

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

PETITIONER, on behalf of STUDENT, ¹)	
)	Date Issued: November 9, 2017
Petitioner,)	
)	Hearing Officer: Peter B. Vaden
v.)	
)	Case No: 2017-0239
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	
)	Hearing Date: October 31, 2017
Respondent.)	
)	Office of Dispute Resolution, Room 2006 Washington, D.C.
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (D.C. Regs.).

Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on August 30, 2017, named District of Columbia Public Schools (DCPS) as Respondent. The undersigned hearing officer was appointed on August 31, 2017. Petitioner (MOTHER) and DCPS met for a resolution session on September 22, 2017, which did not result in an agreement. On September 22, 2017, I convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be

¹ Personal identification information is provided in Appendix A.

determined and other matters. The final decision in this case is due by November 14, 2017.

The due process hearing was convened before this Impartial Hearing Officer on October 31, 2017 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. Petitioner appeared in person and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Counsel for the respective parties made opening statements. Mother testified and called as additional witnesses EDUCATIONAL ADVOCATE 1 and EDUCATIONAL ADVOCATE 2. DCPS called as witnesses SPECIAL EDUCATION TEACHER and LEA REPRESENTATIVE. Petitioner's Exhibits P-1 through P-57 were admitted into evidence with the exceptions of Exhibits P-6, P-9 and P-36 which were withdrawn. Exhibits P-22, P-23, P-24, P-41 and P-53 were admitted over DCPS' objections. DCPS' Exhibits R-1 through R-9 were admitted into evidence without objection. At the conclusion of the evidence phase of the hearing, counsel for both parties made closing arguments. There was no request to file post hearing briefs.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The following issues for determination were certified in the September 22, 2017 Prehearing Order:

1. Whether DCPS violated the IDEA and District of Columbia law by failing to timely complete an initial evaluation to determine whether Student was eligible for special education and related services upon a request made by the parent on

April 5, 2016;

2. Whether DCPS' initial IEP, created July 6, 2017, fails to provide Student a FAPE because it does not provide for a sufficient level of special education instruction and does not provide for behavior support services and annual goals in the area of Social-Emotional Development, the baselines on the IEP are vague or not measurable for some goals and are missing for others and Student's behavior issues including inattention, hyperactivity, and aggression are not addressed in the IEP.

For relief, the parent requests that DCPS be ordered to convene Student's IEP team to revise the IEP to update the level of services, baselines, annual goals, present levels of performance and descriptions of how the disability affects Student's education in the areas of concern. Petitioner also seeks an award of compensatory education.

At the beginning of the October 31, 2017 due process hearing, Petitioner withdrew a third issue which had been resolved, whether DCPS refused to allow Student attend Student's neighborhood school.

FINDINGS OF FACT

After considering all of the evidence admitted at the due process hearing in this case, as well as the arguments of counsel, this hearing officer's Findings of Fact are as follows:

1. Student resides with Mother in the District of Columbia. Testimony of Mother. Student is eligible for special education and related services as a student with a Specific Learning Disability. Exhibit R-3. Student is in the GRADE at CITY SCHOOL. Testimony of Mother.

2. Student was evaluated by DCPS Early Stages in spring 2013. Student's cognitive functioning tested in the Average range. Academic skills were reported to fall in the Average range overall. Student was found not to be eligible for special education under the Developmental Delay classification because Student did not exhibit severe

developmental delays that were at least two years behind Student's chronological age.

Exhibit P-9.

3. On April 5, 2016, Mother requested that Student be again evaluated for special education. Exhibit P-51. Mother's request was followed by a written request to DCPS dated May 31, 2016 from her attorney. Exhibit P-50.

4. At a DCPS Analysis of Existing Data (AED) meeting on July 20, 2016, the DCPS representatives informed the parent that DCPS would not be able to proceed with the evaluation process until a hearing screening of Student was completed. Exhibit P-35. That day, DCPS issued a Prior Written Notice to Mother that the eligibility team would not move forward with an evaluation of Student until Mother obtained a hearing screening of Student. Exhibit P-13. Student's hearing was tested at Early Stages on August 10, 2017. Exhibit P-47.

5. On August 25, 2016, DCPS again acknowledged Mother's referral for Student to be evaluated for special education. DCPS provided written notice to Mother that the next step would be to review various educational and behavioral data and determine whether to proceed with an evaluation. Exhibit P-12.

6. On September 6, 2017, DCPS convened a meeting to review existing information to make a determination on next steps in the evaluation process. Mother and EDUCATIONAL ADVOCATE 3 attended the meeting. The DCPS representatives stated that an audiological assessment of Student had to be completed before moving forward with additional assessments. Educational Advocate 3 responded that the timeline for completing the initial evaluation had not been tolled. Exhibits P-33, P-44.

7. A DCPS Speech Language Pathologist conducted an audiological evaluation of Student on September 22, 2017. This assessor reported that Student

presented with normal hearing and that Student should not have any problems accessing the general education curriculum due to hearing problems. Exhibit R-8.

8. In October 2016, Mother filed a prior due process complaint on behalf of Student, which she withdrew in December 2016. DCPS told the parent that Student's evaluation would be completed within 45 days. Hearing Officer Notice, Testimony of LEA Representative.

9. DCPS SCHOOL PSYCHOLOGIST conducted a comprehensive psychological evaluation of Student on November 16, 2017. Student's full scale IQ (FSIQ) tested in the Low Average range. Academic testing revealed significant deficits in Reading with relative strengths in Math and Written Expression. Responses to the Behavior Assessment Scale for Children, Third Edition (BASC-3) rating scales by Student's English Language Arts teacher indicated Clinically Significant concerns for Student in numerous behavioral areas including Externalizing Problems, Hyperactivity, Aggression, Conduct Problems, School Problems, Attention, Learning Problems, Adaptive Skills, Adaptability, Social Skills, Leadership, and Study Skills. Student's math teacher's responses to the BASC-3 indicated that Student was At Risk in most of the same areas. Student's own responses to the BASC-3 scales indicated concerns with inattention, activity level, anxiety, social stress and anxiety. The teacher ratings and DCPS School Psychologist's classroom observation were suggestive of Attention Deficit Hyperactively Disorder - Predominantly Inattentive Type. DCPS School Psychologist recommended that additional information was needed to make an ADHD determination. Exhibit P-9.

10. A DCPS speech language pathologist conducted a speech and language evaluation of Student in November 2016. Student's receptive language skills tested in

the Average range. Expressive language was in the Mild Delay range. Student's scores on the Clinical Evaluation of Language Fundamentals - Fifth Edition (CELF-5) were in the Below Average range. Exhibit P-8.

11. Student's initial special education eligibility meeting was convened on February 15, 2017. The delay between completing the initial evaluations in November 2016 and holding the eligibility meeting was partly attributed to scheduling conflicts. DCPS offered meeting dates to Mother in December 2016 and January 2017, but Mother or her attorney were not available on those dates. Testimony of Special Education Teacher, Exhibit P-46.

12. At the February 15, 2017 eligibility meeting, Student was determined eligible for special education under the SLD classification. DCPS presented a draft IEP for Student at the February 15, 2017 meeting. Mother and Educational Advocate 3 did not agree with the proposed IEP and the team decided not to proceed then with consideration of the IEP. Testimony of Mother.

13. On March 16, 2017, Educational Advocate 3 wrote DCPS by email to propose changes to the draft IEP, including checking the "yes" box for whether Student's behavior impeded the child's learning or that of other children; revised present levels of performance and baselines, direct speech and language services; increased specialized instruction with pull-out services for Reading, Math and Written Expression and additional classroom accommodations. Exhibit P-41.

14. DCPS made repeated attempts to schedule an initial IEP meeting in spring 2017, but was not able agree on a date when Mother and her law firm representatives were available. Exhibits P-39, P-40, Testimony of Special Education Teacher. At this time, due to job requirements, Mother could only meet on Thursdays and Friday.

Testimony of Mother. Eventually, after providing notice to the parent by certified mail and by email to Petitioner's Counsel, DCPS held the initial IEP meeting on July 6, 2017 without the parent or her representatives being there. Exhibit P-6, Testimony of Special Education Teacher.

15. The July 6, 2017 IEP identified Reading, Written Expression and Communication/Speech and Language as areas of concern. The initial IEP provided for Student to receive 5 hours per week of Specialized Instruction outside general education and 120 minutes per month of Speech-Language Pathology. Exhibit P-6.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument and legal memoranda 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 DCPS, the District 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 District. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

Analysis

A. Child-Find

Did DCPS violate the IDEA and District of Columbia law by failing to timely complete an initial evaluation to determine whether Student was eligible for special education and related services upon a request made by the parent on April 5, 2016?

Mother first alleges that DCPS violated its child-find obligations under the IDEA by not ensuring that Student was timely evaluated for special education eligibility upon her request made on April 5, 2016.

Under the IDEA, states, as well as the District of Columbia, that receive federal educational assistance must establish policies and procedures to ensure that a FAPE is made available to disabled children. *Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir. 2005). Under the Act's child-find requirement, the District must "ensure that '[a]ll children with disabilities residing in the [District] . . . who are in need of special education and related services are identified, located, and evaluated.'" *Scott v. District of Columbia*, 2006 WL 1102839, at 8 (D.D.C. Mar. 31, 2006) (quoting *Reid*); 20 U.S.C. § 1412(a)(3). "As soon as a child is identified as a potential candidate for services, DCPS has the duty to locate that child and complete the evaluation process." *Long v. District of Columbia*, 780 F.Supp.2d 49, 56 (D.D.C.2011). The District must conduct initial evaluations to determine the student's eligibility for special education services "within 120 days from the date that the student was referred [to DCPS] for an evaluation or assessment." *Id.* (quoting former D.C. Code § 38–2561.02(a)). Once the eligibility determination has been made, the District must conduct a meeting to develop an IEP within 30 days. 34 CFR § 300.323(c)(1); *G.G. ex rel. Gersten v. District of Columbia*, 924 F.Supp.2d 273, 279 (D.D.C.2013).

The U.S. Department of Education's long-standing position is that a parent's request for an eligibility evaluation does not automatically precipitate the obligation of

the LEA to conduct the evaluation. A local education agency (LEA) must conduct an evaluation without undue delay only if the LEA suspects that the child has a disability and is in need of special education and related services. *See Letter to Anonymous*, 21 IDELR 998 (OSEP 1994). The LEA's duty to conduct an initial evaluation is triggered when the LEA has reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. *See Board of Education of Fayette County v. L.M.*, 45 IDELR 95 (E.D.Ky. 2006). "A suspicion connotes a relatively low threshold." *Id.* A state or LEA "shall be deemed to have knowledge that a child is a child with a disability if [among other things] . . . the behavior or performance of the child demonstrates the need for such services." *Dep't of Educ., State of Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (D. Haw. 2001) (citing 20 U.S.C. § 1415(k)(8)(B)(ii)).

Student was first evaluated for special education by DCPS Early Stages in spring 2013. Student was found not to be eligible for special education under the Developmental Delay disability classification because Student did not exhibit severe developmental delays that were at least two years behind Student's chronological age. On April 5, 2016, Mother requested that Student be again evaluated for special education. At that time, Student was reading two years below grade level. In math, despite receiving tutoring, Student was still below grade level. Student was performing within age and grade level expectations in Written Expression, but penmanship was a challenge for Student. I find that with this information, DCPS had reason at that point in time to suspect Student had a disability and a need for special education. DCPS, therefore, had a duty to conduct an initial eligibility evaluation.

Under District law, DCPS was required to complete its evaluation of Student within 120 days of Mother's April 5, 2016 referral, that is, by August 3, 2017. However on July 20, 2016, DCPS declined to proceed with Student's evaluation, initially, until Mother obtained a hearing screening for Student. Subsequently, on September 6, 2016, DCPS would not continue with the evaluation until Student had an audiological evaluation. DCPS finally conducted psychological and speech and language evaluations of Student in November 2016. Student was determined eligible for special education and related services as a child with a Specific Learning Disability on February 15, 2017.

DCPS attempts to justify its delay in completing Student's evaluation by Student's need for a hearing screening. However no good argument was offered for why the hearing screening had to be completed before starting the eligibility evaluation. DCPS also claims that the parent did not sign an authorization for the evaluation until August 2016, but there was no evidence that DCPS sought Mother's written consent when she first requested that Student be evaluated in April 2016. I find that DCPS' excuses for not completing Student's evaluation within 120 days are unavailing.

A failure to evaluate a child in a timely manner is a procedural violation of the IDEA. *See, e.g., Idea Pub. Charter Sch. v. District of Columbia*, 374 F. Supp. 2d 158, 167 (D.D.C. 2005). Procedural violations may only be deemed a denial of FAPE 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 CFR § 300.513(a)(2). *See, also, Brown v. District of Columbia*, 179 F. Supp. 3d 15, (D.D.C. 2016). When the DCPS psychologist assessed Student in November 2016, she concluded that Student presented with an SLD and, on February 15, 2017, the DCPS eligibility team determined that Student was eligible for special education. I find that DCPS' failure to ensure that Student's evaluation was completed within 120 days from the date that Student was referred by the parent for an evaluation, as required by D.C. Code § 38–2561.02(a)(1), impeded Student's right to a FAPE and caused a deprivation of educational benefit. Student was denied a FAPE as a result.

B. Appropriateness of Initial IEP

Did DCPS' initial July 6, 2017 IEP fail to provide Student a FAPE because it does not provide for a sufficient level of special education instruction and does not provide for behavior support services and annual goals in the area of Social-Emotional Development, the baselines on the IEP are vague or not measurable for some goals and are missing for others and Student's behavior issues including inattention, hyperactivity, and aggression are not addressed in the IEP?

Student's first IEP was developed by the City School IEP team on July 6, 2017. Due to scheduling difficulties, the DCPS team held the IEP meeting without Mother's or her advocates' participation. The July 6, 2017 IEP identified Reading, Written Expression and Communication/Speech and Language as areas of concern. The initial IEP provided for Student to receive 5 hours per week of Specialized Instruction outside general education and 120 minutes per month of Speech-Language Pathology. The parent contends that the July 6, 2017 IEP was inappropriate for Student because it lacks appropriate baselines and annual goals and provides inadequate Specialized Instruction and Behavioral Support Services. DCPS responds that the IEP was appropriate at the time it was developed.

In *Moradnejad v. District of Columbia*, 177 F. Supp. 3d 260 (D.D.C. 2016), the

Court adopted the Report and Recommendation of U.S. Magistrate Judge G. Michael Harvey, which explained how a court or a hearing officer must assess an IEP:

The Supreme Court explained in [*Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)] that a court's assessment of an IEP involves two inquiries:

First, has the State complied with the procedures set forth in the [IDEA]? And second, is the [IEP] developed through the [IDEA's] procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Moradnejad at 274-75. In *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S.Ct. 988 (2017), the U.S. Supreme Court elaborated on the standard, first enunciated in *Rowley, supra*, for what constitutes an appropriate IEP:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F.*, 137 S.Ct. at 999. . . . The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.* . . . Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. *Id.* (emphasis in original.) . . . The IEP must aim to enable the child to make progress. . . . [T]he essential function of an IEP is to set out a plan for pursuing academic and functional advancement. *Id.* . . . A focus on the particular child is at the core of the IDEA. The instruction offered must be "*pecially designed*" to meet a child's "*unique needs*" through an "*individualized education program.*" An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability and potential for growth. *Id.* (emphasis in original.) . . . When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. *Id.*, 137 S.Ct. at 1000. . . . [For a child who is not fully integrated in the regular classroom and not able to make grade-level advancement] his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Id.* . . . A reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their

decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances. *Id.*, 137 S.Ct. at 1002.

“The adequacy of an IEP can be measured only at the time it is formulated, not in hindsight.” *District of Columbia v. Walker*, 109 F. Supp. 3d 58, 66 (D.D.C. 2015) (citing *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C.2008)).

With regard to the development of the July 6, 2017 IEP, DCPS held the IEP meeting without the participation of Mother or her representatives. DCPS’ failure to ensure that Mother participated in the initial IEP meeting was clearly irregular. However, the parent did not raise this as a procedural violation issue for determination in this case. Therefore, I turn to the second prong of the *Rowley/Andrew F.* inquiry. Was the July 6, 2017 IEP reasonably calculated to enable Student to make progress appropriate in light of Student’s circumstances? DCPS has the burden of persuasion on this issue.

Educational Advocate 2 opined that the initial IEP should have provided Student at least 15 hours per week of Specialized Instruction and Behavioral Support related services. She contended that, from her review of the records, as of the July 6, 2017 initial IEP team meeting, there was a wealth of data to support this higher level of services, including that Student was reading two years below grade level and had challenges with decoding and phonemics, when Student should have been reading for meaning. She asserted that Student was also struggling with mathematics and that Student’s behavior problems were compounding these academic shortcomings. Educational Advocate 2 opined that due to Student’s reading deficits, until Student approached grade level, Student needed all core courses to be provided outside of general education.

Special Education Teacher explained that the DCPS IEP team limited Specialized Instruction to 5 hours per week in Student's initial IEP because of a desire to keep Student with nondisabled peers for as much time as possible and because Student had made some educational progress in the 2016-2017 school year without any special education services. However, Special Education Teacher agreed that Student had made little progress in the critical area of reading.

I found Educational Advocate 2's analysis of Student's special education needs to be persuasive in light of Student's undisputed reading deficits and conclude that DCPS did not meet its burden of persuasion that the initial IEP's provision for only 5 hours per week of Specialized Instruction was reasonably calculated to enable Student to make progress in light of Student's circumstances.

Educational Advocate 2 also opined that Student should have been provided behavioral support services in the initial IEP because the teachers' responses to the BASC-3 behavior rating scales indicated that Student's behavioral and emotional scores were at the Clinically Significant or At-Risk levels in most domains. Special Education Teacher testified that Student's behavior in the City School classroom in the 2016-2017 school year had not been a concern to the extent that it was impeding Student's progress or that of other students. Given the breadth of clinically significant and at-risk concerns identified by Student's teachers on the BASC-3, I do not find it credible that Student's behavior in the classroom was not impeding Student's progress. However, whether Student required Behavioral Support Services in order to benefit from special education is not clear from the evidence. *See* 34 CFR § 300.34(a) (definition of Related Services). In her November 16, 2016 Comprehensive Psychological Evaluation report, DCPS School Psychologist recommended that additional information was needed to determine

whether Student has ADHD, but there is no indication that additional ADHD screening was completed. I will order DCPS to conduct follow up assessments to determine Student's need for behavioral supports and whether Student has ADHD or another IDEA disability which accounts for the many behavior issues flagged in the teachers' BASC-3 responses.

Educational Advocate 2 opined that the baselines in the July 6, 2017 IEP were not provided or were incomplete and that the IEP annual goals did not relate to the baselines. DCPS will have to revised Student's IEP to provide for more Specialized Instruction and, if appropriate, Behavioral Support Services. At that time, DCPS should also update the IEP Present Levels of Performance and Annual Goals.

Compensatory Education Remedy

In addition to seeking revision of Student's IEP, the parent also requests a compensatory education award to compensate Student for the denials of FAPE in this case. "If a hearing officer concludes that the school district denied a student a FAPE, he has 'broad discretion to fashion an appropriate remedy,' which may include compensatory education. *See B.D. v. District of Columbia*, 817 F.3d 792, 800 (D.C. Cir. 2016). Compensatory education consists of prospective educational services designed to 'compensate for a past deficient program.' *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. Cir. 2005) (internal quotation marks omitted). A final award relies on 'individualized assessments,' requires a 'fact-specific' inquiry, and must be 'reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.' *Id.* at 524. The Hearing Officer should be guided by the principle that, '[t]o fully compensate a student, the award must seek not only to undo the FAPE denial's

affirmative harm, but also to compensate for lost progress that the student would have made.’ *B.D.* at 798. That inquiry requires ‘figuring out both [(1)] what position a student would be in absent a FAPE denial and [(2)] how to get the student to that position.’ *Id.* at 799.” *Butler v. District of Columbia*, Case No. 16-cv-01033 (D.D.C. Aug. 14, 2017).

In this decision, I have found that DCPS denied Student a FAPE by not completing Student’s initial eligibility evaluation within 120 days of Mother’s April 5, 2016 evaluation request and by not ensuring that an initial IEP was timely developed. Had the eligibility evaluation been completed within 120 days, Student could have received the initial IEP before the start of the 2016-2017 school year. I have also found that DCPS did not meet its burden of persuasion that the July 6, 2017 IEP, which provided for only 5 hours per week of Specialized Instruction, was appropriate for Student. Petitioner’s expert, Educational Advocate 2, opined that if Student had been timely found eligible and provided appropriate special education, Student, whose reading level is some two years behind grade level, would now be reading at a level approximately only one year below the current school grade. Educational Advocate 2 recommended that Student receive at least 400 hours of reading instruction in phonemic awareness development and decoding skills to get Student to the position Student would have been in, but for the denials of FAPE by DCPS.

Petitioner offered as a hearing exhibit a reading evaluation conducted by Lindamood-Bell Reading Center (LMB) which contained a proposal for a reading instruction program. However, no one from LMB testified at the hearing to explain the proposal. The LMB proposal does not indicate that it is intended as compensatory education for Student. It needs to be updated based on my findings in this decision.

Therefore, as a compensatory education remedy for Student, I will order DCPS to fund LMB services for Student, not to exceed 400 hours of instruction, as may be recommended by LMB to get Student to a reading level no less than one year below Student's current school grade.

ORDER

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

ORDERED:

1. Within 10 school days of this decision, DCPS shall ensure that Student's IEP is revised to provide for at least 15 hours per week of Specialized Instruction outside general education and to identify a suitable educational setting to implement the revised IEP;
2. Within 20 school days of this decision, DCPS shall ensure that Student's psychological evaluation is updated to provide supplemental data on Student's social, emotional and behavioral profile as may be needed to assess Student's need for IEP behavioral goals, related services and accommodations, including, without limitation, such assessment data as may be needed to determine whether Student has an ADHD impairment. Upon receipt of this data, Student's IEP team shall be promptly reconvened to review the additional information and to update Student's IEP as appropriate;
3. As compensatory education for the denials of FAPE determined in this decision, Petitioner may provide DCPS an updated report from Lindamood-Bell Reading Center with a recommendation for the type and amount of LMB instruction Student now requires, to reach a reading level approximately one year below Student's current school grade level. DCPS shall fund the recommended hours of LMB instruction targeted to reach that goal, not to exceed 400 hours total, and shall furnish transportation, if needed, for Student to participate in the LMB sessions and
4. All other relief requested by the Petitioner herein is denied.

Date: November 9, 2017

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).

cc: Counsel of Record
Office of Dispute Resolution
OSSE - SPED
DCPS Resolution Team