

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

Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

OSSE  
Student Hearing Office  
May 27, 2014

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STUDENT, <sup>1</sup>	)	
through the Parent,	)	
	)	Date Issued: May 26, 2014
Petitioner,	)	
	)	Hearing Officer: Virginia Dietrich
v.	)	
	)	
District of Columbia Public Schools	)	
	)	
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

Student was a child with a disability who attended a nonpublic special education school (“School A”) during the 2013/14 school year (“SY”) where District of Columbia Public Schools (“DCPS”) was the local education agency responsible for Student’s education. When Student arrived at School A at the beginning of the 2013/14 SY, Student’s individualized education program (“IEP”) did not require speech and language services as a separate related service. However, after 30 days at School A, one hour/week of speech and language services was added to Student’s IEP on an interim basis based on the recommendation of school staff, pending the results of a formal speech and language assessment.

At an IEP Team meeting on January 29, 2014, DCPS took the position that (1) Student did not require formal speech and language services based on the results of a recently completed speech and language assessment, and (2) Student did not meet DCPS’ eligibility criteria for speech and language services as a related service. Petitioner took the position that Student was entitled to receive speech and language services under the Individuals with Disabilities Education Act (“IDEA”) because speech and language services allowed Student to benefit from specialized instruction, regardless of whether or not Student qualified for a speech and language impairment under the IDEA. This due process litigation ensued.

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<sup>1</sup> Personal identification information is provided in Appendix A.

## Hearing Officer Determination

### **Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the IDEA, as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations.

### **Procedural History**

The due process complaint was filed on 02/25/14. DCPS timely filed a response to the complaint on 02/26/14. This Hearing Officer was assigned to the case on 02/28/14.

A prehearing conference took place on 04/08/14. A Prehearing Order was issued on 04/09/14.

Petitioner waived the resolution meeting, but DCPS did not. The resolution meeting took place on 03/10/14, at which time parties did not agree to end the resolution period. The 30-day resolution period ended on 03/27/14, the 45-day timeline to issue a final decision began on 03/28/14 and the final decision was due by 05/11/14. The case was continued on 04/29/14 following one day of testimony on the scheduled hearing date because presentation of Petitioner’s witnesses took more time than expected. The final decision due date was extended to 05/29/14, by agreement of the parties.

The due process hearing was a closed hearing that took place on 04/29/14 and 05/19/14. Petitioner was represented by Alana Hecht, Esq. DCPS was represented by Maya Washington, Esq. Neither party objected to the testimony of witnesses by telephone. Petitioner participated in the hearing in person.

Petitioner’s Five-Day Disclosure, dated 04/22/14, consisted of a witness list and documents P-1 through P-29. Petitioner’s Five-Day Disclosure was admitted into evidence without objection.

DCPS’ Amended Disclosure Statement, dated 04/23/14, consisted of a witness list and documents R-1 through R-15. DCPS’ Amended Disclosure Statement was admitted into evidence without objection.

Petitioner presented the following six (6) witnesses in her case in chief: (1) Special education English teacher at School A (“English teacher at School A”); (2) Speech-language pathologist #1 at School A (“SLP at School A”), (3) Speech-language pathologist #2 at School A who qualified without objection as an expert in speech-language pathology (“Expert SLP at School A”); (4) Science teacher at School A (“Science teacher at School A”); (5) Paralegal; and (6) Senior educational advocate (“Advocate”).<sup>2</sup> Petitioner did not present any rebuttal evidence.

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<sup>2</sup> The Hearing Officer did not qualify the senior educational advocate as an expert in special education with specialty in the interpretation of educational evaluation data.

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DCPS presented the following two (2) witnesses: (1) DCPS speech-language pathologist who qualified without objection as an expert in speech-language pathology in the area of evaluation and determination of speech-language services and educational recommendations, (“DCPS SLP Expert”); and (2) Expert in special education with specialty in IEP development, special education program and instruction, who qualified over objection (“Special Education Expert”).

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

Whether DCPS denied Student a FAPE since 01/29/14<sup>3</sup> by failing to provide Student with an IEP that included weekly direct speech-language services; when (a) the data available to the team was sufficient to warrant speech-language IEP related services for Student, and (b) Student required direct speech-language services in order to benefit from special education.

Petitioner requested the following relief:

- (1) A finding of a denial of a FAPE on the issue presented;
- (2) DCPS to convene a Multidisciplinary Team meeting within 10 days of the Hearing Officer Determination to amend Student’s IEP to include 1 hour/week of direct speech-language services outside of general education and develop appropriate goals; and
- (3) DCPS to fund compensatory education consisting of speech-language services, either through DCPS or through an independent provider, to compensate Student for missed services since 01/29/14.

### **Findings of Fact**

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer’s Findings of Fact are as follows:<sup>4</sup>

#1. Student is a resident of the District of Columbia. Petitioner is Student’s grandmother and legal guardian.<sup>5</sup> Student is a child with a Specific Learning Disability who requires special education.<sup>6</sup>

#2. After an IEP review by the IEP team on 09/24/13, which occurred approximately 30 days after Student arrived at School A, the IEP team that consisted of Petitioner, school officials and a DCPS representative, agreed to add 1 hour/week of speech and language services to Student’s IEP on an interim basis pending a formal speech and language assessment.<sup>7</sup>

#3. The decision to add speech and language services to Student’s IEP was based on (a) the review of an outdated 2010 Comprehensive Psychological Evaluation that measured

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<sup>3</sup> At the due process hearing, Petitioner modified the start date of the allegation from 09/24/13 to 01/29/14.

<sup>4</sup> Footnotes hereinafter in Findings of Fact refer to the testimony of a witness or a document admitted into evidence.

<sup>5</sup> Petitioner.

<sup>6</sup> P-3.

<sup>7</sup> SLP at School A.

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cognitive abilities and academic achievement, but did not measure speech and language deficits, (b) a CELF-4 screening assessment conducted by SLP at School A that revealed an Average CORE Language score, and (c) the fact that Student had received speech and language services in the past, but not since April 2011.<sup>8</sup> The feeling of the IEP team was that speech and language services would be beneficial to Student, but there was no current and objective evaluative data available at that time to support the need for direct speech and language services.<sup>9</sup> Typically, the results of a formal speech-language assessment are used to determine whether speech and language services are necessary.<sup>10</sup>

#4. A formal speech and language assessment is necessary in order to establish baselines and develop appropriate speech and language goals.<sup>11</sup> Prior to 09/24/13, Student's last formal Speech Language Re-Evaluation was completed on 01/13/10.<sup>12</sup> Interim speech and language goals that addressed reading and writing were added to Student's 09/24/13 IEP under the Communication/Speech and Language category.<sup>13</sup> These goals did not address deficits in oral communications that are typically addressed by speech-language pathologists, i.e., articulation, voice, fluency, oral language skills and pragmatic language.<sup>14</sup> The interim speech and language goals developed were inappropriately based on data from a 2010 Woodcock Johnson III cognitive assessment.<sup>15</sup>

#5. From 09/24/13 through 01/29/14, Student received 1-2 hours/week of direct speech and language services from Expert SLP at School A, either in his English class, Science class, or 1:1 outside of the classroom.<sup>16</sup> The speech and language services provided by Expert SLP at School A consisted of helping Student with (a) decoding (identifying what a written word is and not what it means), (b) reading aloud in class, (c) writing assignments of putting Student's thoughts on paper, (d) catching up with class work, (e) reading comprehension strategies, (f) syntax, and (g) reading fluency;<sup>17</sup> all of which fell within the purview and responsibilities of the special education teacher.<sup>18</sup> Expert SLP at School A also provided phonological patterns to the English teacher at School A to assist with differentiation of the material and made suggestions on how to strengthen reading for Student.<sup>19</sup>

#6. DCPS' guidelines for providing a student with direct speech-language services is that the child must demonstrate an oral language communication deficiency or speech-language pathology as determined by a formal speech and language assessment.<sup>20</sup> The formal speech and language assessment of Student completed by DCPS on 12/11/13 did not reveal any oral language communication deficits or speech-language pathology. Student's oral language skills

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<sup>8</sup> P-3-8, P-22, SLP at School A, DCPS SLP Expert.

<sup>9</sup> P-3-8, R-12-12, SLP at School A, DCPS SLP Expert.

<sup>10</sup> SLP at School A, DCPS SLP Expert.

<sup>11</sup> SLP at School A, DCPS SLP Expert.

<sup>12</sup> P-16.

<sup>13</sup> P-4-8, P-22, SLP at School A, DCPS SLP Expert.

<sup>14</sup> DCPS SLP Expert.

<sup>15</sup> Expert SLP at School A.

<sup>16</sup> English teacher at School A, Science teacher at School A, Expert SLP at School A.

<sup>17</sup> English teacher at School A, Science teacher at School A, Expert SLP at School A.

<sup>18</sup> Special Education Expert, Expert SLP at School A.

<sup>19</sup> Expert SLP at School A.

<sup>20</sup> DCPS SLP Expert.

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were generally in the Average range with a few areas of challenge in oral expression.<sup>21</sup> Student did not meet DCPS' eligibility criteria for a speech and language impairment or the provision of speech and language services.<sup>22</sup> DCPS' formal speech and language assessment was valid; its validity was not challenged as an issue in the due process complaint.

#7. School A is a full-time special education school where Student receives all of his instruction, i.e., 24.5 hours/week of specialized instruction, outside of general education.<sup>23</sup> Student's English Language Arts ("ELA") and Science classroom consists of approximately 6 students and 2-3 adults, with no special education teacher in either classroom. The class work was presented by the content certified general education teacher, i.e., English or Science teacher, with the assistance of classroom aides.<sup>24</sup>

#8. Student had difficulty accessing the written word in his ELA class, even though all of Student's work was specialized, differentiated and specifically tailored for Student before it was presented by the content area teacher. In English class and Science class, Student did not receive the assistance of a certified special educator and did not thrive except when he received the 1:1 assistance of Expert SLP at School A who broke down the material for Student in the areas of reading and writing. In both classes, due to the small student/staff ratio, Student was able to receive 1:1 dedicated assistance from the aides when needed and when Expert SLP at School A was not present.<sup>25</sup>

#9. Expert SLP at School A motivated Student to participate more in class and Student performed better with her prompting and assistance, but Student also had difficulties with work when she was there and when she wasn't there to help him.<sup>26</sup> Student's comprehension level was different when assisted 1:1 by Expert SLP at School A.<sup>27</sup> Expert SLP at School A broke down information for Student and Student benefitted from it, but breaking down the information and specializing the instruction for Student also is what a special education teacher or classroom aide would do.<sup>28</sup> Special education teachers are trained on strategies to address syntax and reading comprehension.<sup>29</sup>

#10. Student's deficits in ELA were phonics and reading. It is the responsibility of the content area teacher and special educator within the context of specialized instruction to (a) help Student with reading, writing and organizing his thoughts, and (2) to present differentiated instruction to Student.<sup>30</sup> A reading intervention program, a reading teacher or a special educator via specialized instruction, commonly addresses the type of reading and writing deficits that

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<sup>21</sup> R-12, DCPS SLP Expert.

<sup>22</sup> R-12, DCPS SLP Expert.

<sup>23</sup> P-3, English teacher at School A.

<sup>24</sup> English teacher at School A, Science teacher at School A.

<sup>25</sup> English teacher at School A, Science teacher at School A.

<sup>26</sup> Expert SLP at School A.

<sup>27</sup> Science teacher at School A.

<sup>28</sup> Science teacher at School A.

<sup>29</sup> Expert SLP at School A.

<sup>30</sup> English teacher at School A, Special Education Expert.

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Student had, but School A did not have a reading intervention program or a reading teacher, and a special educator was not a part of Student's classroom.<sup>31</sup>

#11. Reading and writing is not a related service, it is part of or imbedded in the curriculum at a special education school.<sup>32</sup>

#12. The goals added to Student's IEP on 09/24/13 by School A were goals that addressed reading and written expression even though they were categorized as speech and language goals.<sup>33</sup> Student did not need speech and language goals or services to access the curriculum or benefit from specialized instruction. The speech and language goals temporarily added to Student's 09/24/13 IEP are typically addressed by a reading teacher, a reading specialist or a special education teacher.<sup>34</sup>

### **Conclusions of Law**

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer 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. 34 C.F.R. 300.1.

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence 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 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

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).

The sole issue to be determined is whether DCPS denied Student a FAPE since 01/29/14 by failing to provide Student with an IEP that included weekly direct speech-language services; when (a) the data available to the team was sufficient to warrant speech-language IEP related

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<sup>31</sup> P-18, English teacher at School A.

<sup>32</sup> DCPS SLP Expert.

<sup>33</sup> DCPS SLP Expert.

<sup>34</sup> DCPS SLP Expert, Expert SLP at School A, Special Education Expert.

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services for Student, and (b) Student required direct speech-language services in order to benefit from special education.<sup>35</sup>

Free appropriate public education or FAPE means special education and related services that are provided at public expense, meet the standards of the State Education Agency, include an appropriate school and are provided in conformity with the IEP. 34 C.F.R. 300.17.

IEP means a written statement for a child with a disability that must include a statement of the special education and related services and supplementary aids and services to be provided to the child to enable the child to advance appropriately toward attaining annual goals and to be involved in and make progress in the general education curriculum. 34 C.F.R. 300.320(a)(4).

Related services means transportation and such developmental, corrective, and other supportive services as are *required* (emphasis added) to assist a child with a disability to benefit from special education, and includes speech-language pathology services. 34 C.F.R. 300.34.

Nothing in the IDEA or the definition of related services requires the provision of a related service to a child unless the child's IEP Team has determined that the related service is *required* (emphasis added) in order for the child to benefit from special education and has included that service in the child's IEP. *Comments to Federal Register*, Vol. 71, No. 156, p. 46569.

School districts may not rely solely on a universally applicable standard in ending a student's related service. Nor may the decision be the unilateral choice of the child's provider. Rather, the determination must be reached through the IEP process and involve the input of the parents and school officials. The school district cannot categorically determine that a child should no longer receive speech-language pathology services, or any other service, based solely on guidelines applied to all children, without regard to their individual needs. *Letter to Koscielniak*, 58 IDELR 168 (OSEP 2011). By extrapolation, this Hearing Officer extends the OSEP guidance to apply to the reverse situation, i.e., the onset of related services.

The validity of DCPS' 12/11/13 speech and language assessment was not presented as an issue in the due process complaint. Although there was quite a bit of testimony on the efficacy of the DCPS SLP Expert and SLP at School A using one assessment or assessment subtest over the other as a valid indicator of Student's need for speech and language services, the Hearing Officer did not consider the testimony in her analysis of the issue presented for determination. Pursuant to 34 C.F.R. 300.511(d), no issues may be raised at the due process hearing that were not raised in the complaint unless the other party agrees. The validity of DCPS' 12/11/13 speech and language assessment could have been raised in the complaint pursuant to 34 C.F.R. 300.304(b)(3), but wasn't. Therefore, the Hearing Officer considered the assessment to be a valid measurement instrument of Student's speech and language needs and the results derived thereof to be valid and uncontroverted.

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<sup>35</sup> Petitioner alleged that Accotink Academy began providing direct speech-language services to Student on 09/24/13, but stopped on or about October 2013 per DCPS' direction.

## Hearing Officer Determination

Per the testimony of three speech-language pathologists, it is inappropriate to provide speech and language services until after a formal speech and language assessment has been completed. Also, it is inappropriate to develop speech and language goals based on an outdated 2010 Woodcock Johnson III assessment, which was done in this case. The only formal and current speech and language assessment in the record was completed by DCPS on 12/11/13 and it did not reveal that Student had any oral language communication deficiencies or speech and language deficits that required direct speech and language services. The results of DCPS' formal speech and language assessment carried a lot of weight with the Hearing Officer.

Were direct speech and language services necessary as a related service to assist Student to *benefit* (emphasis added) from specialized instruction, beginning on 01/29/14? The Hearing Officer determines that they were not for the following reasons:

(1) The interim speech and language goals that were added to Student's 09/24/13 IEP under the Communication/Speech and Language category, were goals that strictly addressed reading and writing. These goals did not address deficits in oral communications that are typically addressed by speech-language pathologists, i.e., articulation, voice, fluency, oral language skills and pragmatic language;

(2) Reading and writing IEP goals are typically and appropriately addressed within the special education setting through specialized instruction by a special education teacher or by participation in a reading intervention program or help from a reading specialist;

(3) The services provided to Student by Expert SLP at School A consisted of help with reading comprehension, decoding, syntax, homework, etc; none of which fell into the speech and language pathology umbrella of articulation, voice, fluency, oral language skills and pragmatic language; and

(4) Student's 12/11/13 formal speech and language assessment did not reveal any oral language deficiencies or speech and language deficits that required direct speech and language services, per the credible and uncontroverted testimony of the DCPS SLP Expert.

The interim speech and language services actually provided to Student addressed reading and writing deficits, not deficits in oral language communications or speech-language pathology. There was no indication from any angle that Student needed or required direct speech and language services from a speech-language pathologist in order to access the curriculum or benefit from specialized instruction. The record revealed that the services received by Student from SLP Expert at School A were not speech-language pathology services at all; the services were actually services that would be provided by a special education teacher or special education aide within the context of providing specialized instruction in reading and writing.

Nor was there any reliable evidence in the record that Student required direct speech and language services in order to *benefit* (emphasis added) from specialized instruction. Student never received any speech-language services that actually fell categorically under the umbrella of speech-language related services. The interim speech and language goals and services added to

## Hearing Officer Determination

Student's IEP on 09/24/13 were a misnomer; in reality the goals were reading and writing goals that could and should be addressed in the specialized instruction environment.

The Hearing Officer hereby determines that Student did not *require* (emphasis added) direct speech and language services to benefit from specialized instruction. What Student needed was specialized instruction from a special educator in order to benefit from specialized instruction. In this case, the Expert SLP at School A was simply performing in the stead of the special education teacher when she helped Student with reading and writing goals and homework and when she helped to differentiate instruction that would be presented to Student by the content certified educators.

Petitioner failed to meet her burden of proof on the issue. DCPS did not violate any provision of the IDEA by not adding speech and language services as a related service to Student's IEP on 01/29/14. Student did not require true categorical speech and language services, either objectively based on formal and reliable evaluative data or subjectively based on the testimony of the School A witnesses.

The Hearing Officer found that the testimony of SLP at School A, Expert SLP at School A, and both the English and Science teachers at School A, to be self serving and somewhat incredulous that the removal of 1-2 hours/week of what was essentially specialized instruction in reading and writing provided by a speech-language pathologist, was the direct cause or correlated to Student's grades declining and his failure to participate in classroom activities. What was more likely, based on the evidence presented, was that Student was not receiving the amount and degree of specialized instruction that Student's IEP required in order to benefit from specialized instruction, due to the lack of presentation or preparation of the material by a certified special education teacher.

### **ORDER**

Petitioner failed to meet her burden of proof on the issue presented.

This complaint is **DISMISSED WITH PREJUDICE.**

All requested relief is denied.

**IT IS SO ORDERED.**

### **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).

Hearing Officer Determination

Date: May 26, 2014

*/s/ Virginia A. Dietrich*  
Hearing Officer

Copies to:

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