petitioner’s expert, Independent OT, evaluated Student in July 2023, prior to the October 2023 eligibility determination for the child. Her test findings, not disputed by DCPS, were that Student demonstrated several areas for growth, including visual-perception, visual-motor, fine motor, postural control and planning/organizational

skills; that Student demonstrated consistently below-average performance with visual-motor tasks; that Student performed within the “low” range on motor coordination tasks and that the largest barriers to completing work in the general education setting were Student’s anxiety and motor coordination deficits. Independent OT recommended in her July 14, 2023 written report that Student receive OT services at school for 45 minutes per week, outside of the general education classroom, to address goals in fine motor, visual perception, oculomotor, executive functioning, sensory processing, attention, and written communication. In her testimony at the due process hearing, Independent OT opined that Student’s challenges with writing and struggles to complete writing tasks, as well as social skills deficits, indicated that the child needed direct OT services to access the general education curriculum.

DCPS’ expert, DCPS OT, did not dispute Independent OT’s assessment results, but maintained in her testimony that Student’s OT difficulties do not keep him/her from accessing the general education curriculum. DCPS OT observed Student in class, reviewed work samples and interviewed his/her general education teacher. She reported that during the observation, Student was able to attend, was on-task, and participated in the class. She agreed that Student has a “writing aversion,” but she opined that this was due to the child’s anxiety around writing and a tendency to shut down with large assignments. She believed this challenge could be addressed with specialized instruction in the classroom. DCPS OT opined that Student would not benefit from professional OT services and that pulling Student out of the classroom for

OT services would not be beneficial to him/her.

I found DCPS OT's opinions more credible than those of Independent OT. Independent OT did not address in her testimony when the IDEA requires related services, such as occupational therapy, in an IEP – that is, whether direct OT services were necessary to enable Student to benefit from special education services, *see Assistance to States, supra*. Independent OT did not indicate in her testimony whether she knew what special education services Student was offered in the November 3, 2023 IEP. Moreover, unlike DCPS OT, Independent OT had not observed Student in class, not reviewed his/her education records or school work samples and not participated in Student's IEP team meetings or communicated with Student's teachers. On this evidence, I found DCPS OT's opinion, that Student's OT difficulties do not keep him/her from accessing the general education curriculum, to be more persuasive and I conclude that DCPS has met its burden of persuasion that the November 3, 2023 IEP team's determination not to provide OT services in Student's initial IEP was appropriate.

Speech Services

Petitioner's speech-language expert, Independent SLP, evaluated Student on August 16, 2023. She reported that Student's scores for receptive vocabulary, expressive vocabulary, articulation, core language, receptive language, expressive language, language memory and language content were within the Average range. While Independent SLP testified that Student is intelligible and is able to formulate grammatical sentences, she found in her assessment that Student's pragmatic language

tested in the Low range and she recommended that Student be provided with 120 minutes per month of school-based, direct speech-language services to work on word associations, sequencing and higher level organization skills.

DCPS' expert, DCPS SLP, did not dispute Independent SLP's test results for Student. However, she opined that Student's relative weakness with pragmatic language was not impacting his/her access in the academic setting. DCPS SLP testified that she had observed Student in the classroom and interviewed the classroom teacher. She opined that Student had all of the speech-language skills and tools he/she needed to access the academic environment and that Student's pragmatic language skills were impacted by his/her social-emotion challenges, not language deficits. For her part, Student's special education teacher, Case Manager, testified that she had not observed any speech issues for Student, except when the child was upset, and that the November 3, 2023 IEP provided social-emotional support for that.

Although Independent SLP has much more experience in the speech-language field than DCPS SLP, I found Independent SLP's opinion that Student needed IEP speech-language pathology services less persuasive. Like Independent OT, Independent SLP did not address whether direct speech-language services were necessary to enable Student to benefit from special education services. In fact, Independent SLP did not know whether Student had an IEP. Independent SLP had not looked at any of Student's educational records, other than the April 1, 2023 psychological evaluation, to obtain data about how Student was performing in school. She had not observed Student in the

classroom or had the opportunity to communicate with Student's teachers. On this evidence, I find that DCPS has met its burden of persuasion that the November 3, 2023 IEP team's determination not to provide speech-language services in Student's IEP was appropriate.

In sum, I conclude that DCPS has met its burden of persuasion that the November 3, 2023 IEP team's decision not to include OT or speech-language pathology services in Student's initial IEP did not deny Student a FAPE.

ORDER

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

All relief requested by the Petitioner herein is denied.

Date: Date in Caption

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

NOTICE OF RIGHT TO APPEAL

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

Case No. 2023-0237
Hearing Officer Determination
March 7, 2024

cc: Counsel of Record
Office of Dispute Resolution