

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

Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
September 25, 2023

Parent, on behalf of Student, ¹)	
Petitioner,)	
)	Hearing Dates: 9/14/23, 9/15/23
v.)	
)	Hearing Officer: Michael Lazan
)	
District of Columbia Public Schools,)	Case No. 2023-0090
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student (the “Student”) who is currently eligible for services as a student with Specific Learning Disability. 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 May 17, 2023. The Complaint was filed by the Student’s parent (“Petitioner”). On May 31, 2023, Respondent filed a response. A resolution meeting was held on June 2, 2023. The meeting did not result in a settlement. The resolution period expired on June 16, 2022.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R.

¹ Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-A, Chapter 30.

III. Procedural History

A prehearing conference was held on July 13, 2023. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on July 18, 2023, summarizing the rules to be applied in the hearing and identifying the issues in the case.

The hearings were conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioner was again represented by Attorney A, Esq. Respondent was again represented by Attorney B, Esq. This was a closed proceeding.

After a series of emails, the parties agreed to set hearing dates for September 13, 2023, and September 14, 2023, due to witness availability. When the hearing dates were set by the parties, it was understood that one or both of the parties would file a motion, on consent, to extend the timelines for the Hearing Officer Determination (“HOD”). Accordingly, on June 9, 2023, Respondent moved to extend the timelines, on consent, from July 31, 2023, to September 25, 2023. According to the Standard Operating Procedures (“SOP”) of the Office of Dispute Resolution (“ODR”), circumstances that may indicate good cause for a timeline extension include, but are not limited to, unavailability of witnesses, a party, or counsel. ODR SOP Sect. 710(C). Additionally, according to the SOP, in general, the parties’ agreement to a continuance constitutes “good cause” to extend the deadline for issuance of a final HOD. ODR SOP Sect. 710(D)(2). There was no showing of prejudice to the Student, Petitioner, or Respondent.

The HOD due date was therefore extended to September 25, 2023, a continuance of fifty-six days.

Hearings proceeded on September 14, 2023, and September 15, 2023. Closing arguments were presented at the close of testimony on September 15, 2023. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-51. DCPS filed objections to exhibits P-18 (on relevance), P-31 (on relevance and foundation), P-39 (relevance, foundation), P-40 (relevance), P-42 (relevance, foundation), P-43 (relevance, foundation), P-47 (relevance, foundation), and P-48 (foundation). These objections were overruled. Exhibits P-1 through P-51 were admitted. Respondent moved into evidence exhibits R-8 to R-10, R-14, R-15, R-17, R-20 to R-25, R-27, R-33 to R-35, R-37, R-40, R-42, R-43, R-45 to R-52, and R-56 to R-58. Though objections were filed by Petitioner, no objections were made at the hearing. Exhibits R-8 to R-10, R-14, R-15, R-17, R-20 to R-25, R-27, R-33 to R-35, R-37, R-40, R-42, R-43, R-45 to R-52, and R-56 to R-58 were admitted.

Petitioners presented as witnesses, in the following order: Witness A, an occupational therapist (expert in occupational therapy); Witness B, a speech-language pathologist (expert in speech-language pathology and assistive technology); Witness C, a special education advocate (expert in special education as it relates to Individualized Education Program “IEP” programming and evaluation); and Petitioner. Respondent presented as witnesses: Witness D, a speech-language pathologist at School A; Witness E, a social worker at School B (expert in social work); Witness F, a Local Educational Agency (“LEA”) representative at School C; Witness G, Director of Special Education at

School B (expert in speech-language pathology, special education, and administration of special education); and Witness H, a DCPS resolution specialist.

IV. Issues

As identified in the Prehearing Order and in the Complaint, the issues to be determined in this case are as follows:

1. Did Respondent deny the Student a Free Appropriate Public Education (“FAPE”) by creating IEPs on or about May 18, 2021, November 5, 2021, and June 21, 2022, that: 1) provided insufficient specialized instruction; 2) provided insufficient speech and language services; 3) provided insufficient occupational therapy services; and 4) provided insufficient behavioral interventions and services?

2. Did Respondent fail to timely and comprehensively evaluate or reevaluate the Student in or about April 2022 (with a sufficiently comprehensive psychological evaluation and assistive technology evaluation) and in or about September 2022 (with a sufficient neuropsychological evaluation)? If so, did Respondent deny the Student a FAPE?

3. Did Respondent fail to provide Petitioner with full access to the Student’s educational records? If so, did Respondent deny the Student a FAPE?

Claim #3 was withdrawn, without prejudice, at the prehearing conference.

As relief, Petitioner seeks for the Student, among other things, compensatory education, a neuropsychological evaluation (or comprehensive psychological evaluation), and an assistive technology evaluation followed by an IEP meeting. Petitioner also seeks a reservation of rights to file an additional complaint and for additional compensatory education.

V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a student with Specific Learning Disability. The Student struggles with reading, has difficulty taking notes, and gets embarrassed when it appears that s/he is not on grade level in reading.

Testimony of Petitioner. The Student began receiving school-based services as prescribed in his/her initial IEP on November 25, 2014. P-6-9.

2. A speech and language evaluation of the Student was conducted by DCPS on five dates in October–November 2018. The corresponding report was issued on November 15, 2018. The Student’s articulation was determined to be low for his/her age. The Student’s receptive vocabulary skills were found to be in the average range and his/her receptive language skills were found to be in the low average range. The evaluator concluded that the Student presented with reduced speech intelligibility and had concerns that the Student’s expressive language skills could potentially impact him/her adversely in the educational setting and in the community. P-4.

3. DCPS conducted a comprehensive psychological reevaluation of the Student in 2018. The corresponding report, issued on November 16, 2018, stated that the Student was performing below grade/age academic expectations. The evaluator concluded that the Student continued to struggle with impulse control, following directions, communication, social interaction, aggression, and task completion. The evaluator indicated that the Student was not engaged, failed to follow directives, did not care about doing school work, appeared to have issues organizing, initiating, or beginning work, and had difficulty adapting to changing situations. Testing revealed that the Student was at a significant clinical risk for externalizing (acting out) behaviors. As part of the evaluation, the Student was observed in his/her English language arts (“ELA”) general education class, which contained approximately sixteen students and one general education teacher. The Student was assigned a laptop computer to work independently, but s/he roamed the classroom aimlessly, carrying the laptop from student to student and

either interfering with their work or hovering over them. During this observation, the Student did not make any attempts to complete any work, nor did s/he ask for assistance. When asked to return to his/her seat to start work, the Student scowled at the teacher. The Student was also observed in his/her math class, which contained approximately fifteen students and one general education teacher. The Student's performance was the same as in his/her ELA class. The Student was also observed in special education classrooms, which each contained approximately five to six students and one special education teacher. The Student was seated during these observations. In the special education math classroom, the Student was seated at his/her desk with a computer, but s/he did not appear to complete any work. The Student sat quietly while the teacher provided instruction to other students individually. The Student appeared to be reticent when the math teacher asked him/her to complete a problem. In the Student's other special education classroom, s/he was involved in the small group instruction. The Student was engaged and attempted to answer a question presented by the teacher. The evaluator recommended teaching the Student in small groups or 1:1, if possible, among many other recommendations. P-5; Testimony of Witness C.

4. A Functional Behavioral Assessment ("FBA") was written for the Student after an interview on September 16, 2019. The FBA indicated that, every day, the Student was defiant, threw items around the classroom, cursed, attempted to hit, and engaged in antagonizing behavior behaviors, among other things. The Student would elope from the classroom and not do any work unless a teacher stood next to him/her. The purpose of this behavior was to avoid doing work. The FBA recommended small groups, peer pairing, proximity control, frequent reminders, modified work, work broken

into smaller steps, and differentiated instruction. P-34. A Behavior Intervention Plan (“BIP”) for the Student followed on September 23, 2019. The BIP recommended special seating, breaks, warm greetings, non-verbal cues, and teaching calming and coping skills for the Student. P-32.

5. During the 2020-2021 school year, the Student attended School A. The Student’s IEP recommended two hours per week of specialized instruction, 120 minutes per month of speech-language pathology, and 180 minutes per month of behavioral support services, all outside general education. R-9. The Student struggled to read during this school year. On the Middle-of-Year Reading Inventory Assessment administered on January 27, 2021, the Student scored “BR,” at the “beginning reader” level. P-8-4.

6. The Student’s May 18, 2021, IEP again recommended two hours per week of specialized instruction, 120 minutes per month of speech and language pathology, and 180 minutes per month of behavior support services, all outside general education. The Student was reading at kindergarten level, though s/he made progress in testing. The IEP stated that test results indicated that the Student would benefit from intensive intervention that focused on skills and concepts related to quantitative reasoning and representation in math. The IEP indicated that the Student’s attendance in remote therapy sessions declined, which negatively impacted his/her opportunity for progress. The IEP also indicated that the Student was assessed by his/her teacher through a behavior rating scale, but it was difficult for the teacher to determine the Student’s progress, as a result of his/her decline in attendance. P-9; Testimony of Witness C.

7. The Student's IEP progress reports for the 2020-2021 school year showed no progress on any goal except one speech and language goal in the last two semesters.

P-14. On the Student's end-of-year report card, s/he received "1" grades in all subjects.

P-8-3.

8. The Student continued at School A for the 2021-2022 school year. During the first part of this school year, the Student made some improvement in reducing the frequency and intensity of his/her disruptive behavior, and also showed improvement in social skills with peers and adults. However, it was reported that when the Student was asked to write sentences (using words that were provided), s/he was unable to do so. During a spelling test, the Student was unable to spell any of the ten words attempted, and it was difficult to get the Student to perform most tasks. The Student often sat at his/her desk with his/her head down, or aimlessly walked around the classroom avoiding work. P-10. The Student was an active participant in "lunch bunch," which s/he "loved," but s/he did not do non-preferred tasks and was frustrated by the rate at which his/her peers progressed. Not having eyeglasses also made it difficult for the Student, though s/he did get eyeglasses in or about January 2022. Testimony of Witness D.

9. An Analysis of Existing Data ("AED") meeting was held for the Student on October 21, 2021. It was reported that the Student's letter formation was at a kindergarten level. At this meeting, a teacher indicated that the Student "is not producing the work unless I am really, really supporting [him/her]. I have to write out the work and [s/he] traces it with the pencil. I worry that [s/he] is not producing much work." Another teacher said that the Student recognized and knew the sounds of all of the letters, but in

terms of writing them down, the teacher stated that, “I don’t have any proof that [s/he] can do any of that.” P-22-4; P-44.

10. An IEP meeting was held for the Student on November 5, 2021. At the meeting, it was stated that the Student’s phonics and decoding were at a first grade level, and that the Student tried to sound out words with minimal success. P-45. There was a discussion about how to motivate the Student. The Student’s November IEP recommended the same services as the prior IEP, except behavioral support services were reduced to sixty minutes per month. The IEP noted that, with support, the Student could write a sentence at a first grade level. P-10.

11. In PARCC testing conducted in spring 2022, the Student scored 684 in math, not meeting expectations at Level 1, and 676 in English language arts, also not meeting expectations at Level 1. P-36; P-37.

12. During speech therapy in the 2021-2022 school year, the Student did not make meaningful progress and would growl, bark, or put a mask on when asked to do an undesirable activity. Testimony of Witness D.

13. DCPS conducted an occupational therapy evaluation of the Student in May 2022, with the corresponding report issued on May 27, 2022. This evaluation indicated that, per a teacher report, the Student struggled compared to same-age special education peers. It was also noted that it was hard to get the Student to participate, that s/he did not want to do the work, and that s/he had difficulties with sensory processing. The Student also scored in the below average range in fine motor precision and manual dexterity subtests, which assess motor skills involved in writing, drawing, and cutting. The Student scored in the average range in fine motor “integration” and in the visual

motor integration composite, but below average in the motor reduced perception composite and in the general visual perception composite. A Sensory Profile (“SPM-2”) filled out by the Student’s teacher indicated that the Student had issues with respect to visual touch, balance, planning and ideas, and social participation. The Student’s sensory “total score” indicated that his/her sensory functions were significantly affected and had a severe impact on his/her daily academic participation. In the areas of hearing and body awareness, the Student demonstrated moderate difficulties. Testimony of Witness A; P-6.

14. A speech and language evaluation of the Student was conducted in early 2022, with the corresponding report issued on June 6, 2022. The Student presented with typical expressive vocabulary, receptive vocabulary, voice, fluency, and oral motor function. The Student demonstrated below average receptive/expressive language ability, pragmatic skills, and articulation. Comparison to previous testing revealed that the Student’s expressive language scores increased from below normal limits to within normal limits. The Student’s standard score of 66 on the Clinical Evaluation of Language Fundamentals (“CELF-5”) indicated performance severely below normal limits for Core Language, a decrease from prior testing. The Student’s Language Content Index score was also severely below normal limits. The evaluation also indicated that the Student was able to formulate basic sentences using age-appropriate vocabulary and grammar. Receptively, the Student was able to follow multi-step directions (when focused and motivated), identify various items/objects, and interpret/comprehend basic material presented to him/her. The Student continued to demonstrate weakness in the areas of articulation and pragmatic skills. P-7.

15. DCPS conducted a comprehensive psychological evaluation of the Student and issued the corresponding report on June 12, 2022. The Student's general education teachers reported that s/he was generally quiet in the classroom and was often disengaged in the lesson or appeared very uninterested. The teachers both reported that the Student put forth very little effort to complete assignments. It was reported that the Student's work often contained random answers or words like "poop" instead of the answer to a math problem. The Student's special education teacher reported that s/he struggled to produce the simplest of assignments. The Student was observed in his/her special education classroom, which contained approximately three students and one special education teacher. The Student was seated at his/her table, lying on the desk. It was unclear if the Student was listening or inattentive. During independent work, the Student was haphazardly working through a lesson on a computer. The Student was also observed in his/her general education classroom, which contained approximately twelve students and one teacher. The Student performed in a manner that was almost identical to his/her special education performance. Testing on the Kaufman Test of Educational Achievement ("KTEA") indicated that mathematics above a 1st–2nd grade level would be difficult for the Student. His/her reading comprehension, letter word recognition, spelling, and writing were all in the very low range. The Student's composite IQ was 80, in the below average range. The evaluator stated that the Student had a "very compromised" ability to identify letters and read grade-appropriate words, read symbols, words, sentences, and passages appropriate to his/her grade level, and respond to comprehension questions. Reading tasks above the 1st grade level would be difficult for the Student. However, his/her memory skills were in the above average range. School-

based assessments indicated that the Student was functioning on a level commensurate with that of a kindergarten student. P-8.

16. An IEP meeting was held for the Student on June 21, 2022. An LEA representative proposed ten hours per week of specialized instruction outside general education. The other team members rejected that option and pushed for fifteen hours. The IEP ended up recommending fifteen hours per week of specialized instruction outside general education, with 120 minutes per month each of occupational therapy, speech-language pathology, and behavioral support services, all outside general education. The IEP indicated that the Student had made some improvement in reducing the frequency and intensity of his/her disruptive behaviors, and had also shown some improvement in his/her social skills with peers and adults. P-46; P-11.

17. During the 2021-2022 school year, the Student made no academic progress during the second and third reporting periods. P-16. The Student did master three goals in speech and language, relating to writing intelligible sentences, articulation, and sentence grammar (70% accuracy). P-16-3, P-17-3.

18. In September 2022, the Student scored 415 on i-Ready testing in reading, at the 2nd percentile. P-39-8. The Student changed schools in the 2022-2023 school year and began attending School B. School B fulfilled the Student's mandate for fifteen hours per week of specialized instruction through both general education and special education classes. The Student was in both a resource class and an inclusion class for math and reading. An inclusion teacher also pushed into the Student's history class. Testimony of Witness G.

19. At School B, the Student had a difficult time with school avoidance and work avoidance. The Student felt that other students were bothering him/her and s/he did not want to go to school. Testimony of Witness E; P-39-2. During the first reporting period, the Student was disengaged from classes and did not start assignments. The Student would make more attempts to start work if provided with 1-1 support, so Witness E sometimes went into the classroom and sat directly next to the Student to help him/her start to work. The Student showed no growth academically at all at this point. The Student did better in smaller classes, such as the reading intervention and resource classes, because s/he got more individualized attention. Testimony of Witness E.

20. An FBA was written for the Student on December 13, 2022. The Student's behaviors were described as including disengagement from the academic environment and antagonizing peers. It was noted that the behaviors largely occurred during independent work, especially if the Student was unable to grasp the material. The FBA also indicated that even when staff sat with the Student on a 1:1 or small-group basis, the Student often did not respond. The FBA indicated that negative comments could trigger the Student's behaviors, and that work avoidance, and avoidance of peers and staff, were the function of his/her misbehavior. This FBA suggested that the Student needed 1:1 help, chunking, and extended time, with rewards for work completion. P-35. DCPS wrote a BIP for the Student on December 13, 2022, to address the Student's aggressive behavior and academic disengagement. The BIP recommended interventions such as positive praise, modeling prosocial behaviors, a visual checklist, parent feedback, counseling, and warm greetings. P-33.

21. According to IEP progress reports, during the first reporting period of the 2022-2023 school year, the Student demonstrated little progress in math and refused to answer questions regarding fractions. The Student did make progress toward reading goals in a small group or 1:1 guided reading setting with a teacher. P-19. In the second reporting period, the Student made progress in math but not reading because of absences. The IEP progress report indicated that the Student performed best in smaller classes (reading intervention and resource room). P-20.

22. Witness E met with the IEP team to discuss the Student in the middle of the 2022-2023 school year. The team determined that the Student needed additional support. The Student had not made much progress in academics or the ability to stay on task. Testimony of Witness E. By December 2022, the team felt that the Student needed to move to a more restrictive environment. By the third reporting period, the Student was failing English, health and physical education, support, science, and world geography and cultures. Testimony of Witness G; P-40. In the third reporting period, the Student made no progress in math, but some progress in reading and writing. P-21.

23. For the 2023-2024 school year, the Student attends the SLS program at School C. In the SLS program, all academic classes are small and taught by a special education teacher. The Student is generally in a class with eight children, one teacher, and one aide. The Student is engaged and there have been no behavior concerns at the school. Testimony of Witness F.

24. During 2021, the Student's i-Ready score in math was 402 in January, 415 in May, and 392 in September. On the same test on May 24, 2023, the Student's score was 414, slightly lower than his/her score from two years earlier. P-39-6; R-42 at 253.

VI. Conclusions of Law

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.” D.C. Code Sect. 38-2571.03(6) (A)(i). Accordingly, on Issue #1, relating to the appropriateness of the Student’s IEP and placement, the burden of persuasion is on Respondent if Petitioners present a *prima facie* case. On Issue #2, the burden of persuasion is on Petitioner.

1. Did Respondent deny the Student a FAPE by creating IEPs in or about May 18, 2021, November 5, 2021, and June 21, 2022 that: 1) provided insufficient specialized instruction; 2) provided insufficient speech and language services; 3) provided insufficient occupational therapy services; and 4) provided insufficient behavioral interventions and services?

In Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), the Court held that an IEP must be reasonably calculated “in light of the child’s circumstances.” Id. at 999-1000. The Court also held that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001-1002.

The Endrew F. decision reaffirmed the Court’s holding in Board of Education v. Rowley, 458 U.S. 176 (1982), in particular the statement that if a child is fully integrated into a regular classroom, passing marks and advancement from grade to grade through the general curriculum will ordinarily satisfy the IDEA standard. However, a footnote to the opinion warns that this “guidance should not be interpreted as an inflexible rule” and is not a holding that every child advancing from one grade to the next “is automatically receiving an appropriate education.” Id. at 1001 n.2 (citation omitted).

1. IEP dated May 18, 2021.

Petitioners contended that this IEP did not provide sufficient specialized instruction, speech and language services, occupational therapy services, and behavioral interventions and services for the Student.

The IEP provided for two hours per week of specialized instruction, 120 minutes per month of speech and language pathology, and 180 minutes per month of behavior support services, all outside general education. The program therefore placed the Student in all general education classes except for two hours per week. The Student, however, was reading on only “BR” level, which is not even at the kindergarten level. There is little in the IEP, the testimony, or the related documents to explain how this Student could understand written material in any large general education class without a special education teacher in the room.

In fact, the Student’s need for smaller classes and more specialized instruction was made clear by a DCPS evaluation of the Student from three years earlier. The evaluator observed the Student in his/her ELA general education class. There were approximately sixteen students and one general education teacher in the class. The

Student was assigned a laptop computer to work independently, but s/he roamed the classroom aimlessly, carrying the laptop from student to student, either interfering with their work or hovering over them. During this observation, the Student did not make any attempts to complete any work, nor did s/he ask for assistance. When asked to return to his/her seat to start to work, the Student scowled at the teacher. The record suggests that this performance was typical of the Student's behavior in general education classes.

The Student was also not making academic progress in the general education setting. The Student's IEP progress reports for the 2020-2021 school year showed no progress in any goal except one speech and language goal in the last two semesters. On the Student's end-of-year report card, s/he received "1" grades in all subjects. DCPS argued that the Student's absenteeism was the cause of his/her problems at school, but this Hearing Officer agrees with Witness C's testimony that the Student's absenteeism was a result of the Student's inability to function in a large general education setting. Indeed, there is evidence in the record that the Student can be eager to go to classes school when materials are delivered in a small group. That was the compelling testimony of Witness D from School A, who said that the Student was especially enthusiastic to go to "lunch bunch," which s/he "loved." The FBA from September 16, 2019 is in accord with the notion that the Student needed to be educated in a small group. This Hearing Officer agrees with Petitioner that the May 18, 2021, IEP did not provide the Student with sufficient specialized instruction.

Petitioner also argued that the Student's IEP was deficient because the Student did not receive more speech-language therapy, pointing to the testimony of Witness B, who stated that the Student could benefit from an hour a week of therapy instead of thirty

minutes a week, pointing to the Student's articulation issues and core language deficits.

But Witness B, who does not know the Student, was not clear on what would be accomplished during the extra thirty minutes per week, or how the additional time would benefit the Student. Witness B also did not take into account that the Student was resistant to "pull-out" related services.

Witness D, who does know the Student, and whose candid testimony came across very credibly, said that, during the provision of related services, the Student would "sit there" and stare at his/her work. She said the Student did not like to be pulled out, that his/her motivation was really limited as it was, and that it was not appropriate to pull him/her out when s/he was not completing work that was asked of him/her in the therapy room. This Hearing Officer agrees. On this record, the school district has met its burden that its recommendation for the Student's speech-language pathology was appropriate.

Petitioner also argued that the Student required occupational therapy services on his/her IEP. At that time, the Student may have benefitted from occupational therapy, since s/he had sensory issues and issues relating to handwriting. However, Petitioner's own occupational therapy expert, Witness A, testified at one point that she could not say that the Student needed occupational therapy at that time (though she did say that there were occupational therapy deficits and that the Student needed to be evaluated).

Similarly, Petitioner argued that the Student required assistive technology in the May, 2021, IEP. Petitioner's assistive technology expert, Witness B, suggested that the Student needed an assistive technology evaluation and that the Student could benefit from such interventions as word-prediction software and text-to-speech software. But Witness B's testimony did not provide any meaningful, persuasive detail as to why this kind of

assistive technology was material to this particular Student's IEP and special education needs. This Hearing Officer finds these claims to be without merit because Petitioner did not present a prima facie case.

2. IEP dated November 5, 2021.

The Student continued at School A for the 2021-2022 school year. In the November 5, 2021, IEP, DCPS recommended the same services that were in the May, 2021, IEP, except that behavior support services were reduced to 120 minutes per month.

There are undisputed reports in the IEP that the Student made some improvement in reducing the frequency and intensity of his/her disruptive behavior during the start of the 2021-2022 school year. Accordingly, it was reasonable for the team to rely upon this information and accordingly reduce the Student's behavioral support services, especially since the Student did not like to be pulled out of class.

However, the Student's specialized instruction hours remained the same, even though s/he did not fare any better in the general education environment. At the October 21, 2021, AED meeting, a teacher indicated that the Student "is not producing the work unless I am really, really supporting [him/her]. I have to write out the work and [s/he] traces it with the pencil. I worry that [s/he] is not producing much work." Another teacher said that the Student recognized and knew the sounds of all of the letters, but that, in terms of writing them down, "I don't have any proof that [s/he] can do any of that."

DCPS suggested that the Student's main issue at that time was his/her eyesight, since there is no dispute in the record that the Student did not always have eyeglasses but always needed them. DCPS posited that, after the Student got eyeglasses, the Student did well. But the Student's academics did not progress after s/he obtained eyeglasses in or

about January 2022. During the 2021-2022 school year, the Student made no academic progress in the second and third reporting periods. This Hearing Officer agrees with Petitioner that the November 5, 2021, IEP did not provide the Student with enough specialized instruction.²

3. IEP dated June 21, 2022.

During the 2021-2022 school year, concerned staff at School A began to realize that the Student needed more support in academic classes. The Student's general education teachers reported that the Student was often disengaged in lessons. The Student's special education teacher reported that s/he struggled to produce the simplest of assignments. A report on the Student's testing in June 2022 indicated that his/her reading comprehension, letter word recognition, spelling, and writing were all in the very low range. The author of this report, a DCPS psychologist, stated that the Student had a "very compromised" ability to identify letters and read grade-appropriate words, read symbols, words, sentences, and passages appropriate to his/her grade level, and respond to comprehension questions. In the IEP, DCPS therefore recommended fifteen hours per week of specialized instruction outside general education, an increase from prior IEPs.

This mandate placed the Student in fewer general education classes, and was therefore an improvement from the prior IEPs. However, the recommendation still required the Student to participate in large general education academic classes without a special educator in the room. The record suggests that the Student engages in work

² This Hearing Officer finds that the contentions that the November 5, 2021, IEP provided for insufficient speech and language therapy, occupational therapy, and assistive technology are without merit for the same reasons as those stated in the section devoted to the May 18, 2021, IEP.

avoidance in a general education classroom rather than doing academic work. Witness D said that, in general education class, the Student would “just sit there and stare at [his/her] work.” The Student’s teachers during the 2021-2022 school year reported similar issues. Both of the Student’s general education teachers told an evaluator that the Student put forth very little effort to complete assignments in their classes and that his/her work contained random answers and words like “poop” instead of realistic answers. Neither teacher was called as a witness by DCPS to explain how the Student could have managed to benefit from general education academic classes. This Hearing Officer agrees with Witness C that the IEP recommendation for fifteen hours per week of specialized instruction outside general education, while improved from prior recommendations, was nevertheless not reasonably calculated and denied the Student a FAPE.

With respect to the contentions that this IEP lacked sufficient speech-language pathology, occupational therapy, and assistive technology, Witness D said that the Student did not make meaningful progress in speech because the Student was resistant. She said that the Student and would growl, bark, or put on a mask during sessions, and that additional speech-language pathology was of little benefit to the Student. Petitioner’s speech expert, Witness B, does not know the Student and could not dispute these claims. Petitioner also contended that the Student was not recommended for enough occupational therapy. However, after an evaluation was conducted in May, 2022, DCPS did recommend 120 minutes per month of occupational therapy in this IEP.

Petitioner's expert witness in speech did not clearly explain why this mandate was inappropriate. Accordingly, this claim is found to be without merit.³

As a result of the foregoing, this Hearing Officer finds that DCPS denied the Student a FAPE through its IEPs dated May 18, 2021, November 5, 2021, and June 21, 2022.

2. Did Respondent fail to timely and comprehensively evaluate or reevaluate the Student in or about April 2022 (with a sufficiently comprehensive psychological evaluation and assistive technology evaluation) and in or about September 2022 (with a sufficient neuropsychological evaluation)? If so, did Respondent deny the Student a FAPE?

Pursuant to 34 CFR 300.303 (a) and (b), a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 CFR 300.304 through 34 CFR 300.311 at least once every three years. The reevaluation should involve assessments in "all areas of suspected disability." 20 U.S.C. Sects. 1414(b)(3)(B), (c)(1); 34 C.F.R. Sect. 300.304(c)(4). The school district is required to "[u]se a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent." Sect. 300.304(b). For there to be a finding of FAPE denial on this issue, a parent should show that the failure to evaluate resulted in substantive harm to the student. Suggs v. District of Columbia, 679 F. Supp. 2d 43 (D.D.C. 2010).

The record indicates that DCPS conducted evaluations of the Student in May–June 2022. An occupational therapy evaluation, a speech-language evaluation, and a

³ This Hearing Officer was not convinced by the testimony of Witness B in regard to the need for assistive technology for this Student for the reasons stated in the preceding paragraphs relating to the May 18, 2021 IEP.

comprehensive psychological evaluation were completed. The reports issued in connection to these evaluations were professionally written. Petitioner contended that the comprehensive psychological evaluation did not include behavioral testing, but it was already obvious that the Student's behavior needed to be managed in a smaller setting, and Petitioner did not explain how more testing would have shed important new light on the subject. Indeed, Petitioner and her witnesses did not point to any specific behavioral measure that should have been used in the testing. Petitioner also contended that an assistive technology evaluation should have been conducted. Witness B testified that an assistive technology evaluation could benefit the Student. However, Witness B did not clearly explain how the addition of assistive technology would impact the Student in the classroom. During testimony, Witness B did mention word-prediction and text-to-speech software, but she did not explain why this Student is a good candidate for these approaches, or why a formal evaluation is necessary. On this record, this Hearing Officer is not convinced that the Student requires an assistive technology evaluation.

Finally, Petitioner's request for a neuropsychological evaluation in September, 2022 is related to Petitioner's belief that the Student needed to be tested to determine whether s/he is on the autism spectrum. Witness C said that the Student struggled to communicate his/her thoughts and feelings and had difficulty self-regulating, which suggests that autism issues are present. However, Witness C did not establish her credentials in regard to autism, and her resume contains nothing that suggests that she is an expert on autism. Moreover, there is nothing in the record to corroborate her view or to suggest the reasons why an autism-focused evaluation might be needed.

Petitioner also argued that a neuropsychological evaluation was needed to assess the Student's behavior. However, Petitioner did not specifically explain what additional testing was needed or why it was needed, and this Hearing Officer has already found that additional behavioral testing would only confirm what is already known through the Student's comprehensive psychological evaluation, teacher reports, strength and difficulty questionnaires, and the like: that the Student struggles with work, has not received enough attention in the classroom, acts out, engages in work avoidance, and needs a more restrictive setting.

This claim should therefore be dismissed.

RELIEF

As relief, Petitioner seeks compensatory education, a neuropsychological evaluation or comprehensive psychological evaluation, an assistive technology evaluation followed by an IEP meeting, and a reservation of rights to file an additional complaint and for additional compensatory education.

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). These words confer broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be "appropriate." Courts and hearing officers may award "educational services to be provided prospectively to compensate for a past deficient program." Reid ex Rel. Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). Compensatory education aims to put a student in the position s/he

would have been in absent the FAPE denial and “must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” B.D. v. District of Columbia, 817 F.3d 792, 797-798 (D.C. Cir. 2016) (quoting Reid, 401 F.3d at 524).

Witness C’s compensatory education plan recommended 451 hours of 1:1 tutoring, twenty-one hours of behavioral support services, forty-four hours of speech-language pathology, and seventy-three hours of occupational therapy. Since this Hearing Officer has not found that DCPS denied the Student a FAPE by failing to provide behavioral support services, speech-language pathology, or occupational therapy, this Hearing Officer declines to award such services as relief. Additionally, because I did not find that DCPS failed to evaluate the Student, Petitioner’s request for a new neuropsychological evaluation, an assistive technology evaluation, a comprehensive psychological evaluation must be denied.

However, this Hearing Officer has found that DCPS denied the Student a FAPE over the course of the 2021-2022 and 2022-2023 school years. Given the length of time of FAPE deprivation, Petitioner’s request for 451 hours of 1:1 tutoring, which is supported by expert testimony and a compensatory education plan, is reasonable, especially since DCPS did not present any witness to oppose this request or characterize it as excessive. Petitioner also requested that Petitioner’s rights be reserved for future compensatory education for the Student. However, since Petitioner has provided no authority in support of such relief, and no explanation of why this kind of relief is necessary, this Hearing Officer will decline to order it.

Finally, Respondent sought a dismissal with prejudice with respect to the third claim, which was withdrawn during the prehearing conference but not mentioned in the prehearing conference order. Respondent did not dispute that Petitioner withdrew the records claim without prejudice at the prehearing conference, well in advance of the hearing. Accordingly, this Hearing Officer finds that it is appropriate to dismiss this claim without prejudice.

VII. Order

As a result of the foregoing:

1. As compensatory education, Respondent shall fund 451 hours of 1:1 tutoring services for the Student, to be provided by a qualified special education teacher at a reasonable and customary rate in the community;
2. Claim #3 is dismissed without prejudice;
3. All other requests for relief are hereby denied.

Dated: September 25, 2023

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.

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 days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Dated: September 25, 2023

Michael Lazan
Impartial Hearing Officer