



**JURISDICTION:**

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on September 25, 2017, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 810 First Street, N.E., Washington, D.C. 20003, in Hearing Room 2006.

**BACKGROUND AND PROCEDURAL HISTORY:**

The student or (“Student”) is age \_\_\_\_\_ and in grade \_\_\_\_\_.<sup>2</sup> Student resides with Student’s parent in the District of Columbia and is a child with a disability pursuant to IDEA with a disability classification of specific learning disability (“SLD”). Student attends a District of Columbia Public Schools (“DCPS”) high school (“School A”). DCPS is the student’s local educational agency (“LEA”).

Student’s mother (“Petitioner”) filed the current due process complaint on July 25, 2017, alleging DCPS denied the student a free appropriate public education (“FAPE”) by failing to, inter alia, propose an appropriate individualized educational program (“IEP”) for the student.

The parties participated in a resolution meeting, and did not resolve the complaint. The parties did not mutually agree to proceed directly to hearing in this matter. The 45-day period began on August 25, 2017, and ends [and the Hearing Officer’s Determination (“HOD”) is due] on October 8, 2017.

The undersigned Impartial Hearing Officer (“Hearing Officer”) convened a pre-hearing conference (“PHC”) on the complaint on August 14, 2017, and issued a pre-hearing order (“PHO”) on August 17, 2017, outlining, inter alia, the issues to be adjudicated.

**RELIEF SOUGHT:**

Petitioner seeks as relief that the Hearing Officer order DCPS to convene a meeting to develop an appropriate IEP to include services outside the general education setting for all academic classes and specials, present levels of performance, goals in written expression, and increase behavior support services to 120 minutes per month. Petitioner requests that DCPS fund an independent functional behavior assessment (“FBA”) and comprehensive psychological evaluation and fund reasonable compensatory education.

**LEA Response to the Complaint:**

DCPS filed a timely response to the complaint on August 4, 2017. DCPS denies that there has been any failure to provide the student with a FAPE. DCPS asserts that on March 10, 2017, the

---

<sup>2</sup> The student’s current age and grade are indicated in Appendix B.

student's IEP was amended to include 20 hours per week of specialized instruction and 90 minutes per month of behavior support and the IEP is appropriate. Specifically, DCPS asserts that the IEP's goals were based on assessments, observations, and the student's academic needs to enable the student to access the general educational curriculum. DCPS asserts that DCPS conducted a triennial psychological evaluation on April 4, 2016, and did not complete a FBA or BIP because they were not warranted. The LEA asserts that the student did not meet the criteria for extended school year ("ESY") services.

**ISSUES:**<sup>3</sup>

The issues adjudicated are:

1. Whether the LEA denied the student a FAPE by failing to develop an appropriate IEP for the student on or about March 10, 2017, March 28, 2017, and April 3, 2017, because the IEP: (a) lacked goals, present levels of performance, and specialized instruction outside the general education setting in the area of written expression; (b) lacked specialized instruction outside the general education setting on a full time basis, and (c) lacked appropriate goals in math to address remediation of basic math skills, and (d) lacked appropriate goals in reading to address decoding skills.
2. Whether the LEA denied the student a FAPE by failing to conduct a comprehensive psychological evaluation that included cognitive assessment, social emotional assessment and functional behavior assessment/behavior intervention plan, at the student's triennial evaluation in 2016.
3. Whether the LEA denied the student a FAPE by failing to consider and provide the student with ESY services during the summer of SY 2016-2017.

**RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1 through 28 and Respondent's Exhibits 1 through 10) that were admitted into the record and are listed in Appendix A.<sup>4</sup> Witnesses' identifying information is listed in Appendix B.<sup>5</sup>

---

<sup>3</sup> The Hearing Officer restated the issues at the outset of the hearing and the parties agreed that these were the issues to be adjudicated.

<sup>4</sup> Any items disclosed and not admitted or admitted for limited purposes were noted on the record and summarized in Appendix A.

<sup>5</sup> Petitioner presented two witnesses: Petitioner and an educational advocate employed by the law firm representing Petitioner. Respondent presented three witnesses: a DCPS psychologist and two special education teachers.

## **SUMMARY OF DECISION:**

Petitioner established a prima facie case with regard to issue #1 and thus, Respondent held the burden of persuasion on that issue. Respondent did not sustain the burden of persuasion by a preponderance of the evidence on issue #1. Petitioner had both the burden of production and persuasion on issues #2 and #3. Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on these issues. The Hearing Officer grants Petitioner's request for a independent comprehensive psychological evaluation and directs DCPS to convene an IEP meeting to update the student's IEP and then to review the independent evaluation and review and revise the student's IEP as appropriate. The Hearing Officer also grants the student compensatory education in the amount of 65 hours of tutoring and 15 hours of counseling/behavior support services.

## **FINDINGS OF FACT:<sup>6</sup>**

1. Student resides with Petitioner in the District of Columbia and is a child with a disability pursuant to IDEA with a disability classification of SLD. (Petitioner's Exhibit 9-1).
2. Student attends School A, a DCPS school, where Student began attending at the start of school year ("SY") 2016-2017. Prior to attending School A, Student attended a different DCPS school, at which Student had an IEP developed on April 5, 2016. That IEP listed a disability classification of multiple disabilities ("MD") including SLD and other health impairment ("OHI") based on a diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD") (Petitioner's Exhibit 5-1).
3. DCPS conducted an initial comprehensive psycho-educational evaluation of the student in July 2010. The evaluation revealed Student had a borderline full-scale IQ score of 71. Student's academic achievement scores were low to low average and approximately one grade level below the grade the student was in at the time of the evaluation. The evaluation included social, emotional and behavioral assessments and included diagnoses of ADHD and Oppositional Defiance Disorder ("ODD"), and Rule Out for Depressive Disorder Not Otherwise Specified. (Petitioner's Exhibit 12-1, 12-4, 12-8, 12-9, 12-10, 12-11, 12-12, 12-18)
4. In June 2010, DCPS conducted a speech-language evaluation. Student did not present with a speech and language disorder and did not qualify for speech and language services. (Petitioner's Exhibit 11-1,11-4)
5. In April 2016, DCPS conducted a triennial psychological evaluation. At the time of the evaluation, Student's IEP prescribed 20 hours per week of specialized instruction outside

---

<sup>6</sup> The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within a parenthesis following the finding. A document is noted by the exhibit number. The second number following the exhibit number denotes the page of the exhibit (or the page number of the entire disclosure document) from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party's exhibit.

the general education setting in the core subject areas of reading intervention, English language arts and math. The psychological triennial evaluation included a review of Student's attendance and in school academic assessments. (Petitioner's Exhibit 14-1, 15-4)

6. The DCPS psychologist also conducted the Woodcock Johnson-IV ("WJ-IV"). The evaluation noted the student's reading standard score of 60, math standard score of 60 and writing standard score of 77. Student had made little if any academic progress in academic achievement from the time Student was evaluated in 2010. The psychologist did not conduct a cognitive assessment or assess Student's social, emotional or behavioral functioning. DCPS did not consider that additional assessments in these areas were warranted. The psychologist concluded Student continued to be eligible under the MD classification for SLD and OHI for ADHD. (Petitioner's Exhibit 14-1, 14-5)
7. Student's April 5, 2016, IEP was amended on April 6, 2016, to reduce the specialized instruction from 20 hours per week to 15 hours per week outside the general education setting and to prescribe 120 minutes per month of behavioral support services outside the general education setting. The IEP included goals in the areas of math, reading, and emotional, social and behavioral development. The IEP did not prescribe ESY services. (Petitioner's Exhibit 4-1, 4-10, 5-3, 5-4, 5-5, 5-6, 5-13)
8. On November 4, 2016, School A amended Student's April 5, 2016, IEP to edit the existing specialized instruction service setting. The disability classification listed on the front page of the IEP was changed from MD to SLD. The service hours in the IEP remained 15 hours per week outside the general education setting and 120 minutes per week of behavioral support outside the general education setting. (Petitioner's Exhibit 6-1, 6-10, 6-11)
9. School A addressed Student's attendance concerns with an attendance plan and Student met with the attendance counselor. The School A social worker designed incentives to get Student to attend school. School A teachers often called Student's parent during SY 2016-2017 about Student disrespecting teachers and Student taking pictures with a cell phone. (Petitioner's testimony)
10. School A had a behavior intervention plan ("BIP") in place to address the student's non-compliant and attention seeking behaviors. (Petitioner's 18-1)
11. On March 10, 2017, School A convened an IEP meeting at which Petitioner and her educational advocate participated. The team reviewed the student's academic performance and behavior. As a result of Petitioner stating that she was receiving calls from School A regarding the student's behavior, Petitioner and her advocate requested the student's special education services be increased and that School A conduct a FBA and develop a BIP to address Student's behavior and attendance. School A stated that a behavior contract would suffice. Petitioner and her advocate disagreed. (Witness 1's testimony)

12. It appeared from the data presented during the meeting held March 10, 2017, Student was operating six grade levels behind in math, reading and writing. There was discussion about Student not mastering basic math skills, having difficulty with multiplication and division, and at the time failing a number of classes. There was nothing about mastering basic math skills in Student's IEP and the team agreed to amend the IEP goals to include these areas and to address Student's decoding and writing skills. The team also agreed that the transition plan needed to be updated. (Witness 1's testimony, Petitioner's Exhibit 7-1, 7-2, 7-3, 7-4, 7-5)
13. During the March 10, 2017, meeting there was a discussion about the number of service hours the student needed and the advocate and parent asked for a full time IEP of 27.5 hours with all classes outside general education. School A agreed to increase the specialized instruction hours to 20 per week which School A considered a full time placement. The team agreed to update the IEP with the agreed upon changes and send Petitioner a draft IEP for review. The team agreed to meet again to review the draft with the agreed upon changes. (Witness 1's testimony, Petitioner's Exhibit 7-1, 7-2, 7-3, 7-4, 7-5)
14. On March 10, 2017, School A reviewed the criteria for whether Student qualified for ESY services and documented the determination that Student was not in jeopardy of losing any critical skills due to a break in services. The team reserved the right to revisit the decision based on Student's academic performance. (Respondent's Exhibit 7-1)
15. On March 13, 2017, School A had Student sign a "Behavior/Academic Contract" in which Student agreed to, among other things, complete all classwork, attend tutoring and achieve targeted grades in order to receive the stated incentives of cash and meals. (Petitioner's Exhibit 17-1)
16. On March 28, 2017, School A amended Student's IEP to change the present levels of performance ("PLOP"), made some changes in the annual math and reading goals and increased the specialized instruction to 20 hours per week outside the general education setting. There was however, a reading goal placed in both the math and emotional, social and behavioral development sections of the IEP. There was no writing goal(s) added. The behavioral support services were reduced from 120 minutes per month to 90 minutes per month. (Petitioner's Exhibit 8-1, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8, 8-9)
17. On March 30, 2017, Petitioner's educational advocate sent a letter to School A objecting to the amendment of the IEP prior to a meeting to review the IEP changes. The advocate expressed Petitioner's opposition to the reduction in behavioral support services, requested that an updated FBA be conducted and the student's BIP be revised. (Petitioner's Exhibit 22)
18. On April 3, 2017, School A again amended Student's IEP. The amendment page noted the previous March 28, 2017, amendments and also included a change to the secondary transition goals and activities. (Petitioner's Exhibit 9-1)

19. On April 12, 2017, School A convened an IEP meeting to confirm that all the changes to Student's IEP that had been discussed and agreed to at the March 10, 2017, meeting were made, to make corrections if warranted and determine if additional data was needed. The team agreed that a updated psychological evaluation would be conducted as well as an updated FBA and a new BIP would be developed if warranted. Petitioner agreed to provide written consent for the evaluation(s). Petitioner and her advocate disagreed with the reduction in behavioral support services. (Petitioner's Exhibit 10-1, 10-2, Petitioner's Exhibit 24-1)
20. Although the team agreed to goals Petitioner's advocate proposed at the March 10, 2017, meeting, the amended IEP did not have all the changes the team agreed to at the March 10, 2017, meeting. The annual goals do not reflect basic goals in reading, math and written expression to address the student's severe academic deficits. School A explained to the advocate that Student's case manager was unable to incorporate all the requested changes due to technical problems in the IEP data system. To date, Petitioner has not received an IEP with all the requested changes that were agreed to at the meetings held on March 10, 2017, and April 12, 2017. (Witness 1's testimony, Petitioner's Exhibit 9)
21. During SY 2016-2017 Student was in a self-contained special education program. Student did not have behaviors that hindered Student from completing assignments. However, Student's attendance impacted Student completing assignments on time. Student was at school about 3 days per week on a regular basis. Student's special education teachers did not believe Student was in need of ESY services during summer 2017, as Student was not in danger of losing skills over the summer. (Witness 3's testimony, Witness 4's testimony)
22. The School A psychologist repeatedly attempted to complete the psychological evaluation the team that met April 12, 2017, agreed would be conducted. On numerous occasions Student promised to come for the evaluation but never showed up. The evaluation has not yet been completed. (Witness 2's testimony)
23. The psychologist called Petitioner and stated he was having a difficult time getting Student to participate in the evaluation. Petitioner explained to Student the purpose of the evaluation. Student was reluctant to engage in the evaluation but has recently acquiesced. (Peticioner's testimony)
24. Petitioner's educational advocate proposed a compensatory education plan for the student that proposed that the student receive 65 hours of tutoring and 15 hours of counseling/behavior support services to compensate for the alleged denials of FAPE. (Witness 1's testimony, Petitioner's Exhibit 26)

## CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (“FAPE”).

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--  
(a) Are provided at public expense, under public supervision and direction, and without charge;  
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child’s right to FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS’] procedural violations affected the student’s substantive rights.” *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case, as noted in the PHO and at the hearing, Respondent held the burden of persuasion on issue #1. Petitioner held the burden of persuasion on issue #2, and issue #3. <sup>7</sup> The normal standard is preponderance of the

---

<sup>7</sup> DC Code § 38-2571.03 (6) provides:

(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

(i) Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement; provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public

evidence. See, e.g. *N.G. v. District of Columbia* 556 F. Supp. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

**ISSUE 1:** Whether the LEA denied the student a FAPE by failing to develop an appropriate IEP for the student on or about March 10, 2017, March 28, 2017, and April 3, 2017, because the IEP: (a) lacked goals, present levels of performance, and specialized instruction outside the general education setting in the area of written expression; (b) lacked specialized instruction outside the general education setting on a full time basis, and (c) lacked appropriate goals in math to address remediation of basic math skills, and (d) lacked appropriate goals in reading to address decoding skills.

**Conclusion:** Respondent did not sustain the burden of proof by a preponderance of the evidence on this issue.

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

Under the recent Supreme Court decision, *Andrew F. v. Douglas County School District Re-1*, a district must provide "an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." 137 S. Ct. 988, 999 (2017).

"The IEP is the "centerpiece" of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (quoting *Polk v. Cent. Susquehanna Intermediate Unit* 16, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits." *Schaefer v. Weast*, 554 F.3d 47  
The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials, informed by their own expertise and the views of a child's parents or guardians; any re-view of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.

Removing a child with disabilities "from the regular education environment occurs only when

---

agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

Petitioner alleges the student's IEP (a) lacked goals present levels of performance, and specialized instruction outside the general education setting in the area of written expression; (b) lacked specialized instruction outside the general education setting on a full time basis, and (c) lacked appropriate goals in math to address remediation of basic math skills, and (d) lacked appropriate goals in reading to address decoding skills.

The evidence demonstrates that at the March 10, 2017, meeting School A agreed to change the student's IEP goals as requested by Petitioner, through her advocate. School A completed two amendments to the student's IEP dated March 28, 2017, and April 3, 2017, and then convened an IEP meeting with Petitioner and her advocate on April 12, 2017.

The evidence demonstrates that although some of the changes to the IEP that were agreed upon by the team at the March 10, 2017, meeting were in the amended IEP that was provided to Petitioner, Petitioner never agreed for the IEP to be amended without the meeting. Petitioner has not received an IEP since the meeting with the agreed upon changes to the IEP to include PLOP and goals for written expression and appropriate goals in reading and math. Because Petitioner has not been provided an IEP that reflects these agreed upon changes, there is no indication there is an IEP from which Petitioner can be assured Student is receiving appropriate services. Consequently, the Hearing Officer concludes that because a finalized IEP with these changes has not been developed and provided, the Hearing Officer concludes that the parent's opportunity to participate in the decision-making process regarding provision of FAPE had been impeded.

The evidence demonstrates that the team agreed for the student's specialized instruction to be increased to 20 hours per week at the March 10, 2017, meeting. Although Petitioner asserted the student should have all instruction and services outside general education, there was insufficient evidence presented that the student is in need of more than the 20 hours of specialized instruction outside the general education setting.

**ISSUE 2:** Whether the LEA denied the student a FAPE by failing to conduct a comprehensive psychological evaluation that included cognitive assessment, social emotional assessment and functional behavior assessment/behavior intervention plan, at the student's triennial evaluation in 2016.

**Conclusion:** Petitioner did not sustain the burden of proof by a preponderance of the evidence on this issue.

34 C.F.R. § 300.303(a) makes clear that, "A local education agency ("LEA") shall ensure that a re-evaluation of each child with a disability is conducted...if the child's parents or teacher requests a re-evaluation." and that the reevaluation must be conducted at least once every three

years. Requests for evaluations/re-evaluations are to be conducted in a timely manner. *Herbin v. Dist. of Columbia*, 362 F. Supp. 2d. 254, 259, 261 (D.C.C. 2005).

Petitioner asserts that when DCPS conducted Student's triennial reevaluation in 2016 that DCPS should have, but did not, conduct cognitive and social, emotional and behavioral assessments.

34 C.F.R. §300.304 provides evaluation procedures that require that the agency use a variety of assessment tools, and it specifically states that the agency must not use any single measure or assessment as the sole criterion for determining if the child is a child with a disability and determining an appropriate program.<sup>8</sup>

The evidence demonstrates that DCPS conducted a reevaluation that included a review of existing data on the student and included an academic achievement assessment. DCPS specifically stated that no additional assessments were necessary. Although Petitioner asserts that Student's triennial reevaluation should have included cognitive and social, emotional and behavioral assessments, there is no specific requirement pursuant to the IDEA or the DCMR<sup>9</sup> that a student's cognitive and social emotional functioning be assessed during reevaluation.

There was insufficient evidence presented that any additional assessments were warranted at the time of Student's triennial evaluation in 2016. Consequently, the Hearing Officer concludes that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

The team agreed that DCPS would conduct a psychological evaluation of the student and would conduct a FBA at the April 12, 2017, meeting. The evidence demonstrates that DCPS has attempted to evaluate the student but the student has been evasive. Given that there has been a denial of FAPE determined in the issue above, and because there had been a significant lapse in

---

<sup>8</sup> 34 C.F.R. § 300.304 Evaluation procedures. (a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct. (b) Conduct of evaluation. In conducting the evaluation, the public agency must— (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining— (i) Whether the child is a child with a disability under § 300.8; and (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (c) Other evaluation procedures. Each public agency must ensure that— (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

<sup>9</sup> DCMR 5E § 3005 As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP team, including other qualified professionals, as appropriate, shall: (a) review existing evaluation data on the child, including: (1) evaluations and information provided by the parents of the child; (2) current classroom-based assessments and observations; and (3) observations by teachers and related service providers; and (b) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine: (1) whether the child has a particular category of disability under this chapter or, in the case of a reevaluation of a child, whether the child continues to have such a disability; (2) the present levels of performance and educational needs of the child; (3) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and (4) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

providing Student an updated and accurate IEP, the Hearing Officer concludes that a reasonable remedy is to allow Petitioner an independent psychological evaluation, even though DCPS has in good faith attempted to evaluate the student.

**ISSUE 3:** Whether the LEA denied the student a FAPE by failing to consider and provide the student with ESY services during the summer of SY 2016-2017.

**Conclusion:** Petitioner did not sustain the burden of proof by a preponderance of the evidence on this issue.

34 C.F.R. 300.106 (a) provides: (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with Sec. Sec. 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

The evidence demonstrates that at the meeting held March 10, 2017, the IEP team specifically addressed whether the student was in need of ESY services and documented that the student was not in need of those services. Although the meeting notes indicate that the team could revisit the issue, and Petitioner's advocate testified she expected that ESY was to be readdressed, there was no clear intention expressed by the full IEP team to do so. The student's special education teachers credibly testified that the student was not in need of ESY services.

Although Petitioner asserted the student should have been provided ESY services, the Hearing Officer did not conclude based on the evidence presented that the student met criteria for ESY services. Petitioner consultant's testimony alone on this issue was insufficient to conclude the student qualified for ESY services. Consequently, the Hearing Officer concludes that the burden on this issue was not met.

**Remedy:**

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.)

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award 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." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific

educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." Id. at 526.

The Hearing Officer concluded based on the evidence that as of April 2017, Petitioner was not provided an IEP for the student that incorporated the changes in IEP goals and services that were agreed to at the meeting held March 10, 2017.

Petitioner requested that the student be provided compensatory education in the amount recommended by Petitioner's educational advocate. The Hearing Officer concludes that the amount of compensatory education requested is reasonable to compensate the student for being without an updated IEP since April of last school year.

**ORDER:** <sup>10</sup>

1. DCPS, shall within ten (10) school days of the issuance of this order, provide Petitioner authorization for an independent comprehensive psychological evaluation at the OSSE prescribed rate.
2. DCPS shall, within ten (10) school days of the issuance of this order, convene an IEP meeting and update the student's IEP to include goals for written expression, and updated and appropriate goals in reading and math.
3. DCPS shall, within twenty (20) school days of the issuance of this order, conduct an FBA of the student.
4. DCPS shall, within ten (10) school days of its receipt of the independent evaluation, convene an IEP meeting to review the independent evaluation and review and revise the student's IEP as appropriate, and if it has not already done so, shall review the student's updated FBA and determine if an updated BIP is warranted.
5. DCPS shall, within ten (10) school days of the issuance of this order, provide Petitioner authorization for compensatory education in the amount of 65 hours of independent tutoring and 15 hours of independent counseling/behavior support services at the OSSE prescribed rates.
6. All other relief requested by Petitioner is denied.

---

<sup>10</sup> Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

**APPEAL PROCESS:**

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

*/S/ Coles B. Ruff*

---

**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: October 8, 2017**

Copies to:     Counsel for Petitioner  
                  Counsel for LEA  
                  OSSE-SPED {[due.process@dc.gov](mailto:due.process@dc.gov)}  
                  ODR {[hearing.office@dc.gov](mailto:hearing.office@dc.gov)}  
                  [contact.resolution@dc.gov](mailto:contact.resolution@dc.gov)