

**District of Columbia
Office of the State Superintendent of Education**

Office of Dispute Resolution
1050 First Street, NE, Washington, DC 20002
(202) 698-3819 www.osse.dc.gov

OSSE
Office of Dispute Resolution
September 15, 2018

Parent, on behalf of Student,¹)	
Petitioner,)	
)	
v.)	Hearing: September 5, 2018
)	Date: September 15, 2018
)	Hearing Officer: Michael Lazan
)	Case No.: 2018-0153
District of Columbia Public Schools,)	
)	
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving a student who is currently eligible for services as a student with Multiple Disabilities (the “Student”).

A Due Process Complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on June 14, 2018. The Complaint was filed by Petitioner, who is the parent of the Student. On June 22, 2018, Respondent filed a response. The resolution period expired on July 14, 2018.

II. 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. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title

¹Personally identifiable information is attached as Appendix A 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.

III. Procedural History

On July 12, 2018, this Hearing Officer held a prehearing conference. Attorney A, Esq., counsel for Petitioners, appeared. Attorney B, Esq., counsel for Respondent, appeared. On July 18, 2018, a prehearing conference order was issued, summarizing the rules to be applied in this hearing and identifying the issues in the case.

On July 13, 2018, DCPS filed a motion for a continuance. Petitioner consented to the motion. This Hearing Officer found the motion to be necessary and reasonable, and there was no showing of prejudice to the Student, Petitioner, or DCPS. The Hearing Officer Decision (“HOD”) due date was therefore extended to September 15, 2018.

There was one hearing date: September 5, 2018. This was a closed proceeding. Petitioner was represented by Attorney A, Esq. Respondent was represented by Attorney B, Esq. Petitioner moved into evidence Exhibits 1-61. There were no objections. Exhibits 1-61 were admitted. Respondent moved into evidence Exhibits 1-31. There were no objections. Exhibits 1-31 were admitted.

Petitioner presented as witnesses: herself; Witness A, an advocate; Witness B, a physical therapist; and Witness C, a speech and language pathologist. Respondent presented as witnesses: Witness D, a compliance case manager; Witness E, a monitoring specialist; Witness F, a speech and language pathologist; and Witness G, a physical therapist.

IV. Issues

As identified in the Prehearing Conference Summary and Order and in the Due Process Complaint, the Free Appropriate Public Education (“FAPE”) issues to be determined are as follows:

1. Did DCPS fail to offer the Student a FAPE in the Student’s Individualized Education Program (“IEP”) dated January, 2018? If so, did DCPS act in contravention of 34 CFR 300.320, Andrew F. v. Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

Petitioner contended that the IEP did not provide for any/sufficient speech and language therapy, occupational therapy, vision services, assistive technology, or physical therapy, and was not based on comprehensive evaluations.

2. Did DCPS fail to appropriately revise the Student’s IEP, pursuant to 34 CFR Sect. 300.324 and Andrew F. v. Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982), after notice that the Student required related services? If so, did DCPS deny the Student a FAPE?

Petitioner contended that the IEP was not revised to provide for any/sufficient speech and language therapy, occupational therapy, assistive technology, or physical therapy, and was not based on comprehensive evaluations. Petitioner also indicated that the IEP should have been revised to add transportation services.

3. Did DCPS fail to assess the Student in all areas of suspected disability after the HOD dated September, 2017? If so, did DCPS violate 28 U.S.C. Sect. 1414(b)(3), 34 C.F.R. Sect. 300.304(c), and related provisions? If so, did DCPS deny the Student a FAPE?

Petitioner indicated that DCPS failed to conduct a Functional Vision Assessment (“FVA”).

V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a student with Multiple Disabilities. The Student has a range of disabling conditions. The Student has sickle cell anemia, which causes seizures and “pseudo” seizures that can last as long as seventeen minutes. The seizures can occur as often as three times in a day, though sometimes a week may pass without any seizures. If a seizure lasts more than five minutes, a drug called Diastat must be administered to the Student. If the application of Diastat does not work, which is rare, the Student must be taken to a hospital. The Student is also blind in the right eye, and diagnosed with Attention Deficit Hyperactivity Disorder. (Testimony of Petitioner)

2. The Student has an IQ of 52 and functions at a very low level in all academic domains. The Student also has limited adaptive skills, as measured by formal testing. There is some uncertainty as to whether the Student’s visual issues impact the Student’s testing scores. As a result, an FVA is needed for the Student to determine if the Student’s deficits are in part a “function” of the Student’s vision issues. (Testimony of Witness A; P-4-4-7)

3. An occupational therapy evaluation of the Student was conducted on or about August 21, 2017. The evaluator found that the Student would benefit from practicing basic movements. The evaluation also found that the Student could benefit from handwriting practice. The evaluator was puzzled by the lack of related services for the Student, and recommended occupational therapy in the amount of forty-five minutes

per week. The evaluator also recommended a physical therapy evaluation for the Student. (P-17)

4. On August 30, 2017, a speech and language evaluation of the Student was conducted by Witness C. Witness C found that the Student's scores were below average on most measures. On the Peabody Picture Vocabulary Test, 4th Edition, the Student's receptive language was considered to be below average. On the Expressive Vocabulary Test, 2nd Edition, the Student tested at the 5th percentile. In the Oral and Written Language Scales, 2nd Edition, the Student tested at the 0.3 percentile in listening comprehension, 0.2 percentile in oral expression, and 0.1 percentile in overall oral language. Overall, Witness C considered the Student's language deficits to be more than two deviations below the mean. Impairments were identified in expressive vocabulary, listening comprehension, oral expression, and critical thinking skills. (P-20; Testimony of Witness C)

5. An HOD was issued by Hearing Officer NaKeisha Sylver-Blount on September 13, 2017. Hearing Officer Blount ordered a wide range of relief in her decision, including a full-time nurse or health care aide (including on the Student's bus), behavioral support services, accommodations for medical needs, and an FVA within ten days of the HOD. Hearing Officer Blount also ordered that the Student be placed at School A, a non-public school. DCPS then convened an IEP meeting in September, 2017, to revise the Student's IEP per Hearing Officer Blount's order. An IEP was written for the Student on September 27, 2017. This IEP provided for 27.5 hours of specialized instruction weekly, with thirty minutes per week of behavior support services, thirty minutes per week of behavior support services consult, a full-time personal nurse

(including on the Student's bus), and related accommodations. (P-7; Testimony of Witness D)

6. The Student was set to start attending School A in or about October, 2017. However, there was a delay in the Student's start date because a nurse was required, and School A wanted to do a background check on the nurse. (Testimony of Witness D)

7. Also causing difficulty for the Student were transportation issues. The Student was not placed on a bus route immediately. Then, when a bus was assigned, the Student found that the bus ride was up to two hours long. On the long trip, the Student sometimes had seizures, which were addressed by the nurse who accompanied the Student on the bus. (Testimony of Petitioner)

8. DCPS reached out to School A to set up an FVA of the Student. DCPS found a provider, but this provider was unable to assess the Student after scheduling four appointments. Each time an appointment was scheduled, the Student was not in school. At least one of those times, the provider actually went to School A, only to find that the Student was not in school on that day. (Testimony of Witness D)

9. In addition to issues with transportation and the retention of a nurse, disability-related illnesses caused the Student to miss about thirty days of school during the 2017-2018 school year. (Testimony of Petitioner)

10. An assistive technology evaluation of the Student was conducted on or about November 13, 2017. This evaluation was conducted by Witness C, who recommended that the Student receive a laptop computer loaded with a variety of software, including text-to-speech and speech-to-text software. (P-19; Testimony of Witness C)

11. Psychological testing was conducted on the Student in or about January, 2018. The Woodcock Johnson Test of Achievement IV, Form A and Extended, was administered. The Student tested well below average in all tested areas, with reading skills testing at a slightly higher grade level equivalent than writing skills and math skills. (R-8-1)

12. On January 18, 2018, DCPS and Petitioner met at an IEP meeting to discuss the Student's placement at School A, and to review the Student's assistive technology evaluation. Petitioner requested that the Student's speech and language evaluation and occupational therapy evaluation also be reviewed at this meeting. DCPS denied this request but determined that assistive technology recommendations should be placed in the Student's IEP. (Testimony of Witness C; Testimony of Witness D; Testimony of Witness E)

13. A new IEP was written for the Student on or about January 19, 2018. This IEP recommended 29.25 hours per week of specialized instruction, 180 minutes per month of behavioral support services, 120 minutes per month of behavior consultation services, a laptop, text-to-speech software, word prediction software, editing software, headphones with a microphone, a full-time 1:1 nurse (including on the Student's bus to and from school), a medical safety plan, breaks, large print materials, clarification of materials, repetition of instruction, redirection during tests, use of a non-standard calculation device, use of a calculation device, preferential seating, a location with minimal distractions, extended time during assignments, flexibility in scheduling, allowance for naps, and extended school year services. (P-4-12-17)

14. In or about February, 2018, Speech and Language Pathologist A, a DCPS employee, conducted a classroom observation of the Student. The observation revealed that the Student needed 1:1 instruction, repetition, and visual support to perform adequately in reading. Speech and Language Pathologist A also saw that the Student needed additional time to process information. Speech and Language Pathologist A then issued a report about the Student's speech and language issues, which included an interview with the Student's teacher. The Student's teacher had reported that the Student had difficulty listening to instructions, processing information, and understanding the curriculum. Speech and Language Pathologist A concluded that the Student has a moderate to severe delay in oral language. (R-15-5)

15. On March 1, 2018, School A issued a safety plan, outlining steps to take when the Student suffers a seizure, including having a nurse administer Diastat and requiring school staff to clear the room that the Student was in. (P-13)

16. Another meeting was held between Petitioner and DCPS at School A in or about March, 2018. The purpose of this meeting was to review the Student's speech and language and occupational therapy evaluations from August, 2017. DCPS determined that the Student was eligible for speech therapy in a "consult" mode, following the recommendations of both Witness F, the co-head of School A's speech and language department, and Speech and Language Pathologist A. Witness F felt that the Student's attendance was so poor that the Student would be better off learning speech and language skills from teachers in the classroom. With respect to occupational therapy, DCPS agreed to provide the Student with direct services for sixty minutes per week. (R-16; Testimony of Witness E; Testimony of Witness F)

17. The Student's IEP was amended in April, 2018. This IEP required 240 minutes per month of occupational therapy, 120 minutes per month of behavior support services, sixty minutes per month of speech and language "consultation" services, and 120 minutes per month of behavior support "consultation" services. (1-16)

18. A physical therapy evaluation of the Student was conducted in or about April, 2018, by Witness B. On the Bruininks-Oseretsky Test of Motor Proficiency, 2nd edition, the Student scored below average in bilateral coordination, running speed, and agility. The Student was also determined to be well below average in strength, with decreased endurance and well below average balance skills. (P-21; Testimony of Witness B)

19. In or about June, 2018, the Student's location of services was changed to School B, largely because of the issues the Student had with the long ride to and from School A. School B is twelve minutes away from the Student's home, without traffic, and twenty minutes away, with traffic. However, the Student did not attend School B until about July 24, 2018, because there was no nurse in place at School B until then. (Testimony of Petitioner)

20. For the summer of 2018, the Student went to summer school at School B. During this time, the Student took the bus with the nurse to school only one day. On the other days, if the Student attended school, Petitioner drove the Student to school and back home after school. (Testimony of Petitioner)

21. The Student started the 2018-2019 school year at School B. The Student likes School B very much, is "having a ball," and is ready to go to school every day.

There has been a decrease in seizure activity since the Student has been at School B.
(Testimony of Petitioner)

22. On July 29, 2018, DCPS issued an authorization for the Student to obtain an FVA for \$800. (R-24-3)

VI. 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:

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.

See D.C. Code § 38-2571.03(6)(A)(i)

Issues #1 and #2 involve a challenge to the Student's existing or proposed IEP or placement. Accordingly, Respondent shall bear the burden of persuasion, provided that Petitioner establishes a *prima facie* case. Issue #3 does not directly relate to the Student's existing or proposed IEP or placement. For that issue, the burden of persuasion therefore lies with Petitioner. Schaffer v. Weast, 546 U.S. 49 (2005).

1. Did DCPS fail to offer the Student a FAPE in the IEP dated January, 2018? If so, did DCPS act in contravention of 34 CFR 300.320, Andrew F. v.

Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

Petitioner argued that the Student’s IEP did not provide for any/sufficient speech and language therapy, occupational therapy, vision services, assistive technology, or physical therapy, and was not based on comprehensive evaluations.

An IEP must be reasonably calculated to enable a child to receive educational benefit. Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982). The IEP should be both comprehensive and specific and targeted to a student’s “unique needs.” McKenzie v. Smith, 771 F.2d 1527, 1533, D.C. Cir. 1985); N.S. ex rel. Stein v. District of Columbia, 709 F.Supp.2d 57, 60 (D.D.C. 2010). In S.S. ex rel. Shank v. Howard Road Academy, 585 F. Supp.2d 56, 66-67 (D.D.C. 2008), the Court found that the measure and adequacy of an IEP decision must be determined as of the time it was offered to the student. Citing to circuit court decisions, the Court found that an IEP should be judged prospectively to avoid “Monday morning quarterbacking.” See Thompson R2-J Sch. Dist. v. Luke P., 540 F.3d 1143, 1149 (10th Cir. 2008); Adams v. Oregon, 195 F.3d 1141, 1149 (9th Cir. 1999); Carlisle Area Sch. V. Scott P., 62 F.3d 520, 530 (3rd Cir. 1995); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990).

In 2017, the Supreme Court addressed a split amongst the circuit courts regarding what the IDEA means when it requires school districts to provide an “appropriate” level of education to children with disabilities. Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-I, 137 S. Ct. 988 (2017). In Endrew F., the Court held that an IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Id. at 1001. The Court made clear that the standard is “markedly

more demanding than the ‘merely more than *de minimis*’ test applied by many courts.”
Id. at 1000.

By the January, 2018, IEP meeting date, DCPS had had a full opportunity to review the Student’s speech and language and occupational therapy evaluations, which were conducted in August, 2017. There is no dispute that the evaluations were provided to DCPS.

Moreover, when the DCPS evaluators finally did review the evaluations, two months or so after the January, 2018, IEP meeting, the evaluators concluded that the Student was deserving of services in each area. DCPS should have reached this conclusion much earlier. DCPS did not clearly explain why it took so long to review these evaluations. Petitioner is correct that the Student should have received speech and language services, and occupational therapy services, in the IEP of January, 2018.

The January, 2018, IEP meeting did result in the addition of assistive technology in the Student’s IEP, including the speech-to-text and text-to-speech software recommended by Witness C. Witness C did not clearly express any material disagreement with the assistive technology services in the IEP. There is, accordingly, no merit to Petitioner’s claim that the IEP lacked appropriate assistive technology services.

Moreover, while the parties do not dispute that the Student needs an FVA to determine whether the Student’s vision issues impact the Student’s education, there is not enough evidence in the record to show that the Student needs vision services. In particular, Petitioner did not call an expert in vision services to support her case. An agreement that a particular evaluation is needed should not automatically result in a

conclusion that the corresponding services are also needed. Petitioner did not meet her burden of putting forth a *prima facie* case with respect to the need for vision services.

Finally, with respect to physical therapy, DCPS was alerted to the need to evaluate the Student in this area. DCPS knew that the Student suffers from a severe disorder that affects the Student's ability to participate in physical activity. Moreover, the occupational therapy evaluation of August, 2017, specifically recommended a physical therapy evaluation of the Student. However, DCPS never conducted a physical therapy evaluation of the Student.

Petitioner was therefore forced to act. In April, 2018, a physical therapist, Witness B, evaluated the Student for Petitioner. In presenting her report during the hearing, Witness B credibly concluded that the Student requires sixty minutes of physical therapy services in school every week. Witness B pointed out that the Student has issues with tripping, bilateral coordination, running speed and agility, strength, endurance, and balance skills. DCPS presented its own physical therapist in defense, Witness G, who indicated that the Student could make sufficient progress in motor skill development through occupational therapy alone. Witness G also indicated that the Student could use orthotics to address issues with walking, and that the Student's classroom could be rearranged to accommodate the Student's issues. However, Witness B was the more persuasive witness, in part because Witness B has actually met the Student. Witness G conducted only a records review of the Student.

The Student's physical issues were also explained in a letter from a physician from X University Hospital's Department of Pediatrics and Child Health. This letter indicated that the Student has issues with endurance, shortness of breath, fatigue, and

tiredness. It also pointed out that the Student's physical issues have caused the Student to miss school on some days. (R-6). This letter, combined with the testimony and report of Witness B, makes it clear that the Student requires sixty minutes of direct physical therapy services per week.

It is noted that Witness G ultimately *did* recommend that the Student receive physical therapy "consultation" services. DCPS therefore cannot dispute that the January, 2018, IEP should have included at least some physical therapy services, as well as speech and language therapy services and occupational therapy services.

For the foregoing reasons, DCPS denied the Student educational benefit, and therefore a FAPE, by failing to provide sufficient related services on the January, 2018 IEP.

2. Did DCPS fail to appropriately revise the IEP, pursuant to 34 CFR Sect. 300.324 and Andrew F. v. Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982), after notice that the Student required related services? If so, did DCPS deny the Student a FAPE?

Petitioner argued that the IEP was not revised to provide for any/sufficient speech and language therapy, occupational therapy, assistive technology, or physical therapy, and was not based on comprehensive evaluations. Petitioner also indicated that the IEP should have been revised to add transportation services. Pursuant to 34 CFR 300.324(b), DCPS must review a child's IEP "periodically" to discuss information about the child provided to, or by, the parents, or to discuss the child's anticipated needs.

The parties' main dispute over the IEP revision pertained to DCPS's decision to add speech and language "consultation" services to the amended IEP dated April 17, 2018. There is no dispute that this IEP recommended an appropriate amount of

occupational therapy, and that the IEP contained the same requirements for assistive technology as the January, 2018, IEP (which this Hearing Officer deems appropriate).

Petitioner argued that the Student requires “direct” speech and language services, pointing to the report and testimony of Witness C, and there is no dispute that Witness C found that the Student’s speech and language testing scores were below average on most measures. However, School A’s speech and language expert, Witness F, recommended “consultative services,” based on the theory that because the Student was at school so infrequently, speech and language services would be ineffective. Witness F indicated that speech and language services require more regularity than the Student can manage. Speech and Language Pathologist A agreed with Witness F’s unbiased opinion. DCPS therefore had a good reason to recommend consultative speech and language services in the April, 2017, IEP. It is also noted that caselaw tends to favor school districts in claims that an adjustment in speech and language therapy is required for a student to receive a FAPE. See, e.g., L.R. v. Bellflower Unified Sch. Dist., 2012 WL 2501054 (C.D. Cal. June 27, 2012)(a preschool student with the communication skills of one-year-old received one hour of speech and language in IEP; the parent’s request of additional hour was denied in part because speech and language issues should be addressed in class); K.Y. and T.Y. on behalf of T.Y. v. New York City Dep’t of Educ., 2008 WL 9825097 (S.D.N.Y. July 2, 2008), aff’d T.Y. v. New York City Dep’t of Educ., 584 F.3d 412 (2d Cir. 2009)(the IHO determined that, although the evidence showed that the IEP should have included three additional hours of speech and language therapy after school, Plaintiffs failed to demonstrate that the overall program developed and recommended by the DOE deprived the student of a FAPE).

The April, 2018, IEP also contained appropriate transportation services for the Student, including the provision of a nurse on the Student's bus rides. Petitioner complained that implementation of these services was problematic because of difficulties with the Office of the State Superintendent of Education and the Student's nurse, but there are no "failure to implement" claims in the Due Process Complaint or the prehearing order. Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007)(establishing a right to "failure to implement" claims). It is noted that the Student's transportation issues were primarily due to the long commute from the Student's home to School A, which is now resolved.

Even so, Petitioner is correct that the April, 2018, IEP was not revised properly. Though this amended IEP did properly add speech and language therapy and occupational therapy, it did not add any physical therapy to the Student's program. As discussed above in relation to Issue #1, the Student needed physical therapy services in April, 2018, to help with issues in school, including issues relating to endurance and strength. DCPS denied the Student educational benefit, and therefore a FAPE, by failing to revise the January, 2018, IEP to add physical therapy.

3. Did DCPS fail to assess the Student in all areas of suspected disability after the HOD dated September, 2017? If so, did DCPS violate 28 U.S.C. Sect. 1414(b)(3), 34 C.F.R. Sect.300.304(c), and related provisions? If so, did DCPS deny the Student FAPE?

A Local Educational Agency ("LEA") is required to ensure that a child is assessed in all areas of suspected disability, and that the chosen assessment tools and strategies present relevant information that directly assists persons in determining the educational needs of the child. 28 U.S.C. Sect. 1414(b)(3); 34 C.F.R. Sect. 300.304(c).

There is no dispute that an FVA is needed for the Student. None had been completed as of the date of the hearing, although Hearing Officer Blount ordered DCPS to conduct an FVA within ten days of the September 13, 2017, HOD. DCPS's argument was that it tried to conduct the evaluation, scheduling appointments with the Student four times during the 2017-2018 school year. Each time, the Student was not available because the Student was not at school. There is nothing in the record to dispute this contention. Still, DCPS did not explain why it could not have conducted this evaluation at the Student's home. The record also indicates that DCPS failed to contact Petitioner directly, and instead contacted School A, to set up the FVA. Given the importance of this evaluation, DCPS could have and should have tried different approaches, rather than contact School A repeatedly to set up appointments.

This violation should not be considered procedural. The FVA was necessary to determine whether vision was partly responsible for some of the Student's academic and adaptive deficits. For the foregoing reasons, DCPS denied the Student a FAPE by failing to conduct an FVA of the Student.

Relief

Petitioner requested an amended IEP to provide for sixty minutes of speech therapy per week, 60 minutes of physical therapy per week, appropriate related goals, and private transportation. Petitioner also seeks a FVA for the Student.

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to "grant such relief as [it] determines is appropriate." School Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S.

359, 371 (1985). The ordinary meaning of these words confer broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.” 20 U.S.C. Sect. 1415(i)(2)(C)(iii).

Since no violation was found with respect to the provision of speech and language therapy on a consultative basis, it is not appropriate to order changes to the Student’s current IEP on speech and language issues. Moreover, since no violation was found with respect to the provision of transportation, it is not appropriate to order changes to the Student’s current IEP on transportation issues. The reasonable request for sixty minutes per week of physical therapy, however, is fully consistent with the recommendations of Witness B. No other physical therapist has examined the Student to dispute these conclusions. The IEP shall therefore be amended to add physical therapy for sixty minutes weekly, and to add concomitant goals identifying issues to be addressed during the 2018-2019 school year. Additionally, in a repeat of Hearing Officer Blount’s order, this HOD will order DCPS to complete an FVA of the Student within ten days. The FVA may be completed by a provider of Petitioner’s choice, at the usual and customary rate in the community.

Petitioner also seeks compensatory education. In particular, Petitioner seeks twenty-five hours of speech and language therapy, twenty hours of independent occupational therapy, fourteen hours of physical therapy, and software to be downloaded to the Student’s laptop.

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.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005).

In every case, however, 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. Id., 401 F. 3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to craft an award tailored to the unique needs of the disabled student").

Even though DCPS reasonably calculated the Student's needs for speech and language therapy and occupational therapy in the April, 2018, IEP, the Student did not receive speech and language services or occupational therapy services during the months between the January, 2018, IEP and the April, 2018, IEP. DCPS has agreed to provide the Student with twenty-five hours of speech and language therapy services and twenty hours of occupational therapy services as compensatory education.

DCPS has issued a formal written authorization for the compensatory speech and language therapy and occupational therapy. (R-30-2). This authorization contains a maximum rate for the services. While the rates seem reasonable, there is nothing in the record to establish whether providers are available at these rates. To insure that the award can be used by Petitioner, speech and language therapy services and occupational therapy services will be provided by a therapist of Petitioner's choice at a usual and customary rate in the community.

DCPS did not agree to provide the Student with compensatory physical therapy services. However, the Student has been deprived of physical therapy services since January, 2018. The modest request for fourteen hours of physical therapy services must

be granted. Petitioner may select the provider of the physical therapy services, on the condition that the provider charges the usual and customary rate in the community.

Finally, Petitioner also requested software to be downloaded to the Student's laptop as compensatory education. While, clearly, the Student's laptop should contain the appropriate software, this HOD does not sustain Petitioner's claims relating to assistive technology. It is therefore improper to provide relief in regard to this service request.

VII. Order

As a result of the foregoing:

1. The Student is hereby awarded twenty-five hours of compensatory speech and language therapy, twenty hours of compensatory occupational therapy, and fourteen hours of physical therapy, all to be provided by a qualified provider of Petitioner's choice, at a usual and customary rate in the community;
2. The Student's IEP is hereby amended to require sixty minutes per week of physical therapy;
3. The IEP team shall reconvene to add language to the Student's IEP relating to physical therapy, including goals for the Student;
4. An FVA of the Student shall be conducted within ten calendar days of this order, by a qualified provider of Petitioner's choice, at a usual and customary rate in the community;
5. All other requests for relief are hereby denied.

Dated: September 15, 2018

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
OSSE Division of Specialized Education
Contact.resolution@dc.gov

VIII. Notice of Appeal Rights

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

Dated: September 15, 2018

Michael Lazan
Impartial Hearing Officer