OSSE
Office of Dispute Resolution
October 14, 2020

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution

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Confidential

Parents on behalf of Student[1]	)	**Case No. 2020-0109**
	)	
Petitioner,	)	**Hearing Dates: September 30, 2020 and**
	)	**October 1, 2020**
v.	)	**Conducted by Video Conference**
	)	**Date Issued: October 13, 2020**
District of Columbia Public Schools,	)	
	)	**Terry Michael Banks,**
Respondent.	)	**Hearing Officer**

AMENDED HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioner is the mother of an X-year-old student ("Student") attending School A. On May 22, 2020, Petitioner filed a Due Process Complaint Notice ("*Complaint*") against the District of Columbia Public Schools ("DCPS") alleging the denial of a free appropriate public education ("FAPE"). On June 2, 2020, DCPS filed *District of Columbia Public School's Response to Parent's Administrative Due Process Complaint Notice* ("Response"), contesting each of the claims in the *Complaint*.

SUBJECT MATTER JURISDICTION

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. Section 1400 *et seq*., its implementing regulations, 34 C.F.R. Sect. 300 *et seq*., Title

[1] Personally identifiable information is attached in the Appendix and must be removed prior to public distribution.

38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

PROCEDURAL HISTORY

Petitioner filed the *Complaint* on May 2, 2020 alleging that DCPS denied Student a FAPE by (1) failing to evaluate Student for assistive technology ("A/T") from Spring of 2016 through November 2017 and by failing to provide A/T on Student's April 2016 and April 2017 IEPs, (2) failing to provide Student physical therapy on her/his amended January 2019 IEP, (3) failing to implement the April 2017 Individualized Education Program ("IEP") during the first 15 days of the 2017-2018 school year, (4) failing to implement Student's May 2018 and May 2019 IEPs by failing to provide transportation services, and (5) failing to implement her/his May 22, 2019 and May 11, 2020 IEPs by failing to provide prescribed speech and language services.

On June 2, 2020, DCPS filed its *Response*, asserting that (1) the statute of limitations bars the claim involving A/T services from Spring 2016 through November 2017, the failure to provide A/T services on the April 20, 2016 and April 14, 2017 IEPs, and the failure to implement the April 14, 2017 IEP,[2] (2) Student's May 11, 2020 IEP is appropriate and was implemented to the extent possible under the COVID-19 restrictions, (3) Student has been provided physical therapy consultation services but has never required direct physical therapy services, citing a December 14, 2018 physical therapy assessment, (4) the Office of the State Superintendent of Education ("OSSE") is responsible for transportation services; and (5) DCPS provided the speech services prescribed in the May 22, 2019 and May 11 2020 IEPs, and services prescribed in the May 11, 2020 IEP were offered through a teletherapy format that Student did not attend.

The parties participated in a resolution meeting on June 4, 2020, that did not result in a settlement. The resolution period ended on June 21, 2020. A prehearing conference was held on July 1, 2020. Petitioner's counsel was invited to submit a memorandum of points and authorities on the applicability of the statute of limitations to all allegations in the *Complaint* occurring more than two years prior to the filing date and as to DCPS' obligation to provide transportation to Student, on or before July 31, 2020. The Prehearing Order was issued on July 3, 2020.

On July 31, 2020, Petitioner filed *Petitioner's Brief of Statute of Limitations and Transportation Issues* ("*Petitioner's Brief*"). Petitioner argued that in November 2017, DCPS denied access for her educational advocate to observe Student in his/her classroom to discern her/his need for A/T. Petitioner appealed this denial and was rewarded with a judgment by the U.S. District Court on July 15, 2019. The advocate was then able to observe Student on September 23, 2019. Petitioner contends that the failure to allow the observation in November 2017 prevented her from understanding "the harms to [Student] from DCPS' longstanding failure to provide AT…" On August 7, 2020, DCPS filed *District of Columbia Public Schools' Motion to Dismiss Time Barred Claims and Response to Petitioner's Brief* ("*Motion*"). DCPS cited 34 C.F.R. Section 300.511(f) and asserted that Petitioner's allegations did not qualify as allowable exceptions to the two-year statute of limitations. On

[2] DCPS noted that Petitioner filed a due process complaint on August 14, 2017 that did not raise these issues.

August 17, 2020, I issued an Order on Cross Motions barring all claims in the *Complaint* relating to events prior to May 22, 2018 and deferring a ruling on the provision of transportation services until the issuance of the HOD.

The first scheduled hearing dates of August 24-26, 2020 were continued due to a death in Petitioner's family. The due process hearing was conducted on September 30 and October 1, 2020 by video conference and was open to the public. Respondent's *Disclosure Statement*, filed August 17, 2020, contained a witness list of eight witnesses and documents R-1 through R-35. Petitioner filed no objection to Respondent's disclosures, and Respondent's Exhibits R-1 through R-35 were admitted into evidence. Petitioner's Disclosures were also submitted on August 17, 2020, containing a list of eight witnesses and documents P1-P53. Respondent filed no objections, and Petitioner's Exhibits P1-P53 were admitted into evidence. The parties stipulated that Issues 4 and 5 in the Prehearing Order were withdrawn with prejudice.

Petitioner presented as witnesses in chronological order: Witness A, Witness B, and Petitioner. Petitioner offered Witness A as an expert in special education programming and IEP development, and Witness B was offered as an expert in physical therapy. Respondent's counsel did not object to the qualifications of either witness, and I allowed opinion testimony from each of these witnesses. Respondent presented only Witness C, and Petitioner did not object to the witness' testifying as an expert in physical therapy. After the close of testimony, the parties provided oral closing arguments.

ISSUES

As identified in the *Complaint*, the Prehearing Order, and the Order on Cross Motions, the issue presented in this hearing is whether DCPS denied Student a FAPE by failing to provide Student physical therapy on his/her amended January 2019 IEP.

FINDINGS OF FACT

1. Student is X years old and was in grade F at School A during the 2019-2020 school year.[3]

2. On April 24, 2015, when Student was in grade H at School B and classified Other Health Impaired ("OHI"), DCPS conducted an IEP Annual Review meeting.[4] In the Area of Concern for Health/Physical ("Physical"), the Present Levels of Academic Achievement and Functional Performance ("PLOPs") include the following:

> [Student] is able to ambulate independently throughout the hallway and on even and uneven surfaces, however, [s/he] requires hand held assistance from an adult most times due to [her/his] impulse to run off/away. [S/he] is able to ascend/descend stairs independently using a step-to foot pattern while holding on to one rail for support and is beginning to use an alternating floor pattern

[3] Petitioner's Exhibit ("P:") 1, exhibit pages 1 and 5, and electronic pages 2 and 5. The exhibit number is followed by the exhibit page number and the electronic page number in the disclosure in parentheses, i.e., P1: 2, 5 (2, 50).
[4] P11:1 (90).

> with ascending stairs… [Student] is able to throw a ball forward towards a person 5-7 ft. but with poor directionality. [S/he] is also able to catch a ball thrown from a 5 ft. distance, but is most successful when [s/he] is paying full attention to the task – to the ball coming towards ████. [S/he] is able to use 3-4 pieces of the playground equipment independently and safely, and requires minimal/moderate assistance with using some of the higher level climbing equipment. Again, [s/he] requires close supervision at all times while on the playground due to behavioral concerns with hitting/scratching [her/his] peers. [Student] continues to exhibit no independent jumping skills.[5]

The goals were (1) to ascend/descend 2 flights of stairs using an alternating gait pattern while holding on to one rail for support, demonstrating good foot placement and good safety awareness, (2) to jump up 2 inches in the air and jump down from a 4-inch-high platform independently, (3) to demonstrate independent functional mobility and safety with using the outdoor playground equipment.[6]

In Motor Skills/Physical Development ("Motor"), the PLOPs were that "[Student] is able to feed her/himself with supervision, is able to use a tripod grasp when grasping a large crayon, can manipulate through an iPad, but requires adult supervision or assistance with most tasks." The goals were to (1) demonstrate improved visual-motor skills by copying vertical and horizontal lines, circles, crosses, and diagonal lines, (2) participate in fine motor activities, visually attend, and follow directions for up to 5 minutes, (3) string 10 beads with only verbal redirection, and (4) open and close all fasteners (buttons, snaps, zippers, and laces) with minimum assistance in 3/5 consecutive therapy sessions.[7]

The team prescribed 24.5 hours per week of specialized instruction outside of general education, six hours per month of Speech-Language Pathology, three hours per month of physical therapy services per month ("PT"), and four hours of occupational therapy services per month ("OT"), all outside general education.[8]

3. On July 22, 2015, DCPS amended Student's IEP to assign him/her a dedicated aide.[9] In Consideration of Special Factors, it was noted that "[Student] frequently scratches an hits other children. [S/he] also attempts to run out of the room and runs around the classroom if an adult is not sitting right next to [her/him]. We have a token economy system and keep her/him in close proximity of an adult at all times to mitigate this behavior."[10] Otherwise, his/her services were unchanged from the previous IEP.[11]

4. On November 10, 2015, when Student attended School B in grade A, DCPS amended Student's IEP to "Change to the Least Restrictive Environment due to student's

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[5] *Id*. at 10 (99).
[6] *Id*.
[7] *Id*. at 11-12 (100-01).
[8] *Id*. at 13 (102).
[9] P12:1 (108).
[10] *Id*. at 2 (110).
[11] *Id*. at 13 (121).

age."[12] His/her Physical and Motor goals were unchanged from the April 24, 2015 IEP.[13] His/her services were also unchanged from the previous amendment.[14]

5. On April 20, 2016, conducted an IEP Annual Review meeting.[15] Student's Physical PLOPS were unchanged, but the only goal was that s/he would "continue to access [her/his] educational environment safely, i.e., walking to and from classes, ascending/descending stairs, moving through the hallways, participating in PE class, and accessing the playground as reported or observed by staff/therapist."[16] Student's Motor PLOPs were unchanged. The previous goals involving copying lines and shapes and manipulating fasteners were deleted; the goals involving bead stringing and attending and following direction during fine motor tasks remained.[17] Student's specialized instruction outside general education was increased from 24.5 to 25 hours per week, direct PT services were terminated, and 30 minutes per month of consultative PT services were added.[18]

6. On December 14, 2018, Witness C completed a Physical Therapy Reassessment Report for DCPS.[19] Witness C reported that when her/his first IEP was developed in 2012, Student received 60 minutes per week of PT. On April 24, 2015, direct OT services were reduced to 120 minutes per month, and eliminated on April 22, 2016, while 30 minutes per month of OT consultation were provided. On April 22, 2016, Physical Therapist A reported that "[Student] is currently demonstrating competent functional mobility while moving throughout [his/her] school environment and for all activities. [S/he] does however require cueing on the stairs and cueing to motivate [her/him] to participate in movement activities at times." On May 29, 2018, Therapist B reported that "[Student] has the physical ability to complete functional mobility in school with supervision. [Student] exhibits decreased safety awareness, decreased ability to focus on classroom activities, and decreased tolerance for non-preferred activities, which impacts [her/his] safety and independence. [Student] has improved safety when [s/he] is provided with 1:1 assistance to compete functional tasks at school."[20]

Witness C reported that:

> [Student] was observed outside entering and exiting the school. [S/he] was able to walk up and down the curbs and stairs safely without physical assistance or rail hold, but then [s/he] tried to run into the street and had to be redirected by [his/her] dedicated aide for safety. When it was time to go inside, [s/he] dropped to the ground and did not want to get up, requiring much coaxing to return indoors. [Student] laughed when [his/her] dedicated aide chased [her/him] and ran up and down the ramps to get away. When observed in speech therapy sessions, [Student] walked away and dropped to the floor

[12] P13:1 (128).
[13] *Id*. at 10-12 (138-40).
[14] *Id*. at 13 (141).
[15] P14:1 (146).
[16] *Id*. at 9 (155).
[17] *Id*. at 10 (156).
[18] Id. at 11 (157).
[19] P8:1 (69).
[20] *Id*. at 2 (70).

on purpose instead of sitting in a chair to do [his/her] work. When [her/his] classmates were in the gym playing on scooters, [Student] rolled across the floor and would not get up despite the therapist and [her/his] dedicated aide asking [her/him] to do so. [Her/his] classmates exited the gym through the door to the right to go to lunch and [Student] crawled to the door to the left, pushed it open, walked on [her/his] knees outside in the hallway and laughed when the therapist and dedicated aide approached.

Classroom Observations: [Student] can sit independently in a regular classroom chair at [her/his] desk for learning. [S/he] can walk independently in the classroom, navigating furniture and peers safely…

Motor Planning: [Student] can walk on uneven surfaces outside (such as grass, gravel or mulch) with supervision. For example, [s/he] walks in the garden in the front of the school, moving around holes, plants and other obstacles with supervision.

Postural Control: [Student] can sit independently on the floor or in a chair for learning. [S/he] can transfer from prone (on stomach) to all fours, tall kneeling (on knees), right half kneeling to standing independently.

Coordination: [Student] can run up and down a ramp outside of the school without falling.

Gross Motor Skills: [Student] can walk, run, jump, throw and kick a ball…

Endurance: [Student] can walk school-based distances. [S/he] has participated in 30-minute intervals of movement with the physical therapist…

Functional Level in the School Setting: [Student] walks with supervision in [her/his] classroom, hallways, and entry/exit points of [her/his] school (including stairs, ramps and curbs). [S/he] places two feet on each stair, preferring to lead with the left leg when going up the stairs and right leg when going down the stairs…

Transfers/Transitions: [Student] stands independently from a chair or the floor.

Cafeteria Skills: [Student] walks in the cafeteria and navigates the crowded space without bumping into peers or tables. [S/he] will purposefully reach for other students or staff members when walking.

Participation in Physical Education: [Student] receives 120 minutes per month of adaptive physical education. [Student] can run, jump, throw and kick a ball. [S/he] is working on catching a ball, skipping, side sliding, and hopping in adaptive PE…

Bus accessibility: [Student's] dedicated aide reports that [Student's] mother

> drops [her/him] off in a truck and [s/he] does not take the bus. He reports that [Student] can climb into the truck but needs [her/his] mother's help to get out of the truck because of the height of the vehicle.
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> Participation in Playground Activities: [Student] can run and jump on the playground. [Her/his] adaptive PE teacher, Teacher A, reports that [Student] will pick up a ball and throw it or kick it when it is placed. She states that [s/he] can run without difficulty and without losing balance, [s/he] jumps following modeling cues, and [s/he] is working on skipping.
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> Participation in field trips: Teacher B, the classroom assistant, reports that [Student] rides the bus and goes to Special Olympics with [her/his] classmates. She says that [s/he] normally runs around by does not participate in organized games while there.[21]

Witness C conducted a School Function Assessment. The stair subtest revealed that Student can move safely up and down a flight of stairs with use of the rail, but placed two feet on each stair instead of alternating legs on the stairs. On the travel subtest, Student ran up and down ramps, navigated curbs and was able to increase her/his pace. S/he needed supervision when in traffic areas. Student received a perfect score in maintaining and changing positions, indicating that s/he can sit in a chair for learning, stand from the floor, and get on/off the toilet without assistance. Witness C concluded that "[Student's] current gross motor skills do not negatively impact [his/her] ability to access the educational environment."[22]

7. On January 4, 2019, Examiner B completed a Report of Neuropsychological Assessment.[23] Examiner B noted that Student had a history of developmental delays and a history of Angelman's syndrome, hypoplasia of the corpus callosum, tethered cord repair, and seizures. At three years of age, s/he was still having difficulty walking, and was using a walker. S/he was diagnosed with Angelman's Syndrome at age four. Student began to have seizures in July 2017; s/he would stare off, be unresponsive, then collapse and start shaking for 2-3 minutes. This continued weekly until January 2018. S/he was reported to be able to walk by him/herself, but habitually tripped, and was unsteady climbing steps. S/he could feed him/herself, but was unable to use utensils properly. S/he could hold a pen, but could not draw a complete circle.[24]

During the evaluation, Examiner B observed that Student

> … [w]as able to ambulate independently to the testing room… Despite [his/her] generally positive affect, [s/he] sometimes appeared frustrated, disengaged, and reluctant to complete less preferred tasks [s/he] perceived as difficult, sometimes grabbing the test books, laying on the desk, placing [her/his] hands over [her/his] ears, trying to leave the room or turning away

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[21] *Id.* at 3-5 (71-73).
[22] *Id.* at 6-7 (74-75).
[23] P7 (55).
[24] *Id.* at (55-56).

> from stimuli and standing with [her/his] face toward the corner of the room… [S/he] regularly retreated to the corners of the office…"[25]

On the Mullen Scales of Early Learning ("MSEL"), Student's performance on tasks of visual reception was consistent with an age-equivalence of 23 months. In Fine Motor Skills, his/her score reflected an age-equivalence of 21 months. In the area of Expressive and Receptive Language Skills, Student was non-verbal and used some sign approximations/home sign with prompting. S/he did not use his/her device, which was not identified or described in the Report, for communication although it was available to her/him at all times. Despite his/her ability to follow familiar commands, Student had significant difficulty with receptive language and vocabulary.[26] On the Receptive One-Word Picture Vocabulary Test (ROWPVT-4), Student performed in the Extremely Low range and at an age equivalence of less than one year.[27] Examiner B opined that

> Overall, [Student's] neurocognitive profile is consistent with an *intellectual disability, moderate severity.* Given [her/his] cognitive and behavioral weaknesses, [Student] will continue to require significant support at home to complete daily tasks and in the classroom to make academic gains…From a neuropsychological standpoint, [Student's] presentation of intellectual challenges is consistent with the anticipated deficits associated with Angelman's syndrome and hypoplasia of the corpus callosum. Many individuals with Angelman's syndrome can have severe to profound intellectual disabilities, expressive language difficulties, aggressive behaviors, and poor attention. Overall, the evaluation results suggest generalized impairment and inefficiency in the coordination of different brain regions and systems to function as a smooth, integrated network…[28] [Student] will continue to benefit from *physical therapy* supports as provided in school.[29]

8. The record includes no IEP from January 2019.

9. On April 11, 2019, DCPS completed an IEP Progress Report.[30] Student was reported to be progressing on the object control goal: "[Student] is making good progress; [s/he] is able to throw an object to a wall with support. With support and guidance, [s/he] is able to pick up objects and put in a box." S/he was also reported to be progressing on locomotor movements: "[Student] can run 15 feet then stop and start running again. Working with jumping up and down and forward on command. Sometimes when telling [her/him] to jump, [s/he] will move in a bounce motion up and down, but will not lift [her/his] feet. [S/he] continues to make progress on this goal." Student was reported to have mastered the consultative goal of maintaining safety and independence with functional mobility in

[25] *Id*. at (58).
[26] *Id*. at (58).
[27] *Id*. at (61).
[28] *Id*. at (62)
[29] *Id*. at (64).
[30] Respondent's Exhibit ("R:") 15 and electronic page 150. The exhibit number is followed by electronic page numbers in the disclosure in parentheses, i.e., R15 (150).

school.[31]

10. On May 22, 2019, when Student was in grade E at School A, DCPS convened an IEP Annual Review meeting.[32] The Physical PLOPs were as follows:

> [Student] sits independently in a desk chair or on the carpet, transitions to standing independently and can walk in the classroom and hallways with supervision. [S/he] can enter and exit the school via curbs, ramps or stairs with supervision for cognition (such as to make sure [s/he] does not run into the street). [S/he] runs up and down the ramps at the entry of the school and in the hallways. [Student] can hold the rail and go up/down the stairs without physical assistance. [S/he] will drop to the ground for behavioral reasons and not because [s/he] has lost balance/lacks the physical strength to remain upright. With the presence of a one on one aide for cognitive deficits [s/he] is able to navigate the school environment. [S/he] requires 1:1 assistance at all times to maintain [her/his] safety and to ensure that [s/he] engages appropriately with peers.[33]

The baselines were (1) Student needs maximum support to perform ball skills on demand, (2) S/he will run for about 5 yard and stop sometimes and sit down, (3) Student has the physical ability to complete functional mobility in school with supervision, but exhibits decreased safety awareness, decreased ability to focus on classroom activities, and decreased tolerance to non-preferred activities, but has improved safety when s/he is provided with 1:1 assistance to compete functional tasks. The goals were (1) to improve ball skills (kicking, rolling, throwing, catching) moving from maximum support to minimum support from up to 10 feet and a count of 5, and (2) to improve endurance by running 10-25 yards without stopping going from maximum support to minimum support.[34]

The Motor baselines were (1) Student is able to maintain an upright position for 1-2 minutes at a time, fatiguing quickly and leaning back on the chair or against her/his arm, presents with poor endurance, often falling asleep during sessions, and can engage/visually attend in a coloring activity for 3-5 minutes when given sensory input throughout and adaptive tools, (2) Student is can complete the 5 step toileting routine when given maximal verbal cues, maximal physical blockers, and moderate physical assistance for personal hygiene and clothing management, and (3) Student is able to use a two handed approach and functional grasp patterns to open containers, fasteners, and puzzles with maximal physical assistance or hand over hand assistance. The goals were (1) to improve visual motor skills and postural control by maintaining an upright position for 2-3 minutes at a time while engaging in a coloring task for up to 5 minutes when given multi-sensory adaptations, adaptive tools, moderate verbal cues for visual attention and fading physical prompts, (2) to improve self-care skills by completing a 5-step toileting routine, and (3) to improve bilateral coordination and fine motor skills by using a two-handed approach and functional grasp patterns to open containers, manage fasteners, and complete puzzle tasks when given

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[31] *Id*. at (154).
[32] P 22:1 (314).
[33] *Id.* at 9 (322).
[34] *Id*. at 9-10 (322-23).

moderate gestural and verbal prompts as well as minimal physical assistance. There was also a consultative goal to develop and implement strategies to assist Student with maintaining safety and independence with functional mobility in school.[35]

The team prescribed 24.5 hours per week of specialized instruction and 2 hours per month of adapted physical education, six hours per month of speech-language pathology services, four hours per month of OT services, all outside physical education, 30 minutes per month of consultative PT services, and a dynamic voice output communication device.[36]

11. On June 14, 2019, DCPS completed an IEP Progress Report.[37] Physical Therapist D reported that Student had mastered the consultative goal of functional mobility:

> This therapist began working with [Student] in May. A review of the notes from the previous therapist indicated that [Student] had mastered this goal. Clinical observation and consultation with [the] educational team [were] provided. [Student] is able to walk independently in the classroom and hallways, move from the floor to a standing position with verbal and physical prompts sometimes needed to initiate activities. [Student] is able to walk up and down stairs with 1 hand on the rail and 1 foot on each step when going down and inconsistently places one foot on each step when going up. Parent shared at [his/her] most recent IEP meeting that [s/he] may need surgery on both lower extremities which could impact mobility skills.[38]

Student was reported to be progressing in ball skills: "[Student]… can kick a ball with prompting and run. With prompting, [s/he] can participate in a game utilizing various size balls. [S/he] will throw and roll the ball with prompting." S/he was also reported to be progressing on the endurance goal: "[Student] can run 10 yards without stopping. [S/he] is making good progress. Running more than 10 yards [s/he] needs physical prompting as well as short breaks."[39]

12. On July 30, 2019, Witness B completed a Physical Therapy Evaluation of Student.[40] Witness B made the following observations of Student's capabilities:

> [Student] is able to maintain an upright sitting position at a standard table and chair without additional supports… [Student] ambulates independently with a wide base of support, external rotation at the hips and knees, excessive pronation bilaterally, and decreased clearance in swing. [S/he] was noted to demonstrate protective stepping in all directions due to poor balance and to trip over changes in surface area due to decreased attention to [her/his] foot placement and poor clearance in swing while walking. [S/he] tripped multiple times today including the floor to the 1" mat, turning around and falling backwards off the top, having to be caught by this therapist. On the stairs,

[35] *Id*. at 12-13 (325-26).
[36] *Id*. at 14 (327).
[37] R16 (158).
[38] *Id.* at 161.
[39] *Id.*
[40] P9:1 (76).

> [Student] needs close supervision to contact guard assistance to ascend and descend safely. [S/he] used a step to pattern, placing both feet per step when descending with bilateral railings, [his/her] pace was slow, and [s/he] led with the right foot only. When ascending, [s/he] used [her/his] arms on bilateral railings to pull [her/himself] up vs. pushing up through [her/his] legs, and a step to pattern leading with the right, and placed one foot per step for 2 of the 9 stairs. Based on [her/his] gait pattern and instability on the stairs and in the clinic environment today, it does not appear that [s/he] would be able to access [her/his] school and community environments independently or safely. [Student] repeatedly laid down on the floor/mat when demonstrating fatigue and shortness of breath. [S/he] was able to roll over, to assume quadruped, and transition to tall kneel, but [s/he] could not rise to stand without pulling up on a stable object…
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> [Student] presents with fine motor coordination deficits compared to [her/his] same age peers. As per [her/his] IEP, [s/he] demonstrates delays in fine motor, visual motor, and school based self-help skills that affect [her/his] access to the school curriculum…[41]

On the Bruininks-Oseretsky Test of Motor Proficiency ("BOT-2"), Student scored four years below age equivalence in Bilateral Coordination, Balance, Running Speed and Agility, and Strength. Due to her/his gait pattern, Student has decreased endurance for walking long distances, and fatigue increases the risk of tripping and falling.

> ██ requires 1:1 supervision for balance and safety to complete [her/his] school-based tasks, increased time as compared to [her/his] peers, as well as use of the elevator, and frequent breaks to allow [her/his] respiratory rate and muscular endurance to recover after physical activities.
>
> [Student] demonstrates decreased functional static and dynamic balance. [S/he] keeps [his/her] arms out to side in a mid to high guard position with any dynamic balance activities. [S/he] requires increased time and assistance for most tasks including 2 hand support/railings to go up and down stairs, slower movement on uneven surfaces or if required to step over or go around objects in [her/his] path.[42]

Witness B recommended that Student receive 60 minutes per week of school-based physical therapy in two 30-minute sessions.[43]

13. On July 30, 2019, Witness C completed a Physical Therapy Assessment Review Report.[44] After recounting Witness B's findings and recommendations, Witness C made the following observations:

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[41] *Id*. at 3-4 (78-79).
[42] *Id*. at 6 (81).
[43] *Id*. at 7 (82).
[44] P10:1 (85).

[Student] sits independently in a regular classroom chair at [her/his] desk. [S/he] walks around the classroom, hallways and cafeteria with supervision for [her/his] cognitive status. [S/he] can run up and down the ramp leading to the entrance of the school. [Student] goes up/down a flight of stairs with rail support and placing two feet on each stair with adult supervision.

…[a]lternating [his/her] legs on stairs (placing on foot on each step was a goal set for [her/him] by the [Facility A] physical therapist, [Physical Therapist C], in 2012. This skill was practiced directly in school-based physical therapy until 4-22-16 when [s/he] was placed on consultative status by [Physical Therapist A]. With direct school-based physical therapy services for years, [s/he] did not meet the goal to consistently alternate legs on stairs, but [s/he] is safe when navigating stairs with two feet on each step and use of a rail.

[SLP A], [Student's] speech and language pathologist, reports… she has made it a point to have [her/him] use the stairs to go to her sessions (at the request of [Petitioner]) since [s/he] began at [School A] in 2017. [SLP A] states that [Student] alternates legs going up the stairs inconsistently with rail support to her room on the second floor. She states that [s/he] is able to go up and down the stairs with two feet on each step consistently using the rail safely for the past 2 school years. She has never seen [him/her] have a fall on the stairs but notes [s/he] will sit down on the stairs, and this seems to be related to behavior. [Occupational Therapist A], [Student's] occupational therapist, reports [s/he] can navigate stairs to and from her room for OT sessions. Both providers have been using a stroller to transition with [Student] this school year based on parent request.

[Teacher C], [Student's] teacher… states he has never seen [Student] fall and reports no concerns for [her/his] movement in the school. [Teacher C] states [Student] enjoys playing tag and running to be chased when they are outside. [Teacher B], the classroom assistant… for the 2018-19… and… 2019-20 school year, also reports she does not have concerns for [her/his] walking and moving in the school…

On 5/29/18, [Physical Therapist B] indicated that "[Student] has the physical ability to complete functional mobility in school with supervision. [Student] exhibits decreased safety awareness, decreased ability to focus on classroom activities, and decreased tolerance to non-preferred activities, which impacts [her/his] safety and independence. [Student] has improved safety when [s/he] is provided with 1:1 assistance to complete functional tasks at school."

[Student] navigates [her/his] school environment (classroom, hallways, cafeteria, entry/exit points, and stairwells) with supervision due to cognition. Though [s/he] uses a step-together pattern (placing tow feet on each stair) more consistently than an alternating pattern (placing one foot on each stair) with rail use when on stairs, [s/he] is safe and capable of moving between the floors of the building without physical assistance…

> The examiner administered the BOT-2 gross motor examination. Based on the interview with [her/his] SLP, [Student] has difficulty with multi-step commands, so it would be difficult to assess [her/his] true skill level on an examination such as this. For example, it asks the student to close [his/her] eyes and touch finger to nose four times, or it asks the student to stand on a balance beam with heel touching toe with arms crossed at chest and eyes closed. Furthermore, tasks on the BOT-2 do not measure school-based gross motor function. The examiner notes [Student] had difficulty stepping sideways over a balance beam, running, hopping, performing push-ups, sit-ups, wall sits and V-ups. Although [Student] has gross motor delays, [s/he] is fully functional to move in the school and can access [her/his] educational setting. Additionally, [Student] receives Adaptive Physical Education to practice jumping, running and other higher-level gross motor skills that were noted to be delay on this test. Finally, [Student] has not received direct school based physical therapy services since 2016… yet [s/he] still remains able to access [her/his] educational environment based on therapist observation and teacher/staff interviews. Therefore, [s/he] has been able to fully navigate the school setting for years without the need of direct school-based PT intervention.[45]

14. Witness A observed Student in the classroom on September 23, 2019. He testified that he observed Student being taken to the bathroom in a wheelchair.

15. On September 30, 2019, Witness C reported on a Service Tracker as follows:

> Therapist interviewed [Students'] teacher, [Teacher C], as well as [her/his] OT and SLP. The OT and SLP report that [Student] has a stroller at school but indicate no issues with [her/him] walking to and from their sessions. [Teacher C] stated that [Student] runs outside and plays tag with [her/his] dedicated aide, Mr. C. He states that [Student] likes to have others chase [her/him]. [Teacher C] said [her/his] class takes a movement break every hour to walk to go to the bathroom and [Student] participates without mobility concerns each hour… Aside from behavioral concerns, he does not have problems with [Student's] mobility. [Teacher C] states [Student] sits in [her/his] chair fine, walks to cafeteria and sits to eat food. He states [Student] has started climbing the red ladder on [the] playground. Based on this feedback, [Student] is able to move in [his/her] environment without need for extra strategies.[46]

16. On October 28, 2019, DCPS amended the May 22, 2019 IEP by including a description of the services Student requires on the school bus and nursing assistance.[47]

17. On November 1, 2019, Witness C reported on a Service Tracker as follows:

> Therapist met with LEA, teacher [Teacher C], OT [Occupational Therapist

[45] *Id*. at (86-87).
[46] R10 (97).
[47] P23:1, 22 (336, 357).

> A], mother and attorney at a meeting to discuss [Student's] IEP. Therapist explained that she reviewed [her/his] outpatient PT evaluation and that although [Student] does show gross motor delays, [s/he] does not have difficulty moving in the school. [Teacher C] explained [s/he] has not fallen this year and sits in a regular desk chair. Mother and advocate stated the outpatient PT review stated [s/he] should have a chair so that [her/his] feet are flat on the floor for postural support… Student has met [his/her] goal for physical therapy services as a consultation because [Student] is able to navigate [her/his] school setting with [her/his] dedicated aide, and [her/his] teacher reports no falls or concerns with mobility.[48]

18. On November 12, 2019, DCPS completed an IEP Progress Report.[49] In Physical, Student was reported to be progressing on the ball skills goal: "[Student] is able to catch a 6-inch playground ball thrown to her/him from 10 feet away an average of 40% of attempts and is able to make an accurate throw back over 10 feet an average of 40% of attempts." S/he was also reported to be progressing on his/her endurance goal: "When given a demonstration, [s/he] is able to run for 25 yards on ¾ attempts, but when given a verbal direction, [s/he] will not run."[50] On the consultative goal, the PT reported that

> [Teacher C, Teacher B, Occupational Therapist A, SLP A] and physical therapist observations indicate that [Student] is able to functionally move in [her/his] school environment with supervision. No strategies have been needed to enhance mobility because [s/he] sits independently in [her/his] chair, walks in classroom, hallways, cafeteria and playground without physical assistance alongside dedicated aide. Goal continues to be mastered.[51]

19. On December 3, 2019, Witness C reported on a Service Tracker as follows:

> Therapist observed [Student] transitioning with classmates from hallway to the classroom. [S/he] walked independently, [his/her] dedicated aide doffed [her/his] coat, and then [s/he] sat independently on the floor. [S/he] rolled on the floor then played with Legos in a left side-lying position then in sitting. [His/her] teacher, [Teacher C] reports no falls in the month of November. [His/her] OT, [Occupational Therapist A], reports that she has been using the stroller and elevator to transition to her room per parent request… Goal for PT continues to be mastered, as to no strategies have been needed to access school environment that relates to gross motor skills. Participation and motivation (per staff interviews) are limiting access to school tasks but not gross motor function.[52]

20. On January 2, 2020, Witness C reported on a Service Tracker as follows:

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[48] R10 (98).
[49] R11 (105).
[50] *Id*. at (109-110).
[51] *Id*. at (109).
[52] R10 (99).

> Therapist went to [Teacher C's] classroom to observe [Student] and collaborate with [her/his] teacher [Teacher C]… [Student] lowered to floor then returned to standing. [Student] walked around [her/his] classroom and tried to go to a painting station, needing to be redirected to task. [S/he] then walked on the carpet, saw a blanket on the ground and stepped over it to approach [her/his] teacher's desk. [S/he] then went back to the carpet and lowered to the ground without furniture hold, laid down on the Olaf pillow and rolled on the floor. [Teacher C] reports that [Student] is more tired and is sleeping more at school but has not had a change in [her/his] ability to sit, walk or move in the class and hallways. He reports that [Student] has not had any falls. No concerns noted with gross motor skills in school setting and goal continues to be met.[53]

21. On January 31, 2020, Witness C reported on a Service Tracker as follows:

> Therapist observed [Student] in cafeteria with classmates. [S/he] was able to sit independently in the chair and eat [her/his] salmon… [Her/his] dedicated aide and teacher's assistant [Teacher B] report no concerns for mobility nor falls. Student continues to meet goal for PT.[54]

22. On February 10, 2020, DCPS completed an IEP Progress Report.[55] The only change from the previous Progress Report related to the endurance goal: "[S/he] is able to run for 25 yards when running behind [her/him] for motivation on ¾ attempts. On command, [s/he] will run on an average of ¼ attempts."[56]

23. Petitioner testified that Student moves around independently at home, but sometimes on her/his knees. [S/he] cannot do stairs without assistance. When navigating in the community, the family uses a wheelchair, stroller, or push a tricycle to assist Student. Petitioner does not believe Student can run, jump, kick a ball, or walk without assistance from a dedicated aide.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, and this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows: The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

> 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: Where there is a dispute about the appropriateness of

[53] *Id*. at (100).
[54] Id. at (101).
[55] R12 (113).
[56] *Id*. at (117).

> 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.[57]

Here, DCPS bears the burden of persuasion on the issue of the appropriateness of the January 2019 IEP.[58]

Whether DCPS denied Student a FAPE by failing to provide Student physical therapy on her/his amended January 2019 IEP.

The Supreme Court's first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act ("EHA"), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.[59] The Court noted that the EHA did not require that states "maximize the potential of handicapped children 'commensurate with the opportunity provided to other children.'"[60] Rather, the Court ruled that "Implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child…[61] Insofar as a State is required to provide a handicapped child with a 'free appropriate public education,' we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction… In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."[62]

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.[63] The Tenth Circuit had denied relief, interpreting *Rowley* "to mean that a child's IEP is adequate as long as it is calculated to confer an 'educational benefit [that is] merely… more than *de minimis*."[64] The Court rejected the Tenth Circuit's interpretation of the state's obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

> … [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals

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[57] D.C. Code Sect. 38-2571.03(6)(A)(i).
[58] *Schaffer v. Weast*, 546 U.S. 49 (2005).
[59] 458 U.S. 176, 187 (1982).
[60] *Id*. at 189-90, 200
[61] *Id*. at 200.
[62] *Id*. at 203-04.
[63] *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).
[64] *Id*. at 997.

> may differ, but every child should have the chance to meet challenging objectives… It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.[65]

In *Endrew*, the Supreme Court held that an IEP must be designed to produce more than minimal progress in a student's performance from year to year:

> When all is said and done, a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to 'sitting idly… awaiting the time when they were old enough to drop out…' The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[66]

The sole issue in this case is whether DCPS denied Student a FAPE by failing to provide direct physical therapy services on his/her January 23, 2019 IEP.[67] In fact, there is no January 23, 2019 IEP in the record; Student's 2019-2020 IEP was developed on May 22, 2019. The term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.[68] School districts are not required to provide therapeutic services performed by a physician.[69] A district must include a particular service as a related service in an IEP only where that service is necessary for the student to benefit from special education.[70] In *In re: Student with a Disability*, the Hearing Officer upheld the removal of the services of a dedicated aide because there were other methodologies to allow the student to facilitate communication and benefit from special education.[71]

On the first IEP in the record, dated April 24, 2015, Student was noted to be able to ambulate independently in hallways, to use stairs using a step-together foot pattern, and use some playground equipment. S/he was provided three hours of PT services per month. In June 2015, s/he was provided a dedicated aide to mitigate behaviors including running "around the classroom if an adult is not sitting right next to ███." On April 20, 2016, Student's IEP eliminated PT services, but retained one goal: the only goal was that s/he would "continue to access [her/his] educational environment safely, i.e., walking to and from classes, ascending/descending stairs, moving through the hallways, participating in PE class, and accessing the playground as reported or observed by staff/therapist." Direct PT services were replaced with 30 minutes per month of PT consultation services.

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[65] *Id.* at 1000-01 (citations omitted).
[66] 137 S.Ct. at 1000-01.
[67] P1:2, 6 (7, 11).
[68] 34 C.F.R. §300.34 (a).
[69] 34 C.F.R. §300.34 (c)(5).
[70] *In re: Student with a Disability,* 65 IDELR 160 (ID. SEA 2015).
[71] *Id.*

Witness C completed the first physical therapy evaluation in the record. She found through observations and consultations that Student could engage in school related physical activities including, but not limited to, the abilities to sit independently in a regular classroom chair at [her/his] desk for learning, walk independently in the classroom, navigate furniture and peers safely, walk on uneven surfaces outside (such as grass, gravel or mulch) with supervision, transfer from prone to all fours, run up and down a ramp outside of the school without falling, throw and kick a ball, walk school-based distances, participate in 30-minute intervals of movement with the physical therapist, navigate stairs placing two feet on each stair, preferring to lead with the left leg when going up the stairs and right leg when going down the stairs, walk in the cafeteria and navigate the crowded space without bumping into peers or tables while reaching for other students or staff members when walking, and run and jump on the playground. On a School Function Assessment, Student ran up and down ramps, navigated curbs and was able to increase her/his pace. S/he received a perfect score in maintaining and changing positions, indicating that s/he can sit in a chair for learning, stand from the floor, and get on/off the toilet without assistance. Witness C concluded that "[Student's] current gross motor skills do not negatively impact [his/her] ability to access the educational environment."

Witness B made the most persuasive case for Student's need for PT services. Witness B conducted a Physical Therapy Evaluation in July 2019 and observed, *inter alia*, protective stepping in all directions due to poor balance and tripping "multiple times" over changes in surface area due to decreased attention to [her/his] foot placement and poor clearance in swing while walking, on the stairs, Student needed close supervision to ascend and descend safely using a step to pattern, Student repeatedly laid down on the floor/mat when demonstrating fatigue and shortness of breath, and s/he could not rise to stand without pulling up on a stable object. On the BOT-2, Student scored four years below age equivalence in Bilateral Coordination, Balance, Running Speed and Agility, and Strength. Due to [her/his] gait pattern, Student has decreased endurance for walking long distances, and fatigue increases the risk of tripping and falling. Witness B opined that Student requires one-to-one supervision for balance and safety to complete her/his school-based tasks, increased time as compared to her/his peers, as well as use of the elevator, frequent breaks to allow [her/his] respiratory rate and muscular endurance to recover after physical activities, increased time and assistance for most tasks including 2 hand support/railings to go up and down stairs, slower movement on uneven surfaces or if required to step over or go around objects in [her/his] path. Witness B recommended that Student receive 60 minutes per week of school-based physical therapy in two 30-minute sessions.

Petitioner also testified that while Student moves around independently at home, sometimes it is on her/his knees. She insisted that Student cannot use stairs without assistance, and the family uses a wheelchair, stroller, or pushes a tricycle to assist Student when in public. Petitioner does not believe Student can run, jump, kick a ball, or walk without assistance from a dedicated aide.

The school records submitted by the parties support DCPS contention that while Student's mobility is limited, s/he is sufficiently mobile to access services throughout the school environment. The record includes no objection by Petitioner when direct PT services were terminated four years ago. In his January 4, 2019 Report of Neuropsychological Assessment, Examiner B opined that Student "will *continue* to benefit from physical therapy

supports as provided in school," but Student had not received such services for nearly three years. Moreover, Examiner B observed that Student "was able to ambulate independently to the testing room," sometimes tried to leave the room, and regularly retreated to the corners of the office.

On a Progress Report on April 11, 2019, it was first reported that Student had mastered the consultative goal of maintaining safety and independence with functional mobility in school. The PT reported that Student could run 15 feet, then stop and start running again, but would not jump. On June 14, 2019, the Progress Report indicated that s/he could walk independently in the classroom and hallways, move from the floor to a standing position with verbal and physical prompts, and was able to walk up and down stairs with one hand on the rail and one foot on each step when going down and inconsistently placing one foot on each step when going up. Student was also reported to be able to kick a ball with prompting and was progressing on the endurance goal; s/he had progressed to be able to run 10 yards without stopping.

On the September 30, 2019 Service Tracker, his/her teacher reported that Student routinely runs outside, had no issues walking to and from session, runs and plays tag with her/his dedicated aide, likes to have others chase ███, sits in her/his chair fine, walks to the cafeteria, sits to eat food, and had started climbing the red ladder on the playground. On the November 1, 2019 Progress Report, Teacher C reported that Student had not fallen this year, sits in a regular desk chair, and Teacher C had no concerns about Student's mobility. Witness C reiterated that Student had met her/his consultative goal of being able to navigate her/his school setting with her/his dedicated aide. By November 12, 2019, Student was able to catch a 6-inch playground ball thrown to her/him from 10 feet away and to make an accurate throw an average of 40% of attempts. S/he had also improved to be able to run for 25 yards.

On December 3, 2019, Teacher C reported that Student had no falls during November. The January 2, 2020 Service Tracker reported that Student walked on the carpet, saw a blanket on the ground and stepped over it to approach the teacher's desk. S/he then went back to the carpet and lowered to the ground without furniture hold, laid down on the Olaf pillow and rolled on the floor. Teacher C reports that while Student appeared to be more tired and was sleeping more at school, there had been no change in her/his ability to sit, walk or move in the class and hallways. The report concerning Student's ability to navigate changes in floor surfaces and inability to stand without pulling up on a stable object refutes Witness B's findings to the contrary.[72] On January 31, 2020, Student's dedicated aide reported to Witness C that he had no concerns about Student's mobility or falling. Finally, on February 10, 2020, Student was running up to 25 yards 75% of the time with someone running behind her/him and 25% of the time on command.

Thus, Student's teachers and service providers at School A are unanimous in their belief that while s/he has physical limitations that slow her/him down, s/he has the ability to sit, stand from a seated or prone position, walk, run, and climb stairs one at a time well enough to access her/his academic environment. These reports include her/his teacher, her/his dedicated aide, her/his occupational therapist, and two physical therapists, including Witness C. As for Student's below age equivalence scores on the BOT-2, Witness C questioned the

[72] P9 (78-79).

relevance of those scores on at least two grounds. First, the BOT-2 employs multi-step commands, but Student's speech and language pathologist reported that Student "has difficulty following multi-step directions."[73] Second, Witness C testified that the functions Student was asked to perform on the BOT-2 -- such as closing his/her eyes and touching his/her finger to nose four times, or standing on a balance beam with heel touching toe with arms crossed at the chest and eyes closed -- are unrelated to the normal everyday activities students perform in school.

I conclude that DCPS has met its burden of proving that the failure to include PT services on Student's 2019-20 IEP did not constitute a denial of FAPE. For nearly three years, the termination of such services went unchallenged. Only Witness B's Physical Therapy Evaluation in July 2019 raised serious questions as to whether direct PT services needed to be reinstated. However, Witness B never observed Student in the school setting, and critical aspects of her evaluation tested functions unrelated to the daily activities in the school environment. While Witness B observed and examined Student on one occasion, the teachers and providers are with him/her daily and have no concern as to Student's ability to access his/her environment. For example, while Witness B considers Student B to be at-risk for constant falling, Teacher C, Student's teacher for two years, has never seen her/him fall,[74] and Student enjoys playing tag with his/her dedicated aide and running to be chased when they are outside.[75] Speech-Language Therapist A and Occupational Therapist A both reported on Student's ability to use stairs deliberately, but safely, and without falling.[76] I am persuaded by the unanimity of the reports by Student's teachers, a dedicated aide, and numerous related service providers, that Student is able to access her/his environment capably and safely.

RELIEF

For relief, Petitioner requested, *inter alia*,

1. An order requiring DCPS to fund compensatory education services for the lack of A/T services on Student's 2016 and 2017 IEPs;

2. An order requiring DCPS to convene an IEP Team Meeting to add 60 minutes of physical therapy to Student's January 16, 2019 IEP;

3. An order requiring DCPS to fund compensatory education services for missed physical therapy services;

4. An order requiring DCPS to fund compensatory education services for failure to implement (1) the April 2017 IEP for 15 days, (2) the May 2018 and May 2019 IEPs for the failure to provide transportation services; and

5. An order requiring DCPS to fund compensatory education services, or to develop a

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[73] P10 (86); testimony of Witness C.
[74] *See* P10 (87) (In July 2019, Teacher C had never seen Student fall); R10 (98) (On November 1, 2019, Teacher C had not seen Student fall that year); R10 (99) (On December 3, 2019, Teacher C reported no falls in November 2019); and R10 (100) (On January 2, 2020, Teacher C reported no falls in December 2109).
[75] P10 (87); R10 (97).
[76] P10 (86).

missed services plan for speech services during the summer of 2020, for the missed speech services from March 24, 2020 to May 22, 2020.

ORDER

Upon consideration of the *Complaint*, DCPS' *Response*, the Order on Cross Motions, the exhibits from the parties' disclosures that were admitted into evidence, the testimony presented during the hearing, and the closing arguments by the parties' counsel, it is hereby

ORDERED, that the *Complaint* is **DISMISSED** with prejudice.

APPEAL RIGHTS

This decision is final except that either party aggrieved by the decision of the Impartial Hearing Officer shall have ninety (90) days from the date this decision is issued to file a civil action, with respect to the issues presented in the due process hearing, in a district court of the United States or the Superior Court of the District of Columbia as provided in 34 C.F.R. §303.448 (b).

Terry Michael Banks

Terry Michael Banks
Hearing Officer

Date: October 13, 2020

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